

THEORETICAL AND PRACTICAL PROBLEMS OF IMPLEMENTATION OF INTERNATIONAL LEGAL NORMS INTO THE LEGAL SYSTEM OF THE REPUBLIC OF AZERBAIJAN IN THE FIELD OF PROTECTION OF CULTURAL HERITAGE

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Abstract

The article extensively analyzes the theoretical and practical problems of the implementation of international legal norms in the field of cultural heritage protection into the legal system of the Republic of Azerbaijan. By analyzing the constitutional norms of a number of states, the attitude towards these or other international legal norms is reported, the role of the generally recognized principles of international law and international customary norms in the protection of cultural heritage is analyzed. In addition, the issue of interaction between general and special norms of the Constitution of the Republic of Azerbaijan and then sectoral legislative acts and international and national legal norms in the field of cultural heritage protection is considered. In the article, a number of proposals are put forward in the direction of the development of international and national legal norms in the Constitution of the Republic of Azerbaijan, as well as in sectoral legislative acts. It is believed that the implementation of international legal norms in the sphere of cultural heritage protection to the domestic legal systems of states differs in a number of specific features, where the human rights factor occupies a special place.

Keywords: *human rights, protection of cultural heritage, international legal norms, national legislation, legal system, generally recognized principles of international law, international customary norms, international obligations, sectoral legislative acts.*

I. Introduction

In the sphere of cultural heritage protection, the implementation of international legal norms into the domestic legal systems of states is relevant, as in other fields, but also differs in its specific features. In this case, the specific characteristics of the adopted international legal norms must also be taken into account. Thus, the characteristics of those norms, such as "hard" and "soft" legal norms, also show an important position here. In addition, international obligations addressed to the states are also considered important factors.

Taking into account what has been mentioned, the relevance of the issue put forward for discussion requires extensive analyzes in a number of directions.

First of all, it is necessary to define important elements in this field in the Constitution, which is the main Law of the state. In addition to being the basis for the adoption of the main laws and other normative-legal acts, the Constitution also reflects important principles. In addition to having the highest legal force, the Constitution regulates the relations between people, society and the state. One of the main points here is the attitude towards international legal norms and the regulation of human rights and fundamental freedoms. Taking into account the above, the statement of attitude to international legal norms in the constitutions is not only a general approach, but also has a guiding nature for other normative-legal acts. Article 147 of the Constitution of the

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Republic of Azerbaijan, which is called "Legal force of the Constitution of the Republic of Azerbaijan", consists of 3 important interrelated clauses:

- The Constitution of the Republic of Azerbaijan has the highest legal force in the Republic of Azerbaijan.
- The Constitution of the Republic of Azerbaijan has direct legal force.
- The Constitution of the Republic of Azerbaijan is the basis of the legislative system of the Republic of Azerbaijan [4].

Then, a general approach and a special approach are also distinguished. Here, too, the adopted special normative-legal acts are distinguished, and the mentioned ones combine the national normative-legal acts in the field of cultural heritage protection that we are analyzing. The main feature of the international obligations assumed by the international agreements to which the Republic of Azerbaijan is a party is implemented in practice, where the adopted special normative-legal acts play an important role.

At this time, domestic normative-legal acts, which include areas close to the sphere of cultural heritage protection, occupy a special place. Normative-legal acts adopted in the field of human rights, including those adopted in other areas (for example, the Criminal Code of the Republic of Azerbaijan, the Civil Code of the Republic of Azerbaijan, etc.) become the object of analysis here.

When talking about the implementation of international legal norms in national legal systems, the analysis of the practice of states shows that the approaches here are different. The difference in approach is reflected in the end result. Thus, states that have sufficient experience in the application of international legal norms also achieve efficiency in this direction, which combines a number of features. At this time, it is interesting to apply directly to the norms of international law or to implement the process through domestic normative-legal acts adopted for the purpose of the implementation of international obligations. Of course, the long-term or efficiency of the experience of the states must be taken into account here.

It should also be noted that although there are enough studies on the implementation of international legal norms in national legal systems in the Azerbaijani legal literature, almost no studies have been conducted on the implementation of international legal norms in national legal systems in the field of cultural heritage protection. This increases the importance of current scientific research.

II. Attitude to international law with the analysis of constitutional provisions and protection of cultural heritage

As mentioned, when discussing the issue of application of international legal norms in separate legislative acts, it is necessary to refer to the constitutional norms first.

For this reason, it should be considered important to make a distinction in the norms of international law.

