

THE ROLE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF AZERBAIJAN IN THE APPLICATION OF INTERNATIONAL LAW

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Abstract

The domestic effect of the norms of international law does not end with the inclusion of these norms only in the constitution, the implementation of these norms, especially the application of the relevant state in the administration of justice is important. Courts play an important role in the implementation of international law. The application of international law by the courts is an important element in the implementation of international law. The activity of courts is important in determining the domestic effect of international law. In modern civilized countries, the tendency of the courts to the norms of international law has increased in the legal thinking. The Republic of Azerbaijan (AR) is also among these countries. There are many objective reasons for this. Thus, the realization of this process in our Republic is natural as a state that has supported many international agreements in the field of human rights and freedoms, integrated into Europe and built a stable, democratic society.

During the analysis of the decisions of the Constitutional Court of the AR, it is possible to observe an increase in the number of references to the decisions of the European Court. The Constitutional Court of the AR bases its position on the Constitution, as well as on the European Convention on Human Rights. Thus, it further strengthens its legal position on a specific issue. The Constitutional Court of the AR also refers to the norms of the Convention and the precedents of the European Court in its work on the interpretation of constitutional norms.

Keywords: *constitutional court, judiciary, norms of international law, human rights, legal state, rule of law, European Court, European Convention on Human Rights, precedent, legal position.*

Historical experience shows that litigation is the best way to resolve disputes and reveal the truth. However, this process takes place only when the court is truly independent, impartial and impartial. Under such conditions, the judiciary becomes an effective guardian of human rights and freedoms.

The central role of the entire legal system in civil societies belongs to the courts. It is the courts that administer true justice. The greater the prestige and role of the judiciary, the less dependent it is on the executive and the legislature, the higher the level of the rule of law and democracy in the country, and the normal level of human rights and freedoms.

The judiciary must ensure the constitutional rights and freedoms of the individual in relation to other branches of government, including its independence, high status, authority, and authority in the field of criminal justice [1, 388].

Judicial power in our republic is exercised by courts in accordance with the basic law of the country. Judicial power is exercised through justice. There are Constitutional Court, Supreme Court, appellate courts, general courts and other specialized courts in our country.

The formation of a civil society and a democratic state based on the rule of law in the AR in modern times requires the establishment and effective functioning of a mechanism for judicial protection of human rights and freedoms, which is logically strong, independent and accessible to the population. The establishment of the legal basis for the judicial protection of human and civil rights and freedoms in the Constitution of the country, the reform of the judiciary fully

guarantees the adequate understanding and observance of the values enshrined in the Basic Law [2, 57].

The country's constitution states that everyone is guaranteed the right to judicial protection (art. 60), and that a person's consent is required for his or her case to be heard in another court (art. 61). These articles are incorporated into Article 8 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights. However, it should be noted that the inclusion of international norms in the Constitution of the country means that the state undertakes to fulfill the relevant obligations, but the implementation of this obligation, ie the implementation of these norms of international law is important, otherwise these norms are declarative.

The experience of European countries (Germany, France, and Austria) shows that the norms of international law are mainly implemented in the activities of the courts, and a precedent is formed as a result of these activities. Even though dualistic European countries (Scandinavian countries) at first glance prefer national laws to international law, the supreme courts of those countries have repeatedly shown that they prefer international standards in their decisions.

In modern civilized countries, the tendency of the courts to the norms of international law has increased in the legal thinking. AR is also among these countries. There are many objective reasons for this. Thus, the realization of this process in our Republic is natural as a state that has supported many international agreements in the field of human rights and freedoms, integrated into Europe and built a stable, democratic society.

A key element of our country's integration into the single legal space was its accession to the documents of the Council of Europe, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

This Convention is a fundamental and conceptual legal act in terms of its purpose, mission and content. Thus, international rules and norms on the protection of the rights of individuals from state interference have been expanding since 1945[5, 600]. Major international human rights treaties, including the European Convention on Human Rights, state the use of remedies and the possibility of individual complaints at the international level [9, 156].

The European Court of Human Rights currently has jurisdiction over human rights and freedoms in 47 member states of the Council of Europe and 27 member states of the European Union. The European Court of Human Rights has had a significant impact on the rights and policies of European states in this area by declaring its authority to protect human rights and freedoms in a judicial manner [6, 147-148].

The European Court deals with the interpretation and application of the provisions of the Convention. This is enshrined in Article 32 of the Convention. The European Court has a direct influence on domestic law and, consequently, on the law-enforcement practices of States Parties.

The Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 25 December 2001 and its Protocols 1, 4, 6 and 7 expresses its principled consent to the recognition of the binding force of the decisions of the European Court of Justice. This event was an important step in the practical implementation of the requirements of Article 60 of the Constitution of the AR (judicial guarantees of rights and freedoms).

The Constitutional Court of the AR, in its activity is guided exclusively by the Constitution of the AR. The Constitution of the AR has supreme legal force, laws and other legal acts adopted in the AR cannot contradict it. "At the same time, the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system, and priority over the law in the event of a conflict.

In accordance with the Constitution of the AR, human and civil rights and freedoms are recognized and guaranteed in accordance with the generally recognized principles and norms of international law and in accordance with this Constitution. "Therefore, the Constitutional Court of the AR, when interpreting the Constitution in relation to human rights and freedoms, must

take into account the provisions of the Convention on protection of human rights and fundamental freedoms and decisions of the European Court of Human Rights.

In accordance with the current legislation of the AR, international treaties are an integral and integral part of its legislative system. In the event of a conflict between normative legal acts included in the system of legislation of the AR, in addition to the Constitution and acts adopted by referendum, and interstate treaties to which the AR is a party, international treaties are applied.

