

İÇ HUKUKTA SOSYOEKONOMİK HAKLARIN KORUNMASI SİSTEMİ: ETİYOPYA VE TÜRK İNSAN HAKLARI SİSTEMLERİNİN KARŞILAŞTIRMALI ANALİZİ

System for the Protection of Socioeconomic Rights in Domestic Law: A
Comparative Analysis of Ethiopian and Turkish Human Rights Systems

Biruk PAULOS* ve Dr. Öğr. Üyesi Seydi ÇELİK**

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Öz

Ekonomik, Sosyal ve Kültürel Haklar Uluslararası Sözleşmesi (CESCR), taraf devletlerden sosyoekonomik hakların ulusal düzeyde tam olarak gerçekleşmesi için tüm mekanizmaları, özellikle yasal ve kurumsal önlemleri benimsemelerini, mevcut kaynakları dâhilinde gerektirir. Bu amaçla Sözleşmeye taraf olan devletler, sosyoekonomik haklara etkili iç hukuksal koruma sağlamak için çeşitli tedbirler almıştır. Bununla birlikte sosyoekonomik haklar, ulusal yasal sistemlerde geleneksel olarak tam koruma ve uygun uygulama mekanizmalarından yoksundur. CESCR'a taraf olan Etiyopya ve Türkiye, kendi iç hukuklarında sosyoekonomik hakları korumuşlardır. Buna göre, insan hakları enstrümanları tarafından belirlenen asgari uluslararası standartları bir karşılaştırma

Abstract

International Covenant on Economic, Social and Cultural Rights (CESCR) requires states party to adopt all mechanisms, within the limits of their available resources, particularly legislative and institutional measures, for the progressive and full realization of Socio-economic Rights (SER) at national level. To this end, states party to the Covenant have taken various measures to give effective domestic legal protection to SER. However, SER customarily lack full protection and proper enforcement mechanisms at national legal systems. Ethiopia and Turkey, being parties to the CESCR, have protected SER in their respective domestic laws. Accordingly, using the minimum international standards set by human rights instruments as a unit of comparison, this article strives to comparatively

* Doktora Öğrencisi, Kocaeli Üniversitesi, SBE, Kamu Hukuku, brookcanada2017@gmail.com

** Kocaeli Üniversitesi, Hukuk Fakültesi, seydi.celiki@kocaeli.edu.tr ORC ID: 0000-0003-1224-9877

birimi olarak kullanan bu makale, Etiyopya ve Türk sistemlerini ulusal yargı alanlarında sosyoekonomik hakların korunması açısından karşılaştırmalı olarak analiz etmeye çalışmaktadır.

Anahtar Kelimeler: Etiyopya, İnsan Hakları, Sosyoekonomik Hakların Korunması, Uluslararası İnsan Hakları Araçları, Türkiye

analyze the Ethiopian and Turkish systems for the protection of SER at their national jurisdictions.

Keywords: Ethiopia, Human Rights System, International Human Rights Instruments, Protection of SER, Turkey

1. Introduction

For the full realization of human rights, it is imperative for countries to have legislative and institutional framework for the provision, protection, and enforcement of all forms of human rights. Conventional wisdom shows that some standards¹ are developed for the protection of Socio-economic Rights (SER) at the international level. Specifically, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and their respective monitoring bodies have articulated norms pertaining to the protection of SER. In general terms, the major international norms for the full realization of human rights, in all forms and categories, include non-discrimination between the two sets of human rights, ‘civil and political rights’ on the one hand and ‘SER’ on the other; constitutionalizing human rights; legally defining the scope and content (substance) of human rights; setting practical legal procedures for litigation of human rights; and providing enforceable legal remedy for violations of rights (O’Connell, 2012). Some advocates of enhanced constitutional protection for SER place particular emphasis on the importance of giving full effect to the requirements of international human rights law as set out in instruments such as ICESCR (O’Cinneide, 2015). Unfortunately, in many jurisdictions (countries), the justiciability of human rights in general and social, economic and cultural rights in particular are frequently questioned and challenged² (Seymen, 2018). Accordingly, this set of rights, distinct from other civil and political rights, lack proper enforcement mechanisms in national legal systems.

In line with legal philosophy on rights, international human rights instruments impose on states the moral and legal duty to provide, protect and fulfill human rights while they provide the subjects of rights with the right to claim and exercise their legal rights (Gorman, 2014). Constitutionalizing SER fosters their protection and

¹ States should abide by the international standards set by international human rights instruments including ICESCR and its Optional Protocol. The international standards customarily include ‘legislative’ and ‘all other measures’ available to protect socio-economic rights at domestic level. Among others, the measures include clear incorporating socio-economic rights in domestic laws, defining the scope and content of the rights, adopting legal procedures, enabling judicial enforcement of the rights, providing legal remedies for violations (Ssenyonjo, 2009).

² Argues that as long as socio-economic rights are judicially enforceable at international and many other national courts, as it has been practiced by the African Court of Human and Peoples’ Rights (AfCHPR), the Inter-American Court of Human Rights, the European Committee of Social Rights, the European Court of Human Rights, makes the traditional claim that socio-economic rights are not justiciable an incredible and an outdated claim (Çakar, 2018).

enforcement in domestic legal system. Although many countries, in all regions and across common and civil law systems, provide some degree of recognition of economic, social and cultural rights in their constitutions or through legislation, such rights have often been downgraded to non-enforceable directive principles (Birhane, 2018). Constitutional remedy is simply the relief that one obtains whenever these rights expressly or impliedly guaranteed under the constitution are violated. And the right to remedy when rights are violated is a right expressly guaranteed by global and regional human rights instrument like for instance, Art 8 of the UDHR and Art 2 (3), 9 (5), 14 (6) of the ICCPR. The remedy could be judicial, administrative or legislative remedy. Thus, domestic system is the primary option for the effective protection of SER (Castermans-Holleman, 2009).

Customarily, a distinction is made between two groups of rights (Vasak, 1977)³: civil and political rights on the one hand and economic, social and cultural rights on the other. While both sorts of rights are recognized in principle, considerable differences exist with respect to their national implementation. These differences result from the widespread belief that economic and social rights lack justiciability and, thus, cannot be enforced by the judiciary (Trilsch, 2012). However, the question of their justiciability cannot be answered at a theoretical level. Instead, justiciability is understood not as a prerequisite for the application of economic and social rights, but as the result of a rights challenge for which a legal solution (remedy) can be found based on the applicable (practical) legal procedures. The view that social and economic rights are not ‘justiciable’⁴, meaning they are not appropriate for adjudication by courts, by itself is very problematic in that it hinders the effective implementation of the rights in a given country. Since many aspects of economic and social rights can be made justiciable, it is not logically sound to erode the role of the judiciary in the enforcement of such rights (ÇAMUR, 2017).

As Rebecca Young (2012) explains, justiciability, in its most basic sense, refers to suitability for judicial adjudication. It involves two fundamental elements: whether there is a legal question (normative justiciability) and whether any extrinsic reasons

³ Thus, he came up with the idea of “Civil and Political Rights” as “First Generation” Rights, “Economic, Social and Cultural Rights” as “Second Generation” Rights, and “The Right to Development and Environment” as the “Third Generation” Rights. His generational division of rights has led to the emergence of the idea of what are called *liberty rights* (i.e., civil and political rights), *equality rights* (i.e., economic and social rights), and *solidarity rights* (i.e., rights to development, environment, and peace).

⁴ The term “justiciability” means that people who claim to be victims of violations of these rights are able to file a complaint before an independent and impartial body, to request adequate remedies if a violation has been found to have occurred or to be likely to occur, and to have any remedy enforced.

make that question unsuited to judicial determination (institutional justiciability). Justiciability in international human rights law likely refers to whether a State's progress towards achieving a right is subject to any judicial or quasi-judicial adjudication by a duly authorized international committee or body. In domestic contexts, justiciability involves appropriateness for judicial determination (Young, 2012). Thus, as to her, the claim that SER are justiciable is supported by a concept of justiciability which requires both the existence of a right (normative justiciability) and an absence of extrinsic reasons to avoid adjudication (institutional justiciability).