First of all, in the Preamble of the Constitution of the Republic of Azerbaijan, as one of the important intentions of the Azerbaijani people, it should be specifically mentioned "to live in friendship, peace and tranquility with all the peoples of the world, in accordance with universal values, and to interact for this purpose" [4].

It can be considered that as a continuation of the intention defined in the Preamble, it is the attitude towards the generally recognized principles of international law as one of the important norms of international law. The main difference between the generally recognized principles of international law and other norms of international law is that it

has special legal force. We believe that this feature does not make the discussion of the issue of the implementation of those universal principles into domestic normative-legal acts relevant. Thus, these principles form the basis of interstate relations and are the basis for the adoption of other international norms. The international law subjectivity of states is sufficient for them to follow the generally recognized principles of international law. These principles, which act as the basis of interstate relations, form the basis of the international normative system.

Important international obligations are also reflected in generally recognized principles of international law. In this sense, the attitude of the state itself to the generally recognized principles of international law should be considered very necessary. Article 10 of the Constitution of the Republic of Azerbaijan states that the Republic of Azerbaijan establishes its relations with other states on the basis of the principles provided for in universally accepted international legal norms [4].

In this regard, it would be important to refer to the practice of world states. Thus, Article 10 of the current Italian Constitution states that the Italian legal system conforms to the generally acknowledged provisions of international law [14].

Clause 4 of Article 15 of the Constitution of the Russian Federation states that the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied [5].

Article 4, Part 5 of the Constitution of Georgia states that the legislation of Georgia shall comply with the universally recognized principles and norms of international law. An international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia [6].

Article 25 of the Constitution of the Federal Republic of Germany ("Primacy of international law") states that the general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory [7].

Although there are no direct norms related to this in the Constitution of the Republic of Turkey, a general attitude towards international law has been expressed in the practice of international agreements. Thus, in Clause 5 of Article 90 of the Constitution, it is stated that international agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail [8]. It can be considered that this norm was able to express sufficient accuracy.

The constitutions of some states (for example, USA, France) do not directly address the principles of international law.

The Constitution of Kazakhstan even approached the issue somewhat broadly and specifically mentioned some universally recognized principles of international law. Thus, Article 8 of the Constitution states that the Republic of Kazakhstan shall respect principles and norms of international law, pursue the policy of co-operation and good-neighborly relations between states, their equality and non-interference in each other's

domestic affairs, peaceful settlement of international disputes and renounce the first use of the military force [9].

It can be considered that despite the fact that the attitude to the principles of international law is expressed in different ways in the constitutions of different states, in accordance with the UN Charter, the features of the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States should be unambiguously taken as a basis. Thus, the Declaration (General part) declares that in their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles. Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration. Declares further that: the principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles [12].

Taking these into account, it should be considered necessary to express the attitude to the main principles of international law in a more precise form. In this sense, it should be considered more appropriate to use the phrase "generalized principles of international law" rather than the phrase "principles stipulated in international legal norms" expressed in the Constitution of the Republic of Azerbaijan.

It should be taken into account that international obligations are determined not only by international legal norms, but also by generally recognized principles of international law and international customary norms. In this sense, it is necessary to determine the normative content of individual principles of international law.

According to the main content of the the principle of not using force or threatening to use force reflected in Clause 4 of Article 2 of the UN Charter, all Members of the UN shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner incompatible with the objectives of the UN [10]. As important documents in this field, the 1928 Briand-Kellogg Pact on the Renunciation of War as an Instrument of National Policy, the 1974 Resolution adopted by the UN General Assembly on the Definition of Aggression, provisions mentioned in the 1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations were further developed. The principle of not using force or threatening to use force does not unambiguously allow such actions to be directed against cultural heritage. In other words, any actions expressed by aggression can be directed against the cultural heritage. Actions expressed as aggression were defined by the 1974 Resolution adopted by the UN General Assembly on the Definition of Aggression. And aggression is considered an international crime by the Rome Statute of the International Criminal Court and causes international responsibility. In the decisions of the International Criminal Court, as well as ad hoc international tribunals, it has been noted that the acts expressed as aggression are closely related to direct cultural heritage.

