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WAR CRİMES: İNTERNATİONAL LEGAL NORMS AND CRİMİNAL LEGİSLATİON OF THE REPUBLİC OF AZERBAİJAN

Abstract. In the article, the issues of combating war crimes were considered on the basis of mutual analysis of international legal norms and the criminal legislation of the Republic of Azerbaijan. First of all, it was noted that international legal norms play a priority role in the legal system of every civilized state. States usually include in their constitutions and laws the provision that international legal norms take precedence over national legal norms. In the legal system of the Republic of Azerbaijan, international legal norms have an effective influence and played an important role in the formation and development of various legal fields.

However, along with the positive aspects, the occurrence of negative situations is also inevitable, mainly in the practice of law enforcement, such problems are inevitable. It should also be noted that the problems in the relevant sphere are not unique to the Republic of Azerbaijan, various collisions and problems arise in the application of international legal norms in other civilized states as well.

At the end of the article, it is concluded that the main international norms related to war crimes are mainly concentrated in the Geneva Conventions of 1949, Additional Protocols of 1977 and 2005, and the Rome Statute of 1998. However, the Republic of Azerbaijan ratified only the Geneva conventions from these documents. However, almost all of the war crimes found in those documents have found a place in the Criminal Code of the Republic of Azerbaijan. Compared to some states whose legal system is close to the Republic of Azerbaijan, the level of implementation of international legal norms on war crimes in the Criminal Code of the Republic of Azerbaijan can be highly evaluated. Thus, in the Criminal Code of the Republic of Azerbaijan, separate chapters and articles are devoted to this category of crimes, and the requirements of international legal norms are taken into account during the normative determination of each war crime. Ultimately, significant changes in the Criminal Code of the Republic of Azerbaijan would be expected and significant even after the Republic of Azerbaijan became a member of the International Criminal Court.

Keywords: *war crimes, international legal norms, national-legal implementation, legal system, human rights, international criminal law, international humanitarian law.*

Introduction. International legal norms play a priority role in the legal system of every civilized state. States usually include in their constitutions and laws the provision that international legal norms take precedence over national legal norms. In the legal system of the Republic of Azerbaijan, international legal norms have an effective influence and played an important role in the formation and development of various legal fields.

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situations is also inevitable, mainly in the practice of law enforcement, such problems are inevitable. It should also be noted that the problems in the relevant sphere are not unique to the Republic of Azerbaijan, various collisions and problems arise in the application of international legal norms in other civilized states as well. Taking into account the above, we consider it appropriate to clarify the issue of the place of international criminal law norms in the legal system of the Republic of Azerbaijan. This study is important for the development of national criminal legislation, the disclosure of its contradictions, and the future activity of the courts.

Analysis of recent research and publications. International law creates fertile conditions for the normal functioning of national legal systems and their development. Addressing the issue of the relationship between international and domestic law, Malcolm Evans notes that international law has a positive effect on the diversification of national law, the emergence of new spheres, and the enrichment of additional norms (Evans, 2014). These words can also be mentioned in relation to the Republic of Azerbaijan. Thus, the fact that the Republic of Azerbaijan honestly fulfills its obligations under international law and, most importantly, gives priority to international law norms in the regulation of relations between national law and international law is also reflected in the comments to the Constitution of the Republic of Azerbaijan (Guseynov, 1998; www.e-qanun.az). It is noted in the legal literature that states, as participants in international agreements in the field of human rights, must fulfill their obligations in accordance with the principle of pacta sunt servanda and implement relevant domestic measures. The state must establish its legal system in such a way that it fulfills its international obligations. Thus, referring to national legislation does not exempt it from international obligations (Aliyev, 2019; Dinniss, 2012).

The Constitution of the Republic of Azerbaijan has established various norms on the relationship between international and domestic law. First of all,

Article 148.2 of the Constitution of the Republic of Azerbaijan should be mentioned. In that article, it is noted that the international agreements to which the Republic of Azerbaijan is a party are an integral part of the legislative system of the Republic of Azerbaijan. The interpretation of this article gives reason to note that the Republic of Azerbaijan uses the mechanism of incorporation regarding the domestic implementation of international agreements.

One of the issues that require separate study in the issue of the interaction of international and domestic law is related to the application of international law norms. The true potential of both international and national legal norms is revealed during their implementation. Law manifests itself directly with the norms that show its dynamics in the process of realization. From a procedural point of view, the implementation of international legal norms in the national legal system usually takes place in the form of an application. Let's note one important issue: the effectiveness of international legal norms depends on the quality and level of implementation. If any rule of law, if it is not implemented, then there is no efficiency. However, the attempt to consider the law in the process of implementation should not create conditions for reducing or denying the role of the norm, which is the main element of the law.

The application of international legal norms in national legislation is of great importance in terms of the development and improvement of national legislation. I. Lukashuk notes that international law could not fulfill its functions

without the help of domestic legal mechanisms. Among these mechanisms, courts take the main place (Lukashuk, 1993; Dinniss, 2012). Regarding the application of international agreements, it should never be forgotten that the fact that the international agreements of the Republic of Azerbaijan are considered an integral part of its legislative system does not mean that those agreements will have a direct effect on the territory of the country and will be applied by the courts as domestic laws. In other words, the expression "international law is part of the law of the country" is not equivalent to the expression "international law is directly applicable".