In accordance with Article 12 of the Constitution AR, "human and civil rights and freedoms listed in the Constitution are applied in accordance with international treaties to which the AR is a party." From this article it can be concluded that if we consider the precedents of the European Court as an interpretation of the provisions of the Convention, then they acquire exceptional importance, since these interpretations must be considered as an integral part of the Convention, and, consequently, the obligations of the state that acceded to this document.

Accordingly, it can be concluded that, like all other national courts in the AR, the Constitutional Court of the AR, in accordance with this article of the Constitution of the AR, is obliged to protect human and civil rights not only in accordance with the text of the Convention, but also with its interpretation, which given to him in judicial decisions called "precedent of interpretation." Considering the practice of the European Court of Human Rights as an effective tool for resolving legal conflicts at the national level, the Constitutional Court of the AR, while applying the provisions of the Convention, makes references to the case law formed by this international judicial body.

The Decision of the Plenum of the Constitutional Court of the AR dated 11.05.2004 states that refusal to register a legal entity without legal grounds violates the right to join, as well as the right to join a trade union. Referring to the decision of the European Court of Human Rights in the case of *Sidoropoulos and Others v. Greece*, the Court noted that the right to form associations is an integral part of the right to form trade unions makes.

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Since 2002, in almost all its decisions, the Constitutional Court of the AR has referred to the norms of the European Convention on Human Rights and the precedents of the European Court, and has somehow turned those standards into a source of law.

In the practice of the Constitutional Court of the AR, the cases considered with reference to the precedents of the European Court mainly include freedom of opinion and expression, the right to a fair trial, tax liability, right to association, freedom of assembly, participation in court, right to liberty and security of person, reasonable term, sentence, etc. issues are encountered.

The Decision on the Interpretation of Articles 21 and 23 of the Civil Code of the AR on freedom of opinion and expression states that Article 10 of the European Convention on Human Rights states that everyone has the right to freedom of expression. The provisions of Article 10 of the European Convention on Human Rights formed the basis of the European Court's judgment of 1986 in *Lingens' case* against the Austrian State. Freedom of expression is one of the cornerstones of a democratic society and is seen as a condition for its progress and the expression of every member of society [8, 644-645].

The Decision on Article 440.4 of the Civil Code and Article 74.1 of the Law on Enforcement of Judgments on the right to a fair trial states that the experience of the European Court in this matter is also of interest. The European Court of Human Rights in its judgment of 19 March 1997 in the case of *Hornsby* stated that if the judicial system of the States Parties allows

the non-enforcement of a binding and final judgment of the European Court and thus the interests of one of the parties, the European Convention on Human Rights The "right to a judicial review" referred to in Article 6 will be of an imaginary nature ... The enforcement of a judgment rendered by any court is an integral part of the definition of "judicial proceedings" provided for in that article.

Provisions of the Constitution of the AR, the European Convention on Human Rights and other norms of international law, the existing decisions of the European Court on specific cases provide for the protection of property and judicial rights of individuals and legal entities [3].

The Decision on the Interpretation of Article 100 of the Constitution of the AR "... not liable to other states" states that in connection with tax liability, as in the legislation of some countries, Article 77.1 of the Tax Code of the AR considers the obligation to pay the established tax as its tax liability.

The European Court's judgment of 12 July 2001 (Ferrazi's case against Italy) stated that the material nature of the tax proceedings was clear. However, this does not imply the existence of a civil legal aspect. According to the traditional practice of the European Court, there may be obligations to the state that fall exclusively under the general jurisdiction and are not accepted as civil rights and obligations. The European Court has held that taxes are at the heart of the exclusive powers of public authorities. Although Article 1 of Protocol No. 1 to the European Convention on Human Rights relates to the protection of property, the State retains the power to enact laws necessary to ensure the payment of taxes. The European Court noted that tax disputes remain "beyond the scope" of civil rights and obligations, despite the fact that they have material consequences for the taxpayer. Thus, the European Court has accepted that the content of the tax liability does not arise from civil law relations [7, 532].

Regarding the right to join judicial acts on the complaint of E.Alizadeh and others on the right to unite, it is noted that in accordance with Article 11, paragraph 2 of the European Convention on Human Rights, this right is exercised in the interests of national security and public order, no restrictions may be imposed other than those prescribed by law and necessary in a democratic society for the prevention of riots and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. This article does not preclude the imposition of legal restrictions on the exercise of such rights by members of the armed forces, police or public authorities.

The European Court's judgment of 10 July 1998 in the case of Sidiropoulos and Others v. Greece stated the European Court's legal position on the matter as follows: "The text of Article 11 of the European Convention on Human Rights rests solely on the right to form trade unions. The right to form associations is an integral part of the right enshrined in that article. The right of citizens to form a legal entity to act together in their own interests is a fairly important aspect of the right to freedom of association, without which the right loses its meaning. The method and its application to the practical activities of the government is an indicator of democracy in the country in question. They must use methods that do not conflict with their obligations under the convention. "Restrictions on the right to association in our country are provided for in the Constitution and other laws [4].

Thus, the analysis of the decisions of the Constitutional Court of the AR gives grounds to say that the number of references to the decisions of the European Court has increased. The Constitutional Court of the AR bases its legal position on the country's basic law, as well as on the European Convention on Human Rights. In this case, the Constitutional Court of the AR further strengthens its legal position on the issue under consideration, based on the principles of the rule of law and the rule of law. The Constitutional Court of the AR also refers to the norms of the European Convention on Human Rights and the precedents of the European Court in its interpretation of constitutional norms.

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