SER should be given some adjudicative space at domestic courts (O'Connell, 2012). Nevertheless, some argued that SER were inherently non-justiciable and not suited to judicial enforcement. It was further argued that the protection of such rights should be a task for the legislature and executive and that constitutionalizing them would have the inevitable effect of transferring power from these two branches of government to the judiciary, which lacks the democratic legitimacy necessary to make decisions concerning allocation of social and economic resources (Boyle, 2018). Others argued, however, that there was no principled objection to the inclusion of SER in a justiciable constitutional rights and that the vital issue was the extent and nature of their inclusion (Mubangizi, 2006). Many objections to the adjudication of SER in the international arena have their counterparts in domestic law (Palmer, 2007). It has been argued in the Western-style democracies that since SER are political, legislative matters involving primary issues of resource distribution, the judicial review of legislative or executive decisions concerning their implementation and enforcement constitutes an illegitimate intrusion into the policy affairs of the elected branches of government and a breach of the traditional doctrine of the separation of powers. However, if the judiciary develops a jurisprudence of human rights based on existing protections, the demands made on executive organs will be less challenging than they might otherwise be (Simon Halliday, 2004).

Domestic incorporation of international norms should be both derived from and inspired by the international legal framework and should at all times be coupled with an effective remedy for a violation of a right. Ultimately the test of effective implementation of human rights requires incorporation to reach a sufficient threshold including ensuring that the international normative content is not diluted or undermined and that an effective remedy is available for a violation (Boyle, 2018). The benefits of incorporating SER are self-evident in many respects. It means that

individuals will have better access to rights directly relating to their conditions of living. This includes the better protection of employment rights (Article 6 ICESCR), the rights relating to pensions (Article 9 ICESCR), the rights which protect an adequate standard of living (including access to adequate housing and food) (Article 11 ICESCR), the rights relating to health and healthcare (Article 12 ICESCR), and the rights relating to education (Article 10 ICESCR and partial protection in Article 2 Protocol 1 ECHR), among others. It would ensure that vulnerable and marginalized groups, including children, the elderly, the disabled, and the unemployed receive protection in the progressive realization of their rights. Legislation has been central to most national and international efforts to define and implement human rights. The notion of formulating human rights claims as legal claims and pursuing human rights objectives through legal mechanisms is pivotal for effective implementation and enforcement of SER within domestic jurisdictions (Mayessa, 2012). Article 2 (1) of the ICESCR also places particular emphasis in the adoption of legislative measures to achieve the realization of the rights recognized in the covenant. The Committee on Economic, Social, and Cultural Rights (the body responsible for overseeing implementation of the ICESCR) has called for justiciable remedies for violations of ESC rights to be made available (Boyle, 2018). The Committee also indicates that a blanket refusal to recognize the justiciable nature of Economic, Social and Cultural (ESC) rights is considered arbitrary and that, ideally, ESC rights should be protected in the same way as civil and political rights within the domestic legal order. This means that states should explore how best to protect ESC rights within their own domestic framework. The most common features identified as attributes of human rights include: universality, interdependence, indivisibility, inherence (in human dignity), inalienability, and equality (Regassa, 2009). Thus, since human rights are universal, indivisible, and interdependent in nature, it is not possible to provide protection to one set of human rights and deny protection to the other.

Conventionally, there are three most important elements that should be fulfilled for the action-ability of human rights (Regassa, 2009). First, the primary step towards the enforcement of actionable rights (including human rights) via litigation before courts requires that there should be clearly defined procedural steps in which the proceeding shall pass through including issues relating to jurisdiction (question of whether the court has competence), standing (question of whether the party has a vested interest), and justiciability (whether the matter is litigable in court). Secondly, in line with the procedural matters, the content (substance) and scope of

the right should be well defined in law. Thirdly, the law should provide enforceable remedies for violations (including annulment of arbitrary laws, injunctions on malicious administrative decisions, and adequate reparation). It is only when there is a well-defined substantive right, a legal procedure and a legal remedy that a person, whose rights (including SER) are violated, can take legal action for the realization of the rights.

As it concerns the domestic implementation of SER, Saladin & Başak (2006) argue that the legalization of human rights is imperative for effective implementation. They contend that in addition to establishing institutional protection mechanisms, measures should focus on law. These should include ratification and incorporation of international human rights treaties in to domestic law, constitutional and legal reform, improvement of domestic legal institutions, and enhancing the administration of criminal & civil justice systems, training of judges, prosecutors and lawyers on legal concepts such as legal entitlements, states' legal duties, and mechanisms of redress (Çali, 2006).

Both Ethiopia and Turkey are parties to the Convention on Economic, Social and cultural Rights. Though they are party to most international human rights instruments, both Ethiopia and Turkey have yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁵. Pursuant to the duties of states party to the Convention, they have established their own respective mechanisms, at legislative and institutional level, for the full realization of socio-economic rights in their jurisdictions. Thus, in light of the international normative framework discussed above, this article aims at investigating and comparatively analyzing the legislative protection of SER in Ethiopia and Turkey with a view to determine the possible lessons that the two countries should draw from their respective experiences. That is to say, this article will attempt to comparatively examine not only how SER are protected and realized in the two countries but also how the two countries can learn from each other in terms of the legislative and institutional mechanisms of protecting the SER of their peoples.

⁵ The Optional Protocol to ICESCR provides for procedures by which victims of violations can file their complaints (communications) either individually, or collectively (in groups) for the review of their case by the Committee on ESCR. The exhaustion of 'domestic remedies' requirement under Article 3 and Article 10 of the Protocol presupposes that States party to the ICESCR have the duty to establish legal procedures by which violations of socio-economic rights can be legally redressed at domestic level.

2. The Protection of SER in Ethiopia

2.1. The Legislative Measures

Ethiopia has signed and ratified the eight core international human rights instruments including the CESC. States party to CESC have the legal responsibility to place mechanisms⁶ (including legislative measures) for the progressive realization of economic, social and cultural rights of peoples by all available means within the limits of their resources⁷. Accordingly, in addition to ratifying the covenant, Ethiopia has attempted to incorporate the major human rights, including civil and political rights as well as economic and social rights⁸, in to the Constitution of the country. All international agreements ratified by Ethiopia are an integral part of the law of the land (Refer Art 9 (4) of the Federal Democratic Republic of Ethiopia (FDRE) Constitution). All international human rights instruments that are ratified by Ethiopia, for any legal and practical reasons, are part and parcel of the domestic laws of the country. Ethiopia has ratified several human rights instruments primarily including ICCPR and the CESC, thus, these instruments make the integral part of the Ethiopian domestic law. Besides, Article 13 (2) of the Constitution provides that the interpretation of the fundamental rights and freedoms specified in the constitution shall be done in conformity to the principles of the UDHR, International Covenants on Human Rights (necessarily including the ICCPR and CESC) and International instruments adopted by Ethiopia (Refer Article 13 (1) of the FDRE Constitution). This provision seems to place SER on equal par with other civil and political rights in the constitution. Since Ethiopia is a dualist state⁹, international legal instruments

⁶ See Article 2 (1) of CESC. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

⁷ The reference to "resource availability" reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time. Yet, States must make constant efforts, including through international assistance and co-operation, to improve the enjoyment of economic, social and cultural rights, so their full realization may be achieved step by step.

⁸ Article 41 of the FDRE Constitution provides some of the major socio-economic rights such as the right to *engage freely in economic activity*, the right to choose his or her *means of livelihood*, occupation and profession, the right to equal access to publicly funded *social services*, the right to *health, education and other social services*, the right to *job opportunities*, the right to receive *fair price for agricultural products*, and the right to *preservation of historical and cultural legacies*.

⁹ In 'dualist' States, that is, in those legal systems where international law is not automatically part of domestic law, further steps are needed to incorporate it into national law. Thus, in Ethiopia, international treaties do not apply until domestic legislation is issued to adopt the contents of the treaty. On the other hand, 'Monist' legal systems, where international law is incorporated directly into the domestic legal system, allow for the immediate domestic application of international treaties.

(treaties, conventions and agreements) get enforcement once they are domesticated by the acts of the parliament and publicized by the Negarit Gazette.

