

POLITICAL CULTURE IN POST-COMMUNIST SOCIETIES AND WOMEN'S HUMAN RIGHTS IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract

This paper analyses the significance of politics in post-communist countries and some contemporary concepts of political action in the context of violations of women's rights. Old structural problems inherited from former socialist state formations - such as new populism, human rights violations, state paternalism, corruption and crime - represent a serious obstacle to the consolidation of democracy. Communist regimes contributed to the reinforcement of traditional and authoritarian attitudes and relationships in the family, school, politics and the workplace, thus slowing down the development of civic and democratic political culture.

Particular attention is devoted to the evolution of the protection of women's rights within the framework of the European Convention on Human Rights and the case-law of the European Court of Human Rights. The paper analyses the limits of a formally gender-neutral conception of human rights, the tension between public and private spheres, as well as the concepts of direct and indirect discrimination. By examining selected cases dealing with social benefits, family life and violence against women, the paper demonstrates both the reach and the shortcomings of the Court's approach.

The conclusion emphasises that without a transformation of political culture and a more gender-sensitive interpretation and application of human rights standards, formal guarantees of equality remain insufficient to ensure substantive equality for women in post-communist societies.

Key words: *post-communist countries, political action, women's rights, authoritarianism, European Court of Human Rights, discrimination*

INTRODUCTION

This paper analyzes the significance of politics in post-communist states in contemporary society and considers some contemporary concepts of political action in the context of violations of women's rights. The starting point of the work is the assumption that democratic consolidation cannot be understood without an insight into the political culture and historical legacy of socialist regimes, and that women's human rights are one of the key "test areas" of the real reach of democracy.

The main threats to the democratization of new states created by the collapse of socialist federations are the old problems inherited from former state formations: new populism, violation of human rights, state paternalism, corruption and crime, etc. Communist regimes contributed to the intensive development of traditional attitudes and relationships, especially authoritarian relationships in the family, school, politics and workplace, and deterred the development of a civil, democratic political culture. This led to the restoration

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of parochial and subject forms of political culture with a traditionalist and neo-traditionalist structure in the new democracies (Galić, 2001).

In theoretical terms, the relationship between liberty, equality and fraternity – as key postulates of the French Revolution – has proven to be much more complex than originally conceived. History has shown that liberty often produces inequality, while the very promotion of equality through social measures can lead to the restriction of liberty. Fraternity, on the other hand, is often limited to one specific group of people (e.g. a nation), which favors conflicts with other groups that are also homogenized by some variant of the idea of fraternity (Pusić, 2007).

Protests across Europe in different historical periods have encouraged states, in their role as constitution-makers, to address issues of human rights protection more seriously. The state tried to establish order by passing conventions for the protection of human rights, while the judiciary was supposed to effectively protect these rights. The Convention for the Protection of Human Rights and Fundamental Freedoms was conceived as a gender-neutral document, but in practice it has long been marginalized in terms of the gender dimension and specific violations of women's rights (Garton-Ash, 1993; Radačić, 2011).

1. POLITICS AND POLITICAL CULTURE IN POST-COMMUNIST SOCIETIES

1.1. The legacy of socialism and political culture

The political culture of the “new democracies” is marked by a long-standing legacy of socialism, collectivist orientations, and a strong trust in the state as the bearer of solutions to all social problems. Galić (2001) shows that in these societies, parochial and subservient characteristics of political culture have long dominated, with citizens experiencing themselves primarily as subjects of the state, rather than as active bearers of sovereignty. Mythological traditionalism is particularly evident in encouraging individual sacrifice for the collectivist goals of the nation. State paternalism is manifested in the presidential assumption of the role of creator and “parent of the nation” – *pater familias* – which legitimizes authoritarian patterns of governance (Galić, 2001). In such an environment, politics is perceived as the domain of “great leaders,” rather than as a space for the participation of all citizens, including women.