The principle of peaceful settlement of international disputes, which acts as the next principle and is reflected in Clause 3 of Article 2 of the UN Charter, envisages the peaceful settlement of disputes between subjects of international law, including cultural heritage. Thus, states must resolve all disputes or conflicts arising between them,

regardless of their nature and origin, only through peaceful means, including issues related to joint cultural heritage objects. This principle calls for the peaceful settlement of any interstate dispute, which requires states to resolve their disputes, regardless of their nature and origin, only by peaceful means, refraining from actions that may lead to escalation of disputes between states, including that they should resolve their disputes based on international legal norms. What was mentioned was also developed by the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field. Issues arising from international disputes may also include the sphere of cultural heritage and integrate these different spheres. For example, protection of cultural heritage samples located on the border of two states, protection of historical cultural heritage samples located in one state and belonging to other nations, and determination of responsibility for damage caused to them. So, currently there are examples of movable and immovable cultural heritage belonging to the people of Azerbaijan in the territory of the Republic of Armenia. Although the Republic of Armenia is responsible for the protection of those cultural heritage samples, the Republic of Azerbaijan is also responsible for their protection to its people. Taking this into account, it is of particular importance to constantly raise the mentioned issues before the international community.

According to the content of the principle of sovereign equality of states expressed in Article 2, Clause 1 of the UN Charter, states are obliged to respect each other's sovereign equality, as well as all rights inherent in sovereignty, including legal subjectivity [10]. At the same time, states have the right to freely choose and develop their political, social, economic and cultural system, and to determine their laws and administrative rules, fulfilling their international obligations. The mentioned reflect the respective rights of the states in the protection of cultural heritage. Those provisions are complemented by the principle of non-interference in the internal affairs of states expressed by Article 2, Clause 7 of the UN Charter [10]. The territorial integrity of states and the inviolability of borders, which act as one of the main principles, also have an important basis in the formation of important elements of cultural heritage protection.

The principle of legal equality and self-determination of peoples is also one of the important principles, and in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, it was also stated that peoples have the right to choose their own social, economic and cultural development path without hindrance. This includes the right of every nation to preserve and develop its cultural heritage. However, the mentioned cannot be directed against the territorial integrity of any state. In this sense, the protection of cultural heritage, which is part of cultural development, determines the mutual relations of nations with the international society and states.

The principle of co-operation of the states, which acts as one of the important principles, includes not only the implementation of peace and security protection measures, but also the expansion of the field of economic, scientific-technical, cultural and other interstate relations. According to Clause 3 of Article 1 of the UN Charter, states are tasked with "implementation of international co-operation in solving international problems of an economic, social, cultural and humanitarian nature". Articles 55 and 56 of the UN Charter are dedicated to the co-operation of states in social, economic and cultural fields [10]. Based on the principle of co-operation, states should behave in their international relations in such a way that they do not hinder co-

operation, but instead develop it further. The specific forms of co-operation of the states depend on the states themselves, their needs, resources, domestic legislation and the international obligations they undertake. International co-operation of states should also include cultural heritage, and it covers a number of spheres. For example, participation in existing international agreements in the sphere of cultural heritage, co-operation with various mechanisms within the framework of international organizations, joint international events with various states, other activities involving joint activities in the field of cultural heritage protection, etc.

The principle of conscientious fulfillment of international obligations, which acts as one of the important principles, is known as the principle of *pacta sunt servanda* ("agreements must be respected"). Ensuring the stability and efficiency of the international legal order, peaceful relations and interstate co-operation depends very much on the compliance of the states with the norms of international law and the honest fulfillment of the obligations they have undertaken. It is rightly considered in legal literature that international law would have lost its legal character without the principle of honest fulfillment of obligations under international law. This principle is the source of legal force of international law. In the 1969 Vienna Convention on the Law of Treaties, this principle is expressed as "every treaty in force is binding on its participants and must be performed by them in good faith". Participation in international agreements is reflected in the fulfillment by states of all terms of the obligations arising from them.

Finally, according to the content of the principle of respect for human rights and basic freedoms, which acts as an important principle, all states are obliged to respect the basic rights and freedoms of all persons located in their territory. Apart from that, all states undertake the duty of non-discrimination on the basis of race, gender, language, religion, etc. All states have an obligation to respect human rights and fundamental freedoms and to help co-operate with each other in achieving these goals [1, p. 27]. As one of the important human rights, cultural rights include the right to cultural heritage. In this regard, important rights are also reflected in international and national legislations. For example, in the International Covenant on Economic, Social and Cultural Rights of 1966, in the European Cultural Convention. In addition, the first Clause of Article 40 of the Constitution of the Republic of Azerbaijan states that everyone has the right to participate in cultural life, to use cultural institutions and cultural resources. In addition, Clause 2 of that Article states that everyone should respect historical, cultural and spiritual heritage, take care of it, and protect historical and cultural monuments.

