

THE KEY PRINCIPLES OF INTERNATIONAL LAW AS THE LEGAL GROUNDS FOR THE FIGHT AGAINST ILLEGAL TRAFFIC OF CULTURAL HERITAGE OBJECTS

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Abstract: The article highlights the features of the substantive principles of international law as the legal basis for fighting the illegal circulation of cultural heritage objects. For this reason, international legal documents and the legislation of the Republic of Azerbaijan are comparatively analyzed. The article studies the implementation of the distinctive principles of international law and its features in the process of legal creation and application in the field of fighting the illegal circulation of cultural heritage objects. These principles that form the basis of legal creation are evaluated in two directions: 1) based on the fundamental principles that act as a material source, other special or sectoral principles of international law and international treaty norms are created; 2) The national norm-making activity of the Republic of Azerbaijan is based on the main principles of international law. In this context, the major principles of international law are defined as a content element of the general order (ordre public) of this country.

Keywords: international law, basic principles, objects of cultural heritage, illegal trafficking, legal basis, universally accepted.

INTRODUCTION

Practice shows that the fight against illegal import and export of cultural heritage objects is not effective without international cooperation. Among the norms of international law on which this cooperation is grounded, the most important principles of international law play an important role. As it is known, the basic principles are a type of these norms, referring to the generally accepted principles and norms of international law (Zimnenko, 2010). When determining the importance of the main principles of international law in the fight against the illegal circulation of cultural heritage objects, it is necessary to address some terminological points in the context of the legislation of the Republic of Azerbaijan. Thus, in the legislation of this country, especially the Constitution adopted in 1995 (Constitution, 1995), the phrase “universally accepted principles and norms of international law” is used. Generally accepted principles and norms are norms recognized and accepted by the international community as a whole or by the majority of members of this community (Zimnenko, 2010).

MATERIALS AND METHODS

The features of the basic principles of international law which appear to be the basis of law for the fight against illegal trafficking in cultural heritage

are identified, through use of the analysis method. In the direction of the implementation of the fundamental principles of international law via the synthesis method, the specifics of their use in the process of legal-making and application thereof in the field of combating illegal trafficking in cultural heritage are investigated. By means of the comparative method, the domestic law of the Republic of Azerbaijan to this effect is compared with the relevant international legislation to determine the characteristics of the key principles of international law. The normative concept and position in the legal regulation system of such basic principles of international law for the fight against illegal trafficking of cultural heritage objects are also defined through execution of the formal-legal method.

RESULTS AND DISCUSSION

We believe that the expression of this phrase “universally accepted principles and norms of international law” in different legal acts, although it is considered a terminological problem in a certain sense, may cause difficulties in practice. For instance, the determination of this expression as “norms and principles” in articles 1.2 of the Criminal Code (Criminal Code of the Republic of Azerbaijan, 1999) and 1.2 of the Code of Administrative Offenses (Code of Administrative Offenses of the Republic of Azerbaijan, 2015) does not create any difficulties. But the expressions “generally accepted norms of international law” (art. 70.I), “norms of international law” (art. 69.II) or “norms defined by international law” (art. 1.II) and the expression “principles and norms of international law” in article 3.3 of the Code of the Execution of Punishments (The code of the Azerbaijan Republic about execution of punishments, 2000) can be interpreted differently. However, we cannot consider this as a mistake of the legislation. On the contrary, this approach of legislation shows that the normative system of international law has an appropriate hierarchy. Thus, the Constitution confirms that not all norms of international law (art. 69.II) are universally accepted norms (art. 70.I). The expression “generally accepted principles and norms of international law” (art. 8, 22) of the Republic of Azerbaijan “On Normative Legal Acts” of 2010 (Constitutional Law, 2010) concretizes generally accepted norms of international law in the example of principles. It proves to be that not all generally accepted norms are principles, but principles are a part of these norms. In fact, principles constitute the “framework” of international law, being universally accepted basic norms (Zimnenko, 2010). The phrase “principles stipulated in universally accepted international legal norms” found in article 10 of the Constitution, on the one hand, means that the principles constitute a type of universally accepted international legal norms, on the other hand, it indicates that the respective principles integrate the basic principles of international law. As specified in the legal literature, the basic principles that form the normative basis of international law constitute a narrower group of universally accepted principles and norms (Mammadov, 2020). According to article 53 of the 1969 Vienna Convention “On the Law of Treaties”, in which the Republic of Azerbaijan participates since 2017 (Vienna Convention on the Law of Treaties 1969, 1969), the basic principles are mandatory norms (*jus cogens*). With this feature, it differs from other generally accepted principles and norms of other international law, and the latter cannot be applied contrary to them.