The Ethiopian legal system incorporates human rights in to the Constitution. Although the constitution does not expressly mention the CESCER, it names the UDHR and ICCPR while the whole chapter 3 of the FDRE Constitution is dedicated for ‘fundamental rights and freedoms’, Article 41 of the FDRE Constitution provides for some of the main SER mentioned in the CESCER. The phrase “human and democratic rights” in the chapter three of the FDRE Constitution seems to make a distinction between the two pointing to the classification of the list of rights in chapter three into two parts named “Human Rights” (Arts 14-28) and “Democratic Rights” (Arts 29- 44). The important thing about this provision of principle, however, is that all categories of rights are coequally to be respected without one having any superior claim to the other in terms of being prioritized or subordinated. However, one may still question why the constitution lists of rights into these two broad categories when there is no prescribed method of differential treatment of the two classes of rights and especially when one notices the fact that the classification used is not consistent with some of the customarily accepted classifications (Regassa, 2009). In a very confusing manner, the FDRE constitution seems to differentiate between two “classes” or clusters of rights, namely “Human” Rights and “Democratic” Rights. Most civil and political rights such as the right to life (Arts 14 and 15), liberty (Arts 14 and 17), security of the person (Arts 14 and 16), rights against torture, slavery, forced labor and related malpractices (Article 18), rights of arrested persons (Article 19), accused persons (Article 20) , and detained persons (Article 21), rights against retroactive laws (Article 22), prohibition on double jeopardy (Article 23), rights to honor and reputation (Article 24), right to equality (Article 25), right to privacy (Article 26), right to religion, belief, and opinion (Article 27), and rights against crimes against humanity (Article 28) are all provided in “Part One” of the Constitution which is categorized as “Human Rights”. Other rights such as the right to thought, opinion, and expression (Article 29), right to assembly, demonstration, and petition (Article 30), right to association (Article 31), right to movement (Article 32), right to nationality or citizenship (Article 33), marital, personal, and family rights (Article 34), right to access to justice (Article 37), right to vote and be voted for (Article 38), property rights (Article 40), economic, social, and cultural rights (Article 41), right to dignified labor (Article 42), right to development (Article 43), right to environment (Article 44), rights of women (Article 35), child-

ren (Article 36), right to self-determination and secession (Article 39) are provided under “Part Two”, the part captioned as “Democratic Rights”. Manifestly, the list of rights in the two parts of chapter three shows that traditional civil and political rights are rampant in both parts although most economic, social, and cultural rights are found in part two. Thus, the classification of the rights is a bit confounding. While ‘human’ rights are entitlements bestowed on us by virtue of our being human, ‘democratic’ rights are rights we claim only as a consequence of our being members of a political community such as being a citizen of a certain country. However, since the constitution provides both sets of rights as constitutional rights, no matter where they are mentioned, it cannot discriminate between them. As Art 13 (2) of the FDRE Constitution uses UDHR, ICCPR and CESCPR as benchmarks for the interpretation of human rights, one can easily deduce that the principles or notions embedded in the UDHR gives equal importance to both sets of rights and accords equal treatment in one main text as indivisible and interdependent human rights. Therefore, it implied the very principles of integrating the two grand categories of human rights including SER and civil and political rights. When judges consult international treaties in elucidating their meaning to give effect to the fundamental rights and freedoms enunciated in the chapter three of the FDRE constitution, they should also look into the visions pre-empted in the UDHR. In short, the Ethiopian human rights system integrates the two sets of human rights without any disparity or discrimination.

According to the Ethiopian Constitution, all federal and state legislative, executive, and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provision of the chapter that deals with human rights (Article 13 (1)). The responsibility is also shared among other organs of the government. For instance, the duty of the legislature is to enact laws that ensure the better protection of the rights or to amend laws that violate these rights to be consistent with the constitutionally guaranteed human rights. Similarly, the duty of the executive is to enforce these rights and address them to the needy person. The Court is, therefore, bound by this article to safeguard SER expressed under the constitution, in respecting, protecting and enforcing the fundamental rights and freedoms. One can see from the above wording that SER could be subjected to judicial scrutiny and also be provided with judicial remedy. Here, there is no particular provision that excludes the judicial review of SER entrenched in the constitution. Thus, as long as SER are justiciable, it appears that judges have the power to decide on cases of SER emb-

racing the impliedly guaranteed rights based on the legal basis of Art 37 (1) of the FDRE constitution, which provides for ‘access to justice’ on ‘all justiciable matters’ for all persons (Mayessa, 2012). However, the Constitution is not precise enough to define the content (substance), remedies and the procedures for judicial enforcement of SER in Ethiopia.

2.2 The Institutional Measures

As regards the enforcement of human rights including SER, the FDRE Constitution provides the responsibility of protecting and enforcing all sorts of human rights to all government organs including the legislative, executive and the judiciary. As a federal state, Ethiopia has two tiers of governments: The Federal Government and the Regional State Governments. As per the Constitution, all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to protect and enforce human rights in Ethiopia.

2.2.1 Protection by the Legislative Organ

The legislature can play one of the most significant roles in ensuring that SER are incorporated and enforced. In particular, it can design and deliver legislation which sets out SER as legal standards. In addition, the legislature can play an important role as an accountability mechanism in the review of legislation before it is passed to ensure that it is compliant with SER (Boyle, 2018). In Ethiopia, at Federal level, the House of Peoples’ Representatives (HPR) and the House of Federation (HoF) are constitutionally established as the legislative (Refer Article 53 of the FDRE Constitution) organs of the country. State Council and Council of Nations, Nationalities and Peoples constitute the legislative organ at regional state level. Despite the fact that the Constitution establishes the two houses, only HPR is vested with law making power. The constitution does not provide the mechanisms by which the HPR shall enforce human rights. However, the HPR can play its role of enforcing human rights in the country through its law making powers and its supervisory roles on those independent human rights institutions¹⁰ which are directly accountable to it. The HoF, among many other powers and responsibilities, is vested with the power to interpret the Constitution. Since human rights constitute almost one third of the entire FDRE Constitution, the HoF has the power to interpret the constitution including the human rights provisions. The FDRE Constitution does not provide the

¹⁰ The Human Rights Commission and the Ombudsman are directly accountable to the House of Peoples’ Representatives

power to interpret the Constitution (constitutional review) to the judiciary. Rather, it provides the constitutional review power to the semi-legislative (quasi-legislative) organ, that is, HoF (Article 62 (1) of the FDRE Constitution). This makes the Ethiopian constitutional review system distinctive as most countries give the power of constitutional review (interpretation) to either an independent Supreme Court or a Constitutional Court. In accordance with Article 55 (16) of the Constitution, both the HPR and HoF have the power to avert massive human rights violations in the federal constituent states of Ethiopia particularly when all other state authorities fail to control the situation. Specifically, the HPR can give directives to regional state authorities to enforce human rights¹¹.

2.2.2 Protection by the Executive Organ

The executive power in Ethiopia resides in the Prime Minister and the Council of Ministers (Article 72 (1) of the FDRE Constitution) at the federal level and the Regional State Administration and State Councils at the regional level. The Prime Minister has a constitutional responsibility to obey and enforce the Constitution that guarantees human rights (Article 74 (13) of the FDRE Constitution). In accordance with Article 74 (5) of the Constitution, the Prime Minister has the power to supervise the overall implementation of policies, regulations, directives and decisions adopted by the Council of Ministers. Thus, he/she can play the role of enforcing and protecting human rights through synchronization of such policies, regulations, directives and decisions made by the Council of Ministers. In the same manner, the Council of Ministers has the constitutional duty to ensure the implementation of laws and decisions adopted by the House of Peoples' Representatives. In doing so, the Council can play its role of protecting and enforcing human rights through the harmonious implementation of other laws and regulations that have bearing on human rights. More specifically, executive branches of the government such as the municipality, ministry of health, ministry of water resources, and the ministry of labor and social affairs play significant roles in the issuance of policies and directives that help to realize the major SER including the right to housing, the right to health, the right to clean water, the right to gainful and safe work environment, respectively.

¹¹ It shall, on its own initiative, request a joint session of the House of the Federation and of the House of Peoples' Representatives to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned State authorities.

2.2.3 Protection by the Judiciary

The court is one of the accountability mechanisms that can offer an effective remedy for a violation of SER if the legislature and the executive have failed to comply (Boyle, 2018). Judicial power is given to independent Courts in Ethiopia. An independent judiciary is established by the Constitution (Article 78 (1) of the FDRE Constitution). Accordingly, Federal Supreme Court, Federal High Courts and Federal First Instance Courts, at federal level; and State Supreme Court, State High Courts and State First Instance Courts, at regional level constitute the regular courts (Article 78 (2), (3) of the FDRE Constitution) in Ethiopia. Besides, the Constitution recognizes the establishment of Religious and Customary Courts parallel to the regular courts. It guarantees the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws with the consent of the parties to the dispute. For instance, for the Ethiopian Muslim community, Sharia Courts are established at all levels of government. Thus, as in article 13 (1) of the Constitution, all judicial organs at all levels of government have the responsibility to respect and enforce human rights in all forms.