1.2. New populism and the erosion of democratic standards

The new populism in post-communist states builds on this legacy. Populist actors often introduce a dualistic rhetoric of “the people” and “the elite”, in which the people are portrayed as a homogeneous whole, and any diversity (including gender equality, minority rights or feminist demands) is portrayed as a threat to national unity. Such a discourse makes it difficult to affirm women’s rights, as gender equality is often delegitimized as an “imported concept” or as a product of “foreign values”, thus ignoring the fact that women’s rights are an integral part of universal human rights. In addition, populist governments often try to limit the independence of the judiciary and international human rights protection mechanisms, including the implementation of judgments of the European Court of Human Rights.

2. THE POSITION OF WOMEN IN SOCIETY AND THE GENDER DIMENSION OF POLITICAL ACTION

The position of women in society forces them to constantly confront the demands of family life, unfairly lower wages and precarious participation in the labour market. Women are still predominantly employed in gender-segregated sectors, such as education and healthcare, and are more often exposed to precarious and lower-paid forms of work (Galić, 2011).

The gender division of labour in the private sphere, combined with patriarchal patterns and limited access to public services (e.g. childcare and elderly care), limits the possibility of women's full participation in public and political life. Even when conditions are formally equal, unpaid domestic and care work, which is predominantly performed by women, creates real obstacles to political and professional participation.

At the same time, political systems often fail to recognise the specific forms of discrimination that women face in the private sphere, including domestic violence, economic violence and reproductive rights. This confirms the thesis that the division into "public" and "private" is not neutral, but often serves as an instrument for maintaining gender inequality.

2.1. Women's human rights and the practice of the European Court of Human Rights

The text "The Development of Women's Human Rights in the Practice of the European Court of Human Rights" addresses the lack of a gender-specific definition of discrimination against women in the European Convention on Human Rights and analyses the ways in which case law autonomously defines the content of the concept of sexual discrimination and gender-based violence. It shows a gradual increase in gender sensitivity in the interpretation of the legislative framework in which discrimination is judged (Radačić, 2011).

When it comes to the Convention and the public-private dichotomy, after World War II the primary goal of the Convention was to prevent the emergence of new totalitarian states and the spread of communism. The focus was on preventing direct violations of civil and political rights by the state, rather than on establishing a welfare state that would address structural inequalities. The Convention is primarily focused on regulating the public, not the private, sphere and on protecting against state interference in the freedom of a reasonable individual (Radačić, 2011).

Such a conception led to the fact that violations of women's rights in the private sphere - such as domestic violence, forced marriages or denial of reproductive rights - remained "invisible" within the framework of the Convention for a long time. The division into public and private and the concept of the subject as a "sexless being of reason" is to the detriment of women, because it ignores specific forms of gender oppression.

2.2. Discrimination, autonomous concepts and positive obligations

Discrimination in modern law is most often defined as different treatment of persons in the same or comparable situations, where the treatment is based on a prohibited ground of distinction, without objective and reasonable justification (Potočnjak, Grgić, 2014).

The text of the Convention itself does not define discrimination, but the Court has developed the concept of autonomous concepts through practice, according to which convention terms have a meaning independent of national legal systems. The Court has

elaborated a series of positive obligations of states to protect the rights of individuals, including the obligation to protect against violations of rights by other private persons.

Freedom from discrimination on the grounds of sex is guaranteed by Article 14 of the Convention and Protocol No. 12 to the Convention. Article 14 protects against discrimination in the enjoyment of convention rights, while Protocol No. 12 introduces an independent prohibition of discrimination. The Court has developed an understanding according to which discrimination exists when:

there is a difference in treatment between persons in the same or comparable situation, or when persons in different situations are treated equally, and there is no reasonable and objective justification for such treatment.

The Court distinguishes between direct and indirect discrimination. Direct discrimination occurs when there is a difference in treatment precisely on the grounds of sex, while indirect discrimination is more subtle and occurs when an apparently neutral measure disproportionately affects women.

2.3. Examples from case law

There are numerous cases of sex discrimination on the basis of social benefits in which the majority of the violations found were direct discrimination. Interestingly, in a large number of these cases, applications were brought by men, citing more favourable treatment of women. Governments often referred to biological (reproductive) differences, different family roles and social positions to justify the different treatment.