The core principles that form the foundation of the normative system

of international law in the fight against the illegal circulation of cultural heritage objects defines “the main directions of legal creation and activity related to the application of law” (Samandarov, 2013). In this context, the substantive principles “that combine not only normativity, but also ideas to be guided” (Anufrieva, 2002) constitute the basis of legal creation in the fight against the illegal circulation of cultural heritage objects. This can be estimated in two directions:

1) as stated in the legal theory, “not only individual legal norms or legal fields, but the entire legal system (notably, the international legal system)” (Marchenko, 2004) and the norms of other special or sectoral principles of international law are created on the basis of the major principles which acts as a (material) source that creates the content of the legal norm (Mehdiyev & Guliyev, 2017). The Vienna Convention 1969, which determines that the basic principles can be changed only by jus cogens norms, also provides that new jus cogens norms can be created (art. 64). Against this background, the fundamental principles do not exclude the existence of other universally accepted principles (which may also be sectoral). According to Article 53 of the Vienna Convention of 1969, international agreements that might contradict the basic principles are considered invalid. Relying international treaty norms on the main principles of international law is also confirmed in the legislation of the Republic of Azerbaijan. According to the Law “On the Rules for the Conclusion, Execution and Cancellation of International Agreements of the Republic of Azerbaijan” of 1995 (art. 1) (Law about international treaties, 1995), these rules are determined in accordance with the generally accepted principles and norms of international law. It is clear that the major principles are stated first in the Vienna Convention of 1969. The creation of other international legal norms on the basis of these principles is, in fact, “not the specification of the main principle’s content, but its implementation in the sphere of law-making” (Zimnenko, 2010);

2) The national norm-making of the Republic of Azerbaijan is based on the fundamental principles of international law. The Constitutional Law defines the recognition of the supremacy of universally accepted principles and norms of international law as one of the basic principles of the rule-making activity of the Republic of Azerbaijan (art. 8.0.3). According to article 156 of the Constitution, the Constitutional Law constitutes an integral part of the Constitution by establishing additional provisions. In other words, recognition of the mentioned principle is a basic constitutional provision. The Constitution (art. 10) defines that universally accepted principles of international law are defined as the basis of international relations, that the Republic of Azerbaijan involved in. The essence of this principle is that it recognizes the advantage mentioned in the activity of national norm-making (including in the sphere of cultural heritage protection) of the country and ensures that its national legislation is adapted to those principles and norms (Constitutional Law, art. 22). On the basis of the mentioned constitutional provisions, it can be considered that “generally accepted principles and norms of international law mentioned in the legal literature are the basis of the general order (ordre public) of the Republic of Azerbaijan” (Mammadov, 2020). It should be noted that the general rule of the country is defined by the “Constitution and acts adopted by referendum” in accordance with “Private International law of 2000” (art. 4) (Law of the Azerbaijan Republic “About Private International law of 2000”, 2000). Making this

idea more specific, let us note that the general rules of the country should include not the universally accepted principles and norms of international law, but only the main principles that belong to this group. This can be justified by the following:

1) Although we accept the Constitutional Law as a part of the Constitution, the phrase “Constitution and acts adopted by referendum” excludes the inclusion of the Constitutional Law in the general rule. In this context, we can justify our opinion only with the provision in article 10 of the Constitution “the Republic of Azerbaijan establishes its relations with other states on the basis of the principles provided for in universally accepted international legal norms”; 2) According to article 53 of the Vienna Convention 1969, “the major principles of *jus cogens* are included in the legal content of the international general rule (international *ordre public*)” (Kudashkin, 2004). In this regard, their inclusion in the domestic general rule ensures the reconciliation of the general rule of the Republic of Azerbaijan with the international general rule. As national legislation is based on the main principles of international law it is also established in sectoral legislative acts. For example, the provisions of article 1.2 of the Criminal Code and article 1.2 of the Code of Administrative, “this Code ... is based on universally accepted norms and principles of international law” confirm what we mentioned before. Just during the analysis of the national legislation, one nuance attracts attention that, unlike the substantive legislation, there is no provision on priority in the normative legal acts related to the procedural legislation. The mentioned situation does not mean that the supremacy of international legal norms is not accepted in the last legislative system. We believe that this can be explained only by the application of national procedural legislation in procedural matters. However, this may not be considered a sufficient basis. But the fact that the norm established in the Constitutional Law is a constitutional provision means that it is also valid for national procedural legislation. The sectoral legislative act cannot contradict or be interpreted against the Constitutional Law. On the other hand, taking into account the provisions of international law in the national criminal (substantive) legislation creates the integration of national Criminal Code with international criminal law and the basis of international cooperation in the fight against crimes of an international nature (including the illegal circulation of cultural heritage objects) is created (Samandarov, 2015).

The main principles of international law do not act as a source only in a material sense, but also directly participate in the application process. This is confirmed by the legislation of the Republic of Azerbaijan. Thus, article 10 of the Constitution confirms that the fundamental principles are directly applied to the international relations of the country. According to article 13.4 of the Constitutional Law, the enforcement body is a specific public when there are no legal norms regulating relations or similar, it uses the general principles of law (it is not excluded that the substantive principles of international law appear in this part as well) (Koretsky, 1989; Mahmudova, 2017). When applying the basic principles, attention should be paid to the following issues:

First, the basic principles of imperative nature of international law can acquire special application characteristics in accordance with the specificity of the fight against the illegal circulation of cultural heritage objects. Although systematicity is characteristic for the main principles in this context, the modes of their use in the fight against the illegal circulation of cultural heritage ob-

jects may be different. In this regard, principles such as sovereign equality, respect for human rights, non-interference in internal affairs, peaceful settlement of disputes, honest fulfilment of obligations are more important for cooperation in the fight against the illegal circulation of cultural heritage objects. In this context, the principle of sovereign equality is of particular importance. According to that principle, each of the states has the sovereign right to implement the necessary measures to combat the illegal circulation of cultural heritage objects within their territory. In accordance with this principle, to identify and distinguish the objects of cultural heritage located in its territory (World Heritage Convention 1972, art. 3), as well as the classification and declaration of some cultural heritage objects as non-alienable, is an inalienable right of every state (UNESCO 1970 Convention, art. 13(d)). Other states must fully respect the sovereignty of the state(s) where the heritage object is located, recognizing that cultural heritage is a common heritage that the entire international community is obliged to protect (art. 6). Respecting the right of sovereign equality of states in the process of cooperation is established in the Declaration on the Principles of International Cultural Cooperation of 1966 (art. XI) (UNESCO Declaration 1966, 1966). The principle of sovereign equality logically forbids interference in the internal affairs of this or that state in international cooperation to combat the illegal circulation of cultural heritage objects. The principle of sovereign equality logically forbids interference in the internal affairs of this or that state in international cooperation to combat the illegal circulation of cultural heritage objects. Article XI of the Declaration on the Principles of International Cultural Cooperation emphasizes that it is inadmissible to intervene in matters that essentially belong to the internal competence of other states (protection of cultural heritage – author). At the same time, the principles of cultural cooperation should be applied taking into account human rights and freedoms. One of the tasks envisaged by the UNESCO 1970 Convention is the implementation of the provisions of the Declaration on the Principles of International Cultural Cooperation (Suleimanli, 2022). Relying on the main principles of international law in the enforcement process is established in the documents adopted by international organizations on the protection of cultural heritage. For example, the Resolution “On the protection of cultural heritage in the OSCE region” adopted at the twenty-third annual session of the OSCE Parliamentary Assembly held in Baku in 2014 (June 28 - July 2), emphasizes that all activities related to cultural heritage are in line with the goals and objectives of the UN Charter principles, especially the principles of sovereign equality and territorial integrity of states (OSCE, 2014).