The Constitution entrenches the bill of rights in its chapter three where SER are placed in an equal footing with civil and political rights. Article 9 (4) of the Constitution provides that regional and international treaties ratified by Ethiopia are integral part of the law of the land, whereas article 13 (2) provides for the ratified human rights treaties to be the interpretation thresholds for the bill of rights in the Constitution. Even if the legal framework for justiciable human rights, including SER, exists in Ethiopia, the understanding regarding the issue and judicial practice for the enforcement of the rights indicates lack of activism to ensure effective realization of them (Birhane, 2018). Obvious as it seems, establishing a proper individual litigation procedure as regards SER is definitely a good way of enforcing such rights in a given country. Litigation is a separate or an independent way of enforcing socioeconomic rights, as it is with civil and political rights. However, litigation of all sorts of human rights has been extremely difficult, if not impossible, in many countries. Most countries do not give clear judicial power to the courts for the adjudication of cases involving SER. The belief that 'socioeconomic rights should not be given any sort of judicial or quasi-judicial protection and thus should be left to the discretionary power of the political wings of the government', is one of the chief reasons why such rights have been relatively devalued or discriminated against other sorts of rights as regards the hierarchy of national

laws. As a matter of fact, litigation of socioeconomic rights at courts is not the only available means for the effective enforcement of those rights of the individuals and the community. However, it cannot be denied or ignored that the absence of an effective method of recognizing justiciability for these rights narrows down the range of mechanisms available for victims of rights violations to receive legal remedies and reparations; it obscures the accountability of the named state; and it opens rooms for impunity of alleged violations of rights (ICJ, 2008).

The courts can protect SER in two ways. Firstly, through their law-making powers of interpreting legislation, and developing the rules of the common law (precedents); and secondly, by adjudicating constitutional and other challenges to state measures that are intended to advance those rights (Mubangizi, 2006). Today, domestic courts in a great many countries are both enabled and sometimes willing to adjudicate issues relating to socioeconomic rights, but the much publicized progress towards justiciability remains somewhat illusory. Too many courts continue to avoid socioeconomic rights as a matter of principle, and many of those who do address them fail to do so in a systematic, doctrinally defensible, or sustainable fashion. While there have been clear advances in the recognition, justiciability and enforcement of economic and social rights over the past two decades and these rights have become part of the agenda of the largest international NGOs and national human rights organizations, many challenges to the realization of these rights remain (Center for Economic and Social Rights, 2015).

At the regional level, the African Court on Human and Peoples' Rights (AfCHPR) play a profound role in the judicial enforcement of SER. The African Human Rights System (AHRs) is the youngest of the three judicial or quasi-judicial regional human rights systems of the world, and was created under the auspices of the African Union (AU). Like the Inter-American System (and the European System, as originally designed), it includes a commission and a court with complementary mandates. The African Commission on Human and Peoples' Rights (ACHPR) and AfCHPR, together with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), all receive complaints of human rights violations (Ertan, 2015; IJRC, 2019). The African system emphasizes on the protection and enforcement of SER on equal par with civil and political rights¹². Since Ethiopia is

¹² States parties to the African Charter on Human and Peoples' Rights have solemnly undertaken to respect, protect, promote and fulfil all the rights in the Charter including economic, social and cultural rights.

party to the African Charter on Human and Peoples Rights and the AfCHPR assumes universal jurisdiction, cases involving Ethiopia can be referred to the Court in cases of violations. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights (the Charter), the Protocol and any other relevant human rights instruments ratified by the States concerned. Thus, the Court can play enormous role in the enforcement of SER through its interpretations of human rights instruments and judgments.

There are various problems that hinder the judicial protection of SER in Ethiopia. The first challenge is that the content and scope of SER as provided in the constitution are too elusive for judicial interpretation and judgment (Birhane, 2018; Mayessa, 2012; Regassa, 2009). For instance, Article 41 of the FDRE Constitution provides for some SER. One of these rights is the right to 'equal access to publicly funded services'. According to this provision, every Ethiopian national has the right to 'publicly funded services'. This provision is too general in that it does not define what 'publicly funded services' are or what such services include. The right to clean water, for example, can be one of such services. But this right is not even mentioned in the constitution as part of SER. But it is provided as the social objective of the government. The right to clean water is very elusively provided in the constitution. It is not provided as a right, rather, it is provided as a 'social objective'¹³ of the government. If a person whose right to clean water is denied cannot have a legal redress (remedy) in Ethiopia simply because the right is not clearly defined for any legal recourse. Unless the right to clean water is interpreted to fall under 'public services' as provided under Article 41 (3) of the Constitution, the right cannot be claimed by any individual in case of violation. Besides, Article 41 states the duty of the state to provide such rights instead of providing SER of individuals (people) so that legal action could be taken in case of violations. Secondly, the enacting of specific legislation is undoubtedly instrumental in ensuring the justiciability and enjoyment of SER when infringed by the government or private parties. However, there are no specific legislation in Ethiopia that stipulate the legal responsibility of those organs who should be accountable for the breach of SER; nor does the law provide for clear legal redress (reparatory system) in case of rights violation (Regassa, 2009). For instance, the FDRE Constitution provides that the State has the obligation to allocate

¹³ Article 90(1) of the FDRE Constitution provides, "To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security".

an ever increasing resources to provide to the public 'public health', 'education' and other 'social services' (Refer Article 41 (4) of the FDRE Constitution). Besides, it states that the State shall undertake all measures necessary to increase opportunities for citizens to find 'gainful employment' (Refer Article 41 (7) of the FDRE Constitution). As regards the protection and enforcement of 'gainful employment' as a socio-economic right, an enactment legislation (Proclamation No.377/2003) was adopted. Besides, in order to eliminate any form of discrimination against persons with disabilities in exercising their SER, the government has issued a directive to implement the Right to Employment of Persons with Disability Proclamation No 568/2007. Accordingly, any individual or group of individuals whose rights are violated can take legal action before the court to access legal remedies. But concerning 'public health', 'education' and 'other social services' as SER, no enactment legislation has been adopted to give effect to the constitutionally guaranteed rights. Thus, although SER are constitutionally protected in Ethiopia, they are not reduced into subsidiary enforceable legislation. Besides, there is no case law (precedent) as regards SER which can serve as a guide for the subsequent adjudication of cases that involve SER. Thirdly, the Ethiopian courts lack jurisdiction to entertain matters involving constitutionally provided SER. Thus, it is impossible for judges to adjudicate SER which are not directly justiciable (Regassa, 2009). Although the FDRE Constitution incorporates the Convention on Economic, Social and Cultural Rights (ESCR) as part of the law of the country and that it attempts to illustratively list some SER under Chapter 3 Article 41 as part of 'democratic rights' and under chapter 10 as 'national policies and objectives', still the constitution fails to specifically provide jurisdiction to the courts to adjudicate on such rights. Fourthly, in the exercise of their judicial power, the Ethiopian courts have the constitutional duty to refer to international human rights instruments when they interpret laws that have bearing on human rights (SER). However, judges usually refer all cases involving human rights claims to the Council of Constitutional Inquiry (CCI) for constitutional review (Mayessa, 2012). Even though the FDRE Constitution vests the power of interpreting the constitution and settling 'all constitutional disputes' to the HoF, it does not deprive the power of interpreting laws (including international treaties) from the courts. While the courts could interpret international human rights instruments as part of the national law, they usually relinquish their power by referring all cases involving human rights violations to the House of Federation. This action of the judges practically limits the judicial protection and enforcement of SER in

the country. The Courts can actually apply constitutionally entrenched rights and provisions of international and regional human rights instruments, including SER, on the basis of article 13 of the constitution unless the applicable provisions are contested to be unconstitutional and necessitate constitutional interpretation (Birhane, 2018). Constitutional duty of the judiciary to enforce the rights enshrined in the constitution obviously extends to applying them in cases they are referred to. This fact is further strengthened by article 3 (1) of the Federal Courts Proclamation that provides for federal courts the jurisdiction to entertain cases arising under the Constitution, federal laws and international treaties (Proclamation 25/1996).

2.2.4 Protection by Independent Government Institutions

Independent Human rights institutions can have a range of roles in terms of protecting human rights, including monitoring the human rights situation; making recommendations to government; handling complaints; auditing laws; holding inquiries; and reporting to international bodies (Bindman, 2018). They can also deal with a wide variety of different rights issues and are meant at least in theory to be independent from both government and NGOs, while also developing good working relationships with both. These institutions have been set up in a wide range of different political systems around the world and thus are not limited to those political regimes which could be defined as democratic. While the Ombudsmen and Human Rights Institutions, for instance, are often subject to criticism for being ineffective and too close to the state in several countries, still they provide some opportunity for both ordinary citizens and the NGOs which seek to represent them to raise their concerns over social rights violations and seek redress for these infringements (Bindman, 2018).