As can be seen, rights in the sphere of cultural heritage also include corresponding duties. The normative bases of this are also established in international documents. Thus, Article 15 of the International Covenant on Economic, Social and Cultural Rights dated 1966 states that the states participating in this Covenant recognize the right of every person to participate in cultural life [13]. Then, Article 4 of the European Cultural Convention dated 1954 states that each Contracting Party shall, insofar as may be possible, facilitate the movement and exchange of persons as well as of objects of cultural value so that Articles 2 and 3 may be implemented. Article 5 of that Convention states that each Contracting Party shall regard the objects of European cultural value placed under its control as integral parts of the common cultural heritage of Europe, shall take appropriate measures to safeguard them and shall ensure reasonable access thereto [11].

III. Protection of cultural heritage and international customary norms

International customary norms are also the basis of interstate relations, they define important international obligations, we believe that the protection of cultural heritage should be among these obligations. We believe that the main features of the protection of cultural heritage during military conflicts are derived from this. The protection of cultural heritage is one of the main goals of international humanitarian law, taking this into account, the Martens clause should be mentioned here. Its essence is that while a more complete Code of the Laws of War is being formed, the High Contracting Parties deem it appropriate to declare that, in cases not included in the regulatory provisions adopted by them, the populations and belligerents remain under the guarantee and regime of the principles of the Law of Nations advocated by the practices established among civilized nations, by the laws of humanity and by the demands of public conscience [3].

One of the most characteristic cases in the modern era is the existence of states withdrawing from general international obligations that are important for the international community by not ratifying international agreements. At this time, it should be noted that determining international obligations by referring to international customary norms should be considered one of the most effective tools of international law, and the role of international customs in international society should be strengthened. The role of absolute rights should be especially mentioned here. Then, we believe that the international custom can have an important role in eliminating the existing gaps between the international law and the international obligations of the states. Considering that the protection of cultural heritage is carried out for the sake of human interests and public interests, and public conscience takes an important place here, the formation of important customary norms in the field of cultural heritage protection should be one of the main directions facing the international community. These features were reflected in the Hague Conventions adopted at the end of the 19th century and the beginning of the 20th century.

Currently, the importance of Martens clause in the development of norms in this direction is characterized by its serious effects. Apparently, by defining the entire scope of the law of armed conflict, the Martens clause allows one to go beyond ordinary law and custom, to appeal to the principles of humanity and the dictates of public conscience. We believe that the Martens clause is very important. The formation of advanced laws and customs in wars is still almost impossible, this concept itself is broad, and at the same time, the invention of new weapons can lead to unimaginable consequences. In this regard, UN General Assembly resolution 38/75 (December 15, 1983) should be noted, as "resolutely and unconditionally condemns nuclear war in all circumstances as contrary to human conscience and reason" [17]. It seems that by defining the entire scope of the law of armed conflict, the Martens clause allows us to go beyond ordinary law and custom and appeal to the principles of humanity and the dictates of public conscience.

In general, the reservation made by the well-known scientist F. Martens to the Hague Conventions should be specially noted. Thus, in his work entitled "Modern international law of civilized nations", a number of important norms in this field were defined, and the necessity of protecting cultural heritage was also put forward [2, p. 43-44]. One of the main features of this reservation put forward by F. Martens is the substantiation of the importance of customary law and international customary norms, and laying the foundation for applying these norms to the protection of cultural heritage in the future. The 13 Hague conventions of 1907, which set a new direction for the Hague

conventions of 1899, led to further strengthening of international humanitarian law norms and international customary norms.

Subsequently, international custom, including international humanitarian law norms, led to the adoption of a number of important international documents in this field, including: Geneva Conventions for the Protection of War Victims of 1949, Protocols No. 1 and No. 2 of 1977 to those international conventions, Protocol No. 3 of 2005, Hague Rules of 1923 for the Air Warfare, the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, the Briand-Kellogg Pact of 1928, which formally prohibits use of war as an instrument of national policy, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Additional Protocols of 1954 and 1999, the 1977 Convention on the Prohibition of the Military or Any Other Hostile Use of Environmental Modification Techniques, the Convention dated 1980 on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and 5 Additional Protocols to it, etc.

IV. Special norms reflected in the Constitution and the problem of cultural heritage protection

Let's continue the analysis of the interaction between the Constitution of the Republic of Azerbaijan and international and national legal norms in the field of cultural heritage protection. For this matter, the provisions reflected in Article 7 of the Constitution should be specially mentioned. Part 2 of that Article, which gives an important place to the role of international legal norms in the regulation of intra-state relations, states that the state power in the Republic of Azerbaijan is limited only by law in internal matters, and in foreign matters only by the provisions arising from international agreements to which the Republic of Azerbaijan is a party [4]. We believe that this norm expresses a very important position of the Republic of Azerbaijan on its obligations arising from international agreements and international customary norms.

