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Decisions of European Court of Human Rights in the legal system of Azerbaijan Republic

Abstract: Protection the rights and freedoms of a man stipulated in the Convention and its Protocols is a goal of European Court's activity, it is corresponded with the final aim and tasks of the Azerbaijani court proceedings, since social and legal values that are protected by the European Court and the Azerbaijani justice system are the general ones. It gives the ground to assert that currently in the Azerbaijani judicial system has been formed a sufficient legal basis for application of the norms of the Convention and decisions of European Court of Human Rights.

Recognition of the jurisdiction of European Court, the binding nature of its decisions, as well as the systematic monitoring for implementation by the Committee of Ministers of the Council of Europe, lie at the basis of the whole Convention's mechanism and include the main distinction of this treaty from other international legal acts.

It seems that significance of European Court's decisions goes beyond the national bounds, affecting the law and law enforcement practice of other states.

The case law of such decisions comes off the circumstance that the interpretation of an international treaty by a body whose jurisdiction is recognized by the member states is an integral element of the legal content of the treaty rules, which cannot be used separately and moreover contrary to this interpretation. The domestic aspect of a binding nature of European Court's decisions is enshrined in the sources of the law of the States parties to the Convention.

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European Convention for the Protection of Human Rights and Fundamental Freedoms correspond to the Constitution of Azerbaijan Republic since practically all the fundamental rights and freedoms enshrined in it are reproduced in one form or another in the text of the Constitution of Azerbaijan, in which it is noted that rights and freedoms of man and citizen are guaranteed in accordance with generally accepted principles and norms of international law [5; 6].

Thus, European Convention and its Protocols, which became a part of judicial system of Azerbaijan Republic, contain the obligations to ensure the fundamental civil and political rights for individuals under the jurisdiction of Contracting parties, and a specific interpretation of the rights recognized by the Convention is given in decisions of the European Court of Human Rights.

In addition, legal grounds of affecting of the European Court's decision on judicial system of Azerbaijan are seen from appropriate norms of the European Convention. Article 32 enshrines that the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto, Article 44 indicates that the judgment of the Grand Chamber shall be final, and Article 46 says that Contracting Parties of Convention undertake to abide by the final judgment of the Court in any case to which they are parties [5, pp. 20, 24, 25]. Being as an integrate part of judicial system of Azerbaijan, the European Convention keeps its international legal significance as the most its provisions are international legal standards, which enshrined in International Covenant on Civil and Political Rights of 1966 and Universal Declaration of Human Rights [9; 4]. These documents, which include uniform legal regulation in a number of positions, constitute a system of international legal norms relating to



basic categories - fundamental human rights and freedoms, and European human rights standards in their basic parameters have no significant differences from common international standards.

Protection of human rights and freedoms enshrined in Convention and Protocols thereto is a goal of European Court's activity, it is corresponded with the final aim and tasks of the Azerbaijani court proceedings, since social and legal values that are protected by the European Court and the Azerbaijani justice system are the general ones. It gives the ground to assert that currently in the Azerbaijani judicial system has been formed a sufficient legal basis for application of the norms of the Convention and decisions of European Court of Human Rights.

Problem of correlation of generally accepted principles and norms of international law and national legislation is multidimensional. There are numerous disputes about scientific terminology in the theory of law concerning the fairness of the question in general, since the norms of international law and the norms of national legislation are elements of different legal systems, with their inherent non-identical objects, subjects, goals and legal essence. To a large extent, this discrepancy of views is caused by a known uncertainty in the existing terminology [13, p. 33-36; 11, p. 3-12; 7, p. 61-63]. In addition, international law has not a single form, but is made up of a huge number of norms of national legal systems that are not related to each other, which are independent and in many respects contradictory. Therefore, the issue of the application of international law in the scientific literature is considered in relation to each legal system separately [10, p. 11-17; 2, p. 104-110].

There are two conceptual approaches in theory concerning the relationship between international and domestic law. Supporters of the dualistic approach, considering these two legal systems, initially they emphasized not so much the connection between them, but their difference and independence.



Modern specialists in international law, the supporters of the dualistic concept, emphasizing the separation of legal systems into international and domestic law, recognize their close ties and wide interaction [14, p. 19-25].

Supporters of the monistic concept are also not united in their views. The overwhelming majority of supporters of monism adhere to the view of the supremacy of international law over domestic law. The recognition by a number of scholars of this supremacy is connected with their advancement of the theory of the rejection of state sovereignty and the creation of a world state and rights [3, p. 18-19; 12, p. 65].

Nevertheless, despite the discrepancy on a question of the priority of the norms of international and domestic law, the absolute majority of scholars agree on one thing: an assessment of international and national character as independent, but at the same time interacting legal systems has become generally accepted [8, p. 121-130; 1, p. 62-63].

Consequently, the Convention and Protocols are in the second place in the system of the law's sources, after the Constitution of Azerbaijan Republic and other normative legal acts that regulate proceedings.

Speaking on the bounds of affection of the European Court's decisions on judicial system of Azerbaijan, it is necessary to note that all States Parties to the Convention fall under the jurisdiction of the European Court. Determining the goals of creation of the Court and its competence, the Convention enshrines that European Court is set up and functioned "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" [5, p. 14].

Recognition of the jurisdiction of European Court, the binding nature of its decisions, as well as the systematic monitoring for implementation by the Committee of Ministers of the Council of Europe, lie at the basis of the whole



Convention's mechanism and include the main distinction of this treaty from other international legal acts.

It seems that significance of European Court's decisions goes beyond the national bounds, affecting the law and law enforcement practice of other states.

The case law of such decisions comes off the circumstance that the interpretation of an international treaty by a body whose jurisdiction is recognized by the member states is an integral element of the legal content of the treaty rules, which cannot be used separately and moreover contrary to this interpretation. The domestic aspect of a binding nature of European Court's decisions is enshrined in the sources of the law of the States parties to the Convention.

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