The FDRE Constitution establishes independent institutions that observe the enforcement of all sorts of human rights in the country. Although the mandate of the institutions as regards the enforcement of human rights is not provided in it, the Constitution provides for the establishment of the Ethiopian Human Rights Commission (EHRC) (Article 55 (14) of the FDRE Constitution) and the Ombudsman (Refer Article 55 (15) of the FDRE Constitution). These institutions are usually considered as special bodies that serve as 'patrons' of the human right norms in Ethiopia. It is important to stress that these institutions have a secondary role compared to the role of the mainstream rights administration institutions (the Legislative,

Executive and Judiciary Organs). The EHRC, for example, is an institution whose promotional task appears larger than its protection and remedial tasks. Besides, based on the establishment proclamation of EHRC, Proclamation No.2010/2000, the Commission has a general mandate of supervising systemic problems on human rights rather than dealing with specific human rights cases. Moreover, it is crucial to note that the sanction that the HRC (or the Institution of the Ombudsperson) has at its disposal, in case of violation of human rights, is the mobilization of shame on institutions that perpetrate abuse (or neglect) of rights through publicizing a report while also doing the best it can to liaison with institutions working towards securing relief to specific victims of human rights abuses. In view of these factors, it is only safe to conclude that these institutions (EHRC and the Ombudsman) serve as consciences of the system, prodding the system into doing more towards a better protection of human rights in Ethiopia (Regassa, 2009).

2.2.5 Protection by Nongovernmental Organizations

Aside from the regular government organs, other national and international organizations play vital roles in the enforcement of SER in Ethiopia. There are several domestic and international Civil Society Organizations (CSOs) that are highly engaged in the protection of human rights in the country. It is obvious that CSOs play profound role in the enforcement of human rights through development programs and rights advocacy. Besides, these organizations help the effective enforcement of human rights through their financial support to the government and their shadow reports to international human rights organizations. These institutions help in fostering the human rights culture through training, education, and dissemination of information. Universities and higher educational institutions also share these responsibilities, in stimulating the state commitment to the human rights values (through technical assistance and capacity building schemes), and in making interventions to facilitate the enjoyment of some rights by the public such as through counselling and legal aid services to victims, through conducting policy research and lobbying (Regassa, 2009). In the past, the law¹⁴ that governs CSOs in Ethiopia was too restrictive to allow Nongovernmental Organizations (NGOs) to engage in human rights protection and enforcement through a right based approach. However, as part of the

¹⁴ The Charities and Societies Proclamation of Ethiopia was one of the post-2005 repressive laws that governed the establishment and operation of CSOs in Ethiopia. The Proclamation contains various provisions that made both the formation and effective working of CSOs highly difficult, if not impossible. This clearly contravenes the human rights guarantees stipulated under the Constitution as well as the regional and international human rights frameworks the country has ratified. This has been constantly condemned by human rights groups, academics and activists over the years.

new political reform in the country, a new law¹⁵ is in place that allows domestic and foreign NGOs to freely engage in the protection and enforcement of human rights through human rights advocacy (Teshome, 2019).

3. The Protection of Soclo-Economic Rights (SER) in Turkey

3.1 The Legislative Measures

Turkey has ratified the CESCRC as of 23 September 2003. Turkey declares that; it will implement its obligations under the Covenant in accordance to the obligations under the Charter of the United Nations (especially Article 1 and 2 thereof). Turkey declares that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations. Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of Turkey are applied. Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of Turkey. According to the Constitution of Turkey¹⁶, the State has the duty to remove the political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual and which are incompatible with the principles of justice and the social state¹⁷ governed by the rule of law. Besides, the government has the duty to provide the conditions required for the development of the individual's material and

¹⁵ The new Civil Society Organizations Agency Proclamation No. 2019/1113 was approved on March 2019, 7 in the House of Peoples' Representatives with the main objectives of creating an enabling environment to enhance the role of civil society organizations in the development and democratization of the country.

¹⁶ See Article 5. The fundamental aims and duties of the state are; to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence.

¹⁷ Turkey might until recently have been characterized as a Middle Eastern regime, subject to authoritarian paternalist rule, but with an incipient welfare state it had been moving towards democratic-welfare-capitalism and EU accession, albeit subject in recent times to strong neoliberal policy tendencies (Dean, 2015). The *social welfare* approach of protecting socio-economic rights, as practiced by Turkey, is concerned with protecting people and with promoting solidarity amidst diversity. In the context of some social welfare states in Western Europe, Toomas & Kenneth (2017) have analyzed the dynamics of implementing social rights at national level. Accordingly, they have established that social rights do not simply require normative protection or adjudication at courts; rather, the actual implementation of such rights depends on the political dynamics of the country-while the neoliberal approach, for example, focuses on the 'individualized' protection of social rights, the welfare states' approach focuses on the 'collective' protection of social rights (Veitch, 2017).

spiritual existence. According to Article 40 of the Constitution of Turkey, everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities. Besides, the government has the duty to indicate to the victims, the legal remedies and the authorities the persons concerned should apply to get the legal redress. It also states that damages incurred by the victim shall be compensated by the state. Thus, in line with this constitutional provision, Turkish citizens have the right to get legal remedies (reparations) in case of violations of constitutionally protected rights definitely including SER.

The major SER encompassed by the ICESCR include the right of self-determination (Article 1 (1)), the right to work and remuneration (Article 6-8), the right to social security and social insurance (Article 9), the protection of family (Article 10), the right to an adequate standard of living-adequate food, clothing and housing (Article 11), the right to physical and mental health (Article 12), and the right to education (Articles 13-14). Article 2 (1) of the Covenant requires that each State Party to the Covenant shall undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. Thus, in line with this provision, Turkey, as a state party to the Covenant, has the obligation to adopt a legislative measure to incorporate SER in to the national law for their effective protection and enforcement.

In accordance with international obligations¹⁸, Turkey has adopted legislative mechanisms for the protection of SER at national level. Primarily, Turkey has provided constitutional protection to these rights. Thus, the major SER that are covered by ICESCR are duly incorporated in to the Constitution. The constitution provides for the right to work and remuneration (Articles 48-Article 55 of the Constitution). It also provides for the issuance of particular laws for the implementation of rights related to work and labor. Thus, the constitution guarantees the SER of laborers

¹⁸ The obligations of states under International Human Rights Law has two aspects: negative and positive obligations. The terms 'negative' and 'positive' are not used to imply any value judgement on the respective obligations. Rather, they are used to denote the state's requirement not to act in a way that violates human rights (negative obligations) and the requirement to act – take positive steps – to implement measures to ensure that individuals are protected from violations of their rights and freedoms by state organs and by private persons or entities (positive obligations) (Cistelean, 2011; Eatwell, 2018). Besides, states have international obligation to pay reparations in case of human rights violations both at individual and groups (collective) level (Kaya, 2019).

(workers) and civil servants as it generally lists the minimum¹⁹ core obligations of the state as regards wage, safe work conditions, collective bargaining, etc. Besides, the right to social security including social insurance is constitutionally protected in Turkey. Articles 60 to 62 of the Constitution provide for the details of social security rights covered. Accordingly, everyone has the right to social security. Special social security protection is provided for the aged, war veterans, orphans, widows, disabled people. Besides, Turkish nationals working abroad have the right to social security. In addition to legislative protection, the constitution provides for the establishment of the necessary organizations (institutions) or facilities for the enforcement of the right to social security. Article 41 of the Constitution provides for the protection of the family. Accordingly, the state shall take the necessary measures (including legal measures) and establish the necessary organization (institution) to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning. The right to housing is constitutionally protected in Turkey. Article 57 of the Constitution states that the state shall take measures (including legislative measures) to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects. The right to physical and mental health of individuals is protected in the Constitution of Turkey. Accordingly, as per Article 56, health and social assistance institutions, in both the public and private sectors, are to be established for the enforcement of this right. Besides, the constitution provides for the establishment of general health insurance, by law, for the provision of widespread health services. The right to education is constitutionally protected in Turkey. Article 42 of the Constitution provides that no one shall be deprived of the right of learning and education. Primary education is compulsory for all citizens of both sexes and is free of charge in state schools. What is more interesting, the state has the duty to provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. Thus, in terms of the substantive provisions of SER in the Turkish Constitution, the constitution encompasses the vast majority of the SER enumerated in the ICESCR. However, even though the right to self-determination is mentioned as the primary part of SER in ICESCR, the right to self-determination is not even mentioned in the Turkish

¹⁹ Today, even most UN members seem to agree, at least in principle, that a life of human dignity requires certain minimum standards in the field of civil liberties as well as economic and social requirements (Castermans-Holleman, 2009).

Constitution. Legislative provisions in Turkish Constitution prohibited distinctions to be made between citizens on the basis of ethnicity, and the constitution outlawed self-determination and regional autonomy (Yildiz, 2005).