In view of the Court's approach, cases can be divided into those in which the assessment was easier and those in which it was more complex. For example, in the Rasmussen case, the Court considered the justification for the existence of a time limit for challenging paternity in cases where such time limits do not exist for challenging maternity, while in the Petrović case the question of the non-existence of paid parental leave for fathers, but only for mothers, was raised. In both cases, the Court, starting from the assumption of a similar position of the mother and father, left a certain margin of appreciation to the States, but emphasised that there must be "particularly compelling reasons" for differentiating on the basis of sex.

The inequality in the different age conditions for the receipt of certain social benefits linked to different retirement ages was also the subject of the Court's assessment. The Court first emphasised that sometimes different treatment was necessary in order to achieve real equality, and reiterated that particularly strong reasons were required for distinctions based on sex. At the same time, it referred to the wide margin of appreciation of the States with regard to general measures of economic and social policy, taking into account the absence of consensus among the Member States.

In *Stec v. the United Kingdom*, the Court considered a situation in which women stopped receiving occupational injury benefits five years before men, as they retired earlier. The government argued that it was logical to stop paying contributions when a person was no longer working, but the Court had to consider whether such a scheme was in fact the result of an already existing structural inequality in the retirement age of women and men (Radačić, 2011).

A contrasting example, where the Court did not accept the State's justification, is the area of family surnames. In *Burghartz v. Switzerland*, the applicant could not add his own surname to that of his wife, which he had taken as his family surname, while in *Unal Tekeli v. Turkey*, the applicant could not use her own surname as her family surname. In both cases, the Court considered that there was no objective justification for such a distinction and found that there had been a violation of the right to non-discrimination.

3. WOMEN'S RIGHTS BETWEEN FORMAL AND REAL EQUALITY

Case law cases show that there is an underlying tension between the formal gender neutrality of the Convention and the real need for a gender-sensitive approach. Equal treatment of men and women does not always benefit women, especially when specific historical and social inequalities are ignored.

In the area of reproductive rights, the Court has often shown greater understanding for the arguments of States, invoking a wide margin of appreciation. In cases of violence against women, however, the Court has increasingly emphasised the positive obligations of States to protect victims, even when the violence takes place in the private sphere. This is gradually “breaking through” the line between public and private, and domestic violence is no longer treated as a “private matter” but as a matter of public interest and State responsibility.

However, the gender perspective is still not equally present in all areas of application of the Convention. In some cases, the Court remains reserved and emphasises the discretion of States, while in others it develops more progressive standards. This shows that the protection of women’s rights is a process in the making, not a finished story.

CONCLUSION

Old problems inherited from socialist creations, such as authoritarian political culture, state paternalism and parochial patterns, are key obstacles to the development of democracy in new states. Among the most significant are violations of human rights, especially women's rights, which in post-communist societies are often “in the gap” between formal equality and real inequality.

Communist regimes, which fostered authority and collectivism, contributed to the intensive development of traditional attitudes in the family, school, politics and the workplace and slowed the development of a civil, democratic political culture. Protests across Europe have sparked debates on the protection of human rights, and the state has sought to restore order by passing international conventions, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the implementation of these standards, especially in the area of women's rights, is still often marginalized.

An analysis of the case law of the European Court of Human Rights shows a gradual growth of gender sensitivity, but also a number of inconsistencies. The Court has developed important principles, such as autonomous concepts and positive obligations of states, but the implementation of these standards strongly depends on the political culture and the willingness of national authorities to accept gender equality as a central democratic issue. In conclusion, it can be said that without a profound transformation of political culture, the strengthening of feminist and civic initiatives, and a more consistent gender-sensitive interpretation of human rights, the formal provisions of the Convention will not be sufficient to ensure real equality for women in post-communist societies. Politics thus remains a key space for the struggle to redefine power relations and to transform declarative equality into a real experience of freedom and dignity for all citizens.

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