Secondly, international cooperation in combating the illegal circulation of cultural heritage objects performs various functions: a) International cooperation, which is one of the most important functional principles of international law established in the UN Charter, acts as a legal basis for the fight against the illegal circulation of cultural heritage objects. According to this principle, states are obliged to cooperate in order to combat the illegal circulation of cultural heritage objects. Without cooperation, it is impossible to prevent illegal trafficking. The fact that “implementation of international cooperation” is defined as a goal in the UN Charter (art.1.3) confirms the reconciliation of ideas and norms in the principle of international cooperation. States have the right to choose the forms and methods of cooperation in order to achieve the stated goal; b) Although it is one of the main principles of international

law, international cooperation “acts as a form of practical implementation of other fundamental principles of international law” in the fight against the illegal circulation of cultural heritage objects (Bekyashev, 2003). In other words, it is necessary for states to cooperate internationally for the implementation of other basic principles of international law. In other words, it seems impossible to implement international cooperation without considering other principles, or to realize other principles without international cooperation. As stated in the Declaration of 1966 of the Principles of International Cultural Cooperation (art. IV) (UNESCO Declaration 1966, 1966), international cultural cooperation helps to implement other basic principles of international law; c) acts as a tool for realizing international obligations and interests of states. In accordance with the provision of the UN Charter (art. 1.3) “international cooperation should be implemented in solving international problems of an economic, social, cultural and humanitarian nature”, the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970 Convention, 1970), defines international cooperation as an effective tool in the fight against the illegal circulation of cultural heritage objects (art. 2). The direct application of the main principles of international law creates the need to determine the relationship between them and other legal norms, including national legislation, in the application process. The supremacy of universally accepted principles and norms of international law, including basic principles, is “hierarchical supremacy, which is determined by the content and universal nature of those norms and principles” (Zimnenko, 2010). In contrast to the “priority advantage” between legally equal norms (Zimnenko, 2010), hierarchical priority is applied to norms with different legal status. The Constitutional Law recognizes the superiority of universally accepted principles and norms as the principle of national law-making and establishes the requirement to adapt the national legislation to these norms, and accepts the hierarchical superiority of the norms mentioned in the law-making process. Of course, applying this unambiguously to the Constitution and the acts adopted by the referendum may cause some controversy. Can the same idea be applied to the application process? In fact, this issue is not specifically addressed in the legislation of the Republic of Azerbaijan, unlike the international agreements that the country is a supporter of.

We believe that, as we mentioned above, this issue should be approached in the application process by differentiating generally accepted principles and norms of international law. As can be seen from the Vienna Convention, the application of the main principles of imperative nature of international law is based on hierarchical superiority. That is, not only national legislation, international agreements, even generally accepted norms of international law cannot contradict these principles. Logically, any rule of law that contradicts these principles cannot be applied or should be considered invalid. In fact, the hierarchical preference in the application process also applies to other generally accepted norms of international law. Taking into account one point that “certain exceptions can be made from the application of these dispositive norms with the mutual consent of the subjects of international law” (Zimnenko, 2010). As a result, it can be noted that, with the exception of the Constitution and the acts adopted by the referendum, the universally accepted principles and norms of international law have hierarchical superiority in relation to the legislation of

the Republic of Azerbaijan. According to article 10 of the Constitution, the priority in relation to the Constitution and the acts adopted by the referendum on international cooperation against the illegal circulation of cultural heritage objects is characteristic only for the main principles of international law. However, this advantage can be a priority advantage, not a hierarchical one.

CONCLUSION

Thus, international cooperation, which is the most effective tool in combating the illegal circulation of cultural heritage objects, must be based on the basic principles of international law in every case. As a legal basis, the implementation of the principles of international law in the field of combating the illegal circulation of cultural heritage objects takes place both in the form of the creation of special principles and norms, and in the form of application. In this direction, the inclusion of the fundamental principles of international law in the general rule of the Republic of Azerbaijan, in the field of cooperation against the illegal circulation of cultural heritage objects, on the one hand, ensures the uniformity of the legal regime of the fight, and on the other hand, the compatibility of the national general rule with the international general rule.

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