3.2 The Institutional Measures

3.2.1 Protection by the Legislative Organ

The Turkish Grand National Assembly (TGNA) is vested with legislative power (Article 7 of the Constitution of Turkey). Article 11 of the Constitution stipulates that the constitutional rules are fundamental legal rules binding upon legislative, executive, judiciary organs, administrative authorities, institutions and individuals. Thus, in light of this rule, the legislative organ has the legal duty to abide by the provisions of the constitution. Since the constitution includes SER as fundamental legal rules, all organs of the government, individuals and other institutions have the legal duty of observing these constitutional obligations.

As the supreme law making organ, the TGNA can play a significant role in legislatively protecting SER in Turkey. The Constitution, as it provides general rules, grants power to the legislative organ to issue detailed laws that regulate the protection and enforcement of various constitutionally stipulated rights. It does not simply provide the rights; rather, it provides for the issuance of subsequent laws to further define the scope, the content and the procedure to be taken to enforce the rights. For instance, the Constitution provides for the right to education as a socio-economic right. The mere fact that the right to education is stated in the constitution is not enough for the effective enforcement of the right. Another subsidiary legislation is needed to determine the particulars of this right. Accordingly, the Turkish constitution grants power to the legislative organ to issue particular laws for the enforcing of the right to education²⁰. By the same token, the constitution states that laws shall be issued to regulate many aspects of SER. For instance, particular laws are to be issued to provide for the compensation mechanism for expropriation of land (See Article 44 of the Constitution), to protect the rights of workers (Refer Articles 50-54 of the Constitution), to establish health insurance (See Article 56 of the Constitution), and to protect the rights and benefits of the aged (See Article 61 of the Constitution). Thus, this shows that the legislative organ in Turkey has the power and responsibility to protect SER.

²⁰ As per Article 42, the scope of the right to education shall be defined and regulated by law.

3.2.2 Protection by the Executive Organ

In Turkey, the executive power and function is exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law. Thus, the executive branch in Turkey has a dual structure²¹. It is composed of the President of the Republic and the Cabinet. The President of the Republic has functions and authority related to the legislative, executive and judicial fields²². Some of the main functions of the president in the legislative fields are to convene the TGNA when necessary, to publish laws and when deemed necessary, to send them back to the Parliament for discussion, to hold a referendum in Constitutional amendments when he/she considers it necessary, to file suit with the Constitutional Court claiming a violation of Constitutional law, to issue decrees with the power of law and regulate the internal workings of the Parliament and to decide when new TGNA elections are necessary. Besides, one of the major the executive duties of the President is to ratify and publish international agreements, to proclaim martial law or impose a state of emergency by a decree to be decided by the Cabinet meeting under his chairmanship, and to issue decrees with the power of law, to approve decrees as signatory. Finally, the duties and authority of the President related to the judiciary are to appoint: members of the Constitutional Court, one fourth of the members of the Supreme Court of Appeals, members of the Supreme Military Appeals Tribunal, members of the Supreme Council of Judges and Public Prosecutors. No appeal may be made to any legal body, including the Constitutional Court, against decrees and presidential orders signed directly by the President of the Republic. The President of the Republic may be impeached for high treason²³. Therefore, in line with the powers and functions granted to the President in the Constitution, he/she can play a significant role in the protection and enforcement of SER in Turkey. Although the constitution does not specify the role of the Executive in protection and enforcement of SER, the general provisions pertinent to the protection of such rights and the powers and functions granted to the executive implies that the executive organ has the mandate to protect those rights. The Council of Ministers (Cabinet) consists of the Prime Minister (PM), designated by the President of the Republic from members of the TGNA, and various ministers nominated by the

²¹ See <http://turkishelections.com/political-structure/executive/> (7.11.2020)

²² Refer Articles 89, 90, 93, 101-105 of the Constitution.

²³ Art 105 of the Constitution of Turkey, the President of the Republic may be impeached for high treason on the proposal of at least one-third of the total number of members of the Turkish Grand National Assembly, and by the decision of at least three-fourths of the total number of members.

Prime Minister and appointed by the President of the Republic²⁴. The fundamental duty of the Cabinet is to formulate and to implement the internal and foreign policies of the state. The Council is accountable to the Parliament in execution of this duty. The Prime Minister is responsible for ensuring the Cabinet's functions in a harmonious manner. The PM supervises implementation of government policy. The Prime Minister is the de facto head of the executive branch. Each minister is accountable to the Prime Minister who in turn ensures that Ministers fulfill their functions in accordance with the Constitution and its laws. In accordance with Article 91 of the Constitution, the Council of Ministers, up on delegation by the TGNA, can issue decrees with a force of law; decrees, even, as regards SER. This provision seems to exempt the issuance of decrees on fundamental rights, individual rights, and political rights except only in case of state of emergency and periods of martial law (Refer Article 91 of the Constitution). Thus, the Council of Ministers can issue decrees with a force of law as it pertains to the protection or specific enforcement of SER. Therefore, according to the Constitution, all the executive organs including the President, the Prime Minister, Council of Ministers and all other administrative agencies of the government have their own role and responsibility to protect and enforce SER in Turkey.

3.2.3 Protection by the Judiciary

The Constitution of Turkey grants judicial power to be exercised by independent courts on behalf of the Turkish Nation²⁵. In the Constitution, the Constitutional Court is placed as the first judicial power among "The Fundamental Organs of the Republic". The Constitution lays down in detail the composition, duties, working method of the Constitutional Court and other issues concerning the constitutional review²⁶. The main function of the Constitutional Court is to review the constitutionality of laws and the other norms stated in the Constitution. However, in addition to its main function, the Constitution orders some other duties to the Constitutional Court irrelevant to the review of norms. The Turkish Constitution does not grant any power to the Constitutional Court to express opinion or to conduct a preventive review with regard to the constitutionality of laws in the process of their

²⁴ See <http://turkiselections.com/political-structure/executive/>

²⁵ Art 9 of the Constitution of the Republic of Turkey

²⁶ Article 146 of the Constitution sets out the number, appointment procedures and qualifications of the members of the Constitutional Court.

preparation. The Turkish Constitution would not include the procedure of “constitutional complaint” to be lodged under certain circumstances by individuals whose fundamental rights have been violated by means of legislative acts.

According to Article 148/1 of the Constitution, “*The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war.*”

As to this provision, the main function of the Constitutional Court is to review the constitutionality of laws. The “law” mentioned herein is used not in respect of substance, but in form. The review power of the Constitutional Court comprises all laws except the Reform Laws (of the Republic) regulated in Article 174 of the Constitution. As a rule, all decrees having the force of law are subject to the review of the Constitutional Court in respect of constitutionality, however, the decrees having the force of law issued during a state of emergency, martial law or in time of war in accordance with Article 148 of the Constitution are exempted from constitutional review. Under the Constitution, access to the Constitutional Court can be made in two ways: first, access to the Constitutional Court for the constitutional review of laws and other norms subject to review; secondly, application for the dissolution of political parties. The constitutional validity of laws, decrees having the force of law and Rules of Procedure of Turkish Grand National Assembly or the provisions thereof may be challenged directly before the Constitutional Court through an annulment action by persons and organs empowered by the Constitution. The constitutionality of parliamentary acts is controlled by the Constitutional Court. The Constitutional Court reviews the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly through abstract and concrete control mechanisms. Individual constitutional complaint has not been recognized in Turkey for long years. After the individual application was introduced into the Turkish legal system by the 2010 constitutional amendments, Turkish Constitutional Court has taken a more technical function in the protection of SER as human rights (DUVAN, 2015). Unconstitutionality of international treaties cannot be claimed before the

Constitutional Court (Art 90 of the Constitution). The Constitutional amendment laws can be reviewed only in respect of form, not in substance²⁷. Thus, as described above, judicial review as regards the constitutionality of legislation (including legislation on SER) is done solely by the Constitutional Court. As per Article 36 of the Constitution, everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures, thus individual complaints on the violation of rights, including SER, can be filed before the Constitutional Court. Thus, it is evident that the Constitutional Court can play important role in the interpretation and enforcement of the constitutionally provided SER through its constitutionality review mandate. In addition to the domestic courts, Turkish citizens, after the exhaustion of local remedies, have access to European Court of Human Rights (ECtHR) to refer disputes involving SER. Turkey, a member of the Council of Europe, has accepted the compulsory jurisdiction of ECtHR in 1990. Accordingly, Turkish citizens have individual access to the ECtHR through the individual application mechanism. Through their ever-developing case-law, both ECtHR and the European Committee of Social Rights ensure that all human rights – be them civil and political rights or social and economic rights – are effectively protected in a complementary and progressive way (Council of Europe, 2019). Even in its last period judgements, the Constitutional Court of Turkey has frequently and regularly cited the ECtHR's different decisions to support its jurisprudence. Thus, the decisions of the ECtHR has significantly influenced the interpretation and enforcement of human rights in Turkey (Duvan, 2015). Over the course of 25 years, the judgments of the ECtHR together with the criticism from the EU pushed Turkey to change its laws and practice to better protect and promote the rights protected in the Convention (Akbulut, 2015). As it can be seen from the number of cases it decides on various aspects of human rights, ECtHR is playing a significant role even in the advancement of international human rights law (Viljanen, n.d).