It is also very necessary for states to express their attitude to international agreements. The legal force of international agreements to which the states are parties is also important at this time. The aspects defined here are related to Clause II of Article 148 of the Constitution of the Republic of Azerbaijan. Thus, it is noted that the international agreements that the Republic of Azerbaijan is a party of are an integral part of the legislative system of the Republic of Azerbaijan [4].

Then, the determination of mutual relations between international agreements and national legislative norms is also of particular importance. In this regard, Article 151 of the Constitution of the Republic of Azerbaijan can be mentioned. In that article, it is noted that if there is a conflict between the normative legal acts included in the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and the acts adopted by referendum) and the interstate agreements to which the Republic of Azerbaijan is a party, those international agreements shall be applied [4].

Protection of cultural heritage is directly related to human rights. The human rights approach requires specificity. Taking this into account, Article 71, Clause V of the Constitution of the Republic of Azerbaijan states that no provision of this Constitution can be interpreted as a provision aimed at abolishing human and civil rights and

freedoms [4]. Later, in paragraph VI of the same article, it is stated that human and civil rights and freedoms have directly force in the territory of the Republic of Azerbaijan [4].

A special approach to human rights is directly derived from the supreme purpose of the state. Thus, Article 12, Clause I of the Constitution of the Republic of Azerbaijan states that ensuring human and civil rights and freedoms, a decent standard of living for the citizens of the Republic of Azerbaijan is the supreme goal of the state [4]. Then, according to Clause II of that Article, the human and civil rights and freedoms listed in this Constitution are applied in accordance with the international agreements to which the Republic of Azerbaijan is a party [4].

V. Interrelation of international and national legal norms in the field of cultural heritage protection with sectoral legislative acts

After the Constitution of the Republic of Azerbaijan, the recognition of the primacy of international legal norms in matters of reciprocity was directly determined in the field legislative acts. Thus, Article 30 of the Law of the Republic of Azerbaijan dated April 10, 1998 "On the Protection of Historical and Cultural Monuments" states that, according to Article 151 of the Constitution of the Republic of Azerbaijan, if there is a conflict between this Law and the interstate agreements to which the Republic of Azerbaijan is a party, those international agreements apply [15]. In addition, it is stated in part 1 of Article 6 of the Law of the Republic of Azerbaijan dated December 21, 2012 "On Culture" entitled "Guarantee of Rights and Freedoms" that the rights and freedoms of everyone in the field of culture in the Republic of Azerbaijan, are ensured by being guided by the norms and principles of international law. The state ensures that every person can exercise their rights and freedoms in the field of culture, regardless of their gender, race, language, religious and political beliefs, nationality, social status, social origin, health conditions, and membership in public associations [16].

We believe that constitutional norms have been able to define an important basis in this field, even if no direct relationship is stated in the sectoral legislative acts. In spite of all this, in the field of cultural heritage protection, the attitude towards the interrelationship of international and national legal norms in the sectoral legislative acts of the Republic of Azerbaijan is highly appreciated and reflects a more realistic manifestation of the application of constitutional norms.

VI. Conclusion

Thus, by analyzing the theoretical and practical problems of the implementation of international legal norms in the field of cultural heritage protection into the national legal systems of states, a number of important conclusions are reached:

- Norms defined in all generally recognized principles of international law lead to the internationalization of states in the field of cultural heritage protection. From this point of view, regardless of the participation of states in some international agreements in the field of cultural heritage protection, their respective international obligations exist, thus it is necessary to form certain international control mechanisms over the fulfillment of those international obligations.

- Taking into account the above, the declaration of a direct attitude to the generally recognized principles of international law in the constitutions of the states is also important in the field of cultural heritage protection.

- International customary norms have determined the initial basis for the protection of cultural heritage, and are currently of great importance in this sphere. The role of international customary norms in the sphere of protection of cultural heritage in the period of military conflicts should be specially noted, where the Martens clause has a special place.

-Statement of human rights in the state constitutions is also important in the protection of cultural heritage. So, in terms of protection of cultural rights, this relationship is directly important, and with the development of human rights, it is necessary to make certain positive changes in this sphere.

- Despite the fact that important provisions on the mutual relations of international and national legal norms are defined in the constitutions of the states, it should be considered necessary to express a direct attitude in the field legislative acts in this sphere. So, in the field of cultural heritage protection, the attitude to the issues of mutual relation of international and national legal norms in the sectoral legislative acts should be considered important from the point of view of expressing specific features.

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