3.2.4 Protection by Democratic Institutions

In Turkey, the Turkish Institution of Human Rights and Equality and the Ombudsman Institution are established as constitutional independent institutions for the protection of human rights. Although it can be treated as one of the executive

²⁷ Article 148 of the Constitution stipulates that anyone who thinks that his/her constitutional rights set forth in the European Convention on Human Rights have been infringed by a public authority will have a right to apply to the Constitutional Court after exhausting other administrative and judicial remedies.

arms of the government in many jurisdictions, the Ministry of Justice in Turkey has an independent Department that observes the decisions of Courts as it pertains to human rights (Ministry of Justice, 2019). The ministry stands to carry out activities for eliminating human rights violations. It facilitates friendly dispute settlement mechanisms and follows up the friendly settlement processes. Besides, it takes all necessary measures concerning the execution of the judgments finding a violation, which are rendered by ECtHR even the judgment is against Turkey. This is done in order to circulate these judgments to the relevant authorities; and to follow-up the processes for elimination of the violations. Most importantly, the ministry conducts projects in cooperation with the relevant public institutions and organizations in the field of human rights for the protection and enforcement of human rights including SER. In addition, it plays great role in awareness creation through organizing national and international symposiums, seminars and training activities on human rights. More specifically, the Human Rights Compensation Commission, which was established within the Ministry of Justice, is responsible for settling disputes by the payment of compensation upon finding of a violation of human rights, following the examination of some of the applications made to ECtHR before 23 September 2012 (Ministry of Justice, 2016).

The Ombudsman Institution of Turkey was established in 2012 with the Law No.6328 as a constitutional public entity affiliated with the Grand National Assembly of Turkey. By virtue of Article 5 of the Law on the Ombudsman No. 6328, the Institution has been assigned “to examine, investigate, and submit recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviors of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based²⁸ justice and in the aspect of legality and conformity with principles of fairness”. Thus, the Turkish Ombudsman Institution serves two purposes: “protecting” the fundamental rights and freedoms, and “promoting” them. The Ombudsman has played great role in the protection and promoting of SER in Turkey. There are seven-

²⁸ States should follow a rights-based approach for the protection of socio-economic rights. For instance, Taket identified three ways in which the right to health, as a socio-economic right, can be protected at domestic level. The rights-based approach to health has three components, it refers to the processes of: first, using human rights as a framework for health development; secondly, assessing and addressing the human rights implications of any health policy, program or legislation; and thirdly, making human rights an integral dimension of the design, implementation, monitoring and evaluation of health-related policies and programs in *all* spheres, including political, economic and social spheres (Taket, 2012).

ral instances where the institution played a pivotal role in the enforcement of SER such as the right to housing²⁹, the right to property and the rights of people with disabilities (OHCHR, 2019).

The Turkish Institution of Human Rights and Equality (TIHRE), which is a national and independent institution, was established and started to operate in 2012 in line with the system and structure of the United Nations (Ministry of Justice, 2016). This institution was determined as the national prevention mechanism by the Decree of the Council of Ministers dated 28 October 2014. The Institution was named after “the Turkish Institution of Human Rights and Equality” by the Law of 20 April 2016, and legal framework and institutional structure concerning the prohibition of discrimination and equal treatment have been rearranged in accordance with the main goal of activating human rights protection mechanisms. Thus, on the promotion and enforcement of human rights including SER, Turkey has two main institutions on human rights: the National Human Rights and Equality Institution (NHREI) and the Ombudsman institution. Both are authorized to monitor, protect and promote human rights, and to prevent violations in this area (Third Sector Foundation of Turkey, 2018).

3.2.5 Protection by Civil Society Organizations

Although there are criticisms and cynicisms about the free involvement of Civil Societies in Turkey, their role in protection of human rights cannot be downplayed. **Marlies Casier** (2009) contends that the institutionalization of human rights has been achieved in such a way as to lend state institutions the image of cooperation with a wide range of civil society actors, while in reality it is exclusive of those associations deemed a threat to the state’s reproduction of itself and the self-image it wants to portray (Casier, 2009). It is very evident that an empowered civil society is a crucial component of any democratic system and should be recognized and treated as such by the state institutions. Turkish CSOs continued to make crucial contributions on key challenges facing the country, notably in the areas of SER such as the right to education, right to work (including female workforce participation), and

²⁹ In the application No. 2016/3154, the applicant expressed that he was handicapped, working as a civil servant at Izmir Metropolitan Municipality and having financial problems and therefore requested for allocation of public housing for himself by taking into account of his disability. The Ombudsman Institution issued a Recommendation dated 28/01/2017 for the Ministry of Finance stating that the Regulation on Public Housing should be amended in a manner to include reasonable regulations to remove unjust treatments of the handicapped staff by taking into account their disability rate and disability status.

support for refugees. Many of the more than 23, 000 CSOs in Turkey are dedicated to researching or advocating on political and social issues such as education, gender rights and environmental justice or to supporting refugees. However, there are a limited number of CSOs operating in the field of human rights in Turkey (Third Sector Foundation of Turkey, 2018).

4. Comparative Analysis on the Protection Mechanisms

4.1 Constitutionalizing SER

Constitutionalizing human rights in general and SER in particular is undoubtedly one of the strongest ways of giving domestic legal protection to those rights (Boyle, 2018). It is one of the several methods of incorporating such rights in to the domestic legal system. Since the Constitution is the supreme law of the country, constitutional protection of SER constitutes the highest form of legal protection available at the national level. Turkey has provided constitutional guarantee for SER. The Constitution of Turkey has dedicated one full chapter³⁰ for providing some of the most important SER. Accordingly, it provides for the right to family protection, the right to education, the right to health, the right to social security, the right to gainful labor (work), and the right to housing. However, unlike the ICESCR, the constitution does not provide for some important SER such as the right to self-determination, the right to food, and the right to clean water. In addition to constitutionally providing SER, the government of Turkey has established institutional mechanisms for the protection and enforcement of the rights. Accordingly, the TIHRE, the Ombudsman Institution of Turkey, the Human Rights Compensation Commission (under the Ministry of Justice), and the Constitutional Court are the major human rights related institutions established to provide legal remedies in case of violations of human rights including SER.

On the other hand, Ethiopia has also taken legislative measures for the protection of SER at domestic level. One of the steps taken to protect these rights was to incorporate them into the Constitution. Accordingly, the FDRE Constitution devotes chapter three for human rights (fundamental rights and freedoms). Although the categorization of human rights under the constitution is not lucid, the constitution encompasses several SER as enumerated in ICESCR. Article 41 of the Constituti-

³⁰ Chapter 3 of the Constitution (Articles 41-65) provides for Social and Economic Rights.

on, 'captioned as Economic, Social and Cultural Rights', provides for some of the major SER including the right to economic activities (work), the right to choose occupation (profession), the rights of aged, disabled peoples, and orphans, the right to protection of historical and cultural legacies. Besides, the Constitution provides for other elements of SER such as family rights (Article 34), the right to self-government (Self-determination), the right to property (Article 40), and labor rights (Article 42). However, the FDRE Constitution does not recognize the right to food, the right to clean water, and the right to housing as SER. Rather, it places these rights as National Social Policy Objectives³¹. On top of this, even though the constitution provides for the right to access to justice under Article 37, the direct justiciability of SER in Ethiopia remains questionable³². In addition to constitutionally protect the rights, the constitution establishes institutions for the protection of human rights (including SER). Independent judiciary (Courts), the HoF, the Council of Constitutional Inquiry (CCI), the Ethiopian Human Rights Commission (EHRC), and the Ethiopian Ombudsman are the main constitutionally established institutions for the protection and enforcement of constitutional rights in Ethiopia.

4.2 Non-Discrimination Between Rights

The major international human rights instruments including UDHR, ICCPR and CESCRC reflect that the two sets of human rights, 'civil and political rights' on the one hand, and 'economic, social and cultural rights' on the other, should be equally respected and protected at domestic and international level (O'Connell, 2012). The Constitution of Turkey provides a strong protection for human rights including SER. Human rights are considered as the corner stone of the Constitution. For example, Article 14 of the Constitution stipulates that no provision of the Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. This clearly shows the value given to fundamental rights and freedoms (human rights). Besides, as per Article 90 of the Constitution, international treaties, including all international human rights instruments, have a superior position in the

³¹ Article 90(1) of the Constitution provides, to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.

³² Many countries that have constitutions with liberal or social democratic values fail to give 'legal sense' (judicial enforceability) to many of the socio-economic rights provisions in their constitutions (Helena Alviar García, 2015).

hierarchy of laws in Turkey. More to the point, the constitutionality of international treaties cannot be challenged even before the Constitutional Court. According to the Constitution, in the case of a conflict between international agreements (treaties) in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail. Thus, let alone the differential treatment between the different sets of human rights, human rights instruments have a higher position than domestic laws in Turkey. Part two of the Constitution provides for ‘Fundamental Rights and Duties’ which includes ‘fundamental rights and freedoms of individuals (Article 12-16) under chapter one, Rights and Duties of Individuals (Article 17-40) under chapter two, Social and Economic Rights (Article 41-65) under chapter three, and political rights and duties (Article 66-74) under chapter four. The way the constitution provides for civil, political, social, economic, and other sorts of human rights shows that the constitution does not have any intention of discriminating one set of rights against the other. Indeed, as per Article 65 of the Constitution, Turkey undertakes to realize SER within the capacity of its financial resources. This is in line with the duties of states party to ICESCR. Since the Covenant requires States party to fulfill their duties towards SER within the limits of ‘available resources’, the stipulation in Article 65 of the Turkish Constitution does not intend to discriminate between the two sets of human rights- between ‘civil and political rights’ and ‘SER’.

In the Ethiopian system, although the phrase “human and democratic rights” in the chapter three of the FDRE Constitution seems to make a distinction between the two pointing to the classification of the list of rights in chapter three into two parts named “Human Rights” (Arts 14-28) and “Democratic Rights” (Arts 29- 44), all categories of rights are coequally to be respected without one having any superior claim to the other in terms of being prioritized or subordinated. In a very confusing manner, the FDRE constitution seems to differentiate between two “classes” or clusters of rights, namely “Human” Rights and “Democratic” Rights. However, as per Article 13 (2) of the Constitution, the interpretation of the fundamental rights and freedoms specified in the constitution are to be done in conformity to the principles of international human rights instruments (UDHR, ICCPR and ICESCR, inter alia) and other International instruments adopted by Ethiopia (Refer Article 13 (1) of the FDRE Constitution). Thus, this provision seems to place SER on equal par with other civil and political rights in the constitution.

4.3 The Scope of the Substantive Provisions

The content (substance) and scope of SER should be well defined in law for their legal enforcement (Regassa, 2009; Mubangizi, 2006). In Turkey, the substance of the major SER provided in the Constitution such as the right education, the right to public health, the right to social security, the right to housing, and the rights of laborers, among many other SER, are defined by legislation subsequent to the Constitution. The legislation helps the judicial enforcement of those rights³³. On the other hand, one of the major challenges of judicially enforcing SER in Ethiopia is that the content and scope of SER as provided in the constitution are too elusive for judicial interpretation and judgment. The Constitution does not provide for the issuance of particular laws (proclamations, regulations, directives and decrees) that define the scope and the detailed content (substance) of the rights. The Courts in Ethiopia do not have clear guidelines on SER for judicial interpretation and application. Accordingly, SER remain judicially unenforceable even though they are generally ‘justiciable matters’ as per Article 37 of the constitution.

4.4 Procedures for Litigation

There should be procedures for the litigation of SER at domestic level (Palmer, 2007). Litigation of SER is a separate or an independent way of enforcing these rights, as it is with civil and political rights. In Turkey, the constitutionally guaranteed SER are judicially enforceable. As per Article 125 of the constitution, recourse to judicial review shall be available against all actions and acts of administration. As regards the enforcement of SER, the Turkish Constitution provides for the issuance of particular laws and legal procedures³⁴ for the effective realization of the constitutionally protected SER. For instance, there are legal procedures to take cases on SER to the Constitutional Court for judicial review. On the other hand, litigation of all sorts of human rights has been extremely difficult, if not impossible, in Ethiopia. This is because courts are not given clear judicial power that enables them to adjudicate cases involving SER. Besides, the Ethiopian Constitution does not provide for

³³ Even though the Turkish Constitution recognizes and establishes a large catalogue of social and economic rights, it does not adequately encompass cultural rights. Even though socio-economic rights are constitutionally protected in Turkey, the judicial enforcement of such rights has always been extremely controversial (Algan, 2007; Yılmaz, 2016). Enforceability of these rights through judicial means is an interesting legal issue in Turkey, since the Turkish Constitution dilutes the duties of the State by giving the legislature discretionary powers in realizing these social and economic rights without specifying any clear provision concerning their judicial enforceability (Yılmaz, 2016).

³⁴ Refer Articles 46, 47, 51, and 54 of the Constitution of the Republic of Turkey

the issuance of particular legislation for the enforcement of SER. Although litigation of socioeconomic rights at courts is not the only available means for the effective enforcement of those rights of the individuals and the community in Ethiopia, the absence of an effective method of recognizing justiciability for these rights narrows down the range of mechanisms available for victims of rights violations to receive legal remedies and reparations.

4.5 The Available Legal Remedies

As part of their commitments to the international human rights instruments, states shall provide domestic legal remedies for the violations of human rights (including SER) (Young, 2012). In line with this, Turkey has provided constitutional guarantee for compensatory regimes in case of any sort of rights violations in general and violation of SER in particular. Most interestingly, as per Article 19 of the Constitution, the State takes the liability to pay damage suffered by persons as a result of rights violations through the general principles of the law on compensation. What is more, damages incurred by any person through unlawful treatment by holders of public office shall be compensated for by the state (Article 40 of the Turkish Constitution). More specifically, as regards SER violations, the Constitution provides for compensation in case of land expropriation (Article 46) and limitations imposed on privately owned assets and wealth (Article 63). Litigation of SER cases before courts cannot be realized unless the law prescribes effective legal remedies including annulment of arbitrary laws, injunctions on malicious administrative decisions, and adequate reparation (compensation). At this juncture, while the Turkish legal system has a relatively clear legal procedures and legal remedies for the breach of SER. The human rights institutions of Turkey, as discussed above, including the Courts have a legal ground for delivering legal remedies in all cases that involve the breach of SER. However, the Ethiopian legal system fails to provide clear legal remedies for the breach of human rights in all of their forms. As it can be inferred from the wordings of Articles 85 to 92 of the FDRE Constitution, the government aspires to prevent violations of SER through national policies instead of providing legal remedies for the breach of rights. This approach denies the legal recourse rights of individuals or groups who have suffered violations of rights and who seek legal remedies from the concerned organ.

5. Concluding Remarks

Based on the international standards set by human rights instruments for the protection of SER, this article has attempted to comparatively analyze the Ethiopian and Turkish systems for the protection of SER at their domestic laws. The establishment of legislative and institutional mechanisms is one of the main requirements of ICESCR and other international human rights instruments for the progressive realization of SER in states party to the Covenant. In line with their obligations that emanate from international legal instruments, both Ethiopia and Turkey have taken their respective legal and institutional measures for the protection and realization of SER.

Accordingly, Turkey has incorporated the vast majority of SER in to the Constitution. In addition to the constitutional protection, the government of Turkey has issued detailed substantive and procedural laws, based on the Constitution, to make SER justiciable. Furthermore, courts and other human rights institutions (mainly the Human Rights Compensation Commission and the Ombudsman Institution) have the mandate to protect and enforce SER in Turkey.

On the other hand, Ethiopia has adopted some of the SER encompassed in ICESCR in to the FDRE Constitution. Despite the fact that SER have constitutional protection in Ethiopia, they lack legal enforcement as human rights in general and SER in particular remain judicially unenforceable. Constitutionally protected human rights including SER are to be interpreted and given effect by the CCI which works under the auspices of the HoF. Besides, the Constitution establishes two main independent institutions for the protection of human rights: the Ethiopian Human Rights Commission and the Ethiopian Ombudsman. These institutions protect human rights (SER) through investigation of violations, report, and recommendations. Thus, the Ethiopian legal system follows a policy-oriented approach for the protection of SER as it fails to give legal sense of human rights in general.

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