The state of application of international legal norms in the Republic of Azerbaijan is still not at the desired level, although the decisions of the Constitutional Court of the Republic of Azerbaijan often refer to the European Convention of 1950 and the decisions of the European Court of Human Rights, the application of international legal norms in the decisions of other judicial bodies can be said to be is at a weak level. In the courts of the first instance, the situation in this sphere is still not good, judges prefer to refer only to national legislation.

Formulation of the main material. Regarding the impact of international legal norms on the sphere of the criminal law of the Republic of Azerbaijan, it should be noted that the changes stipulated in the international treaties of the Republic of Azerbaijan in terms of criminal responsibility for one or another action should be directly included in the text of the Criminal Code of the Republic of Azerbaijan. Thus, the legislation of the Republic of Azerbaijan determines the procedure for changing the norms of the Criminal Code of the Republic of Azerbaijan during the entry into force of international agreements regulating issues of criminal responsibility. An exception to the rule of including issues related to criminal responsibility in the Criminal Code of the Republic of Azerbaijan is allowed.

Thus, Article 11.5, which we mentioned in the previous paragraphs, stipulates that the Criminal Code of the Republic of Azerbaijan should directly refer to the provisions of international criminal law when solving the issue of criminal liability of persons with diplomatic or other immunity. In any case, the norms of international criminal law become the source of the criminal law of the Republic of Azerbaijan, in essence, their joint application takes place. Officially, only the Criminal Code of the Republic of Azerbaijan is in force in the territory of the Republic of Azerbaijan, but international criminal law norms are also applied with the help of its provisions.

International criminal law significantly affects the definition and definition of criminal acts that are considered war crimes under international law. Therefore, it is considered necessary to study the issue of implementing the norms of war crimes established in international criminal law into national criminal legislation. The priority of international legal norms is expressed in the fact that two legal systems should be taken into account at the source of the law of each state: the domestic legal system and the international legal system. In case of conflict between them, international law prevails. Thus, the norms of domestic law not only do not contradict the norms of international law but must also specify and ensure the realization of the requirements of international legal norms. In the doctrine of the criminal law of the Republic of Azerbaijan, various opinions have been expressed regarding war crimes, especially regarding the

implementation of international legal norms in this sphere into national criminal legislation. F. Samandarov notes that the main object of war crimes is the method and means of waging war established by the international legal norms, and the life and health of people act as an additional object. According to the author, the violation of international legal norms during an armed conflict, which is a type of war crime, is objectively characterized by actions (actions or inactions) expressed in the violation of international humanitarian law norms during an armed conflict. The most important norms of international humanitarian law regarding armed conflicts are reflected in the 1949 Geneva Conventions on the Protection of War Victims and Additional Protocols to those conventions (Samandarov, 2013). Analyzing the relations in this field, Sh. Samadova notes that the direct objects of war crimes are social relations aimed at ensuring the specific laws and customs of war, the rules of treatment of the civilian population, and prisoners of war (Samedova, 2020).

V. Ibayev believes that Chapter XVII of the Criminal Code of the Republic of Azerbaijan entitled "War Crimes" considers the existence of armed conflicts as the decisive criterion for war crimes. Regardless of whether it was committed during an interstate war or a civil war, certain acts will be described as war crimes and will lead to the corresponding punishments defined in the Criminal Code of the Republic of Azerbaijan (Ibayev, 2001).

The consideration of the norms of international law in national criminal legislation creates the connection between the norms of international criminal law and the Criminal Code of the Republic of Azerbaijan. In any case, to ensure the effectiveness of criminal legislation, international legal norms that meet the requirements of the time should be taken into account. A. Naumov, one of the well-known scientists in the field of criminal law, notes that modern criminal legislation can claim its scientificity and modernity if it can take into account the changes occurring in society in time (Naumov, 1996).

Now, let's pay attention to the issue of the degree to which international legal norms of war crimes are taken into account in the criminal legislation of the Republic of Azerbaijan. First, let's start with Article 114 of the Criminal Code of the Republic of Azerbaijan, which establishes the crime of mercenary. This article is included in the criminal law related to the obligations arising from the provisions of the International Convention on Combating the Recruitment, Use, Financing, and Training of Mercenaries, to which the Republic of Azerbaijan is a party. It should be noted that the Republic of Azerbaijan ratified this Convention on September 30, 1997.

The crime of violating the laws and customs of war is reflected in Article 115 of the Criminal Code of the Republic of Azerbaijan. This article has benefited from the norms of the following international legal documents: the 1907 Convention on the Laws and Customs of War on Land, the 1949 Geneva Conventions on the Treatment of Prisoners of War and the Protection of Civilian Population in Time of War, and the 1977 Geneva Conventions for the Protection of Victims of International Armed Conflicts. Additional protocol of year I.

The social danger of this crime is expressed in the fact that the violation of the laws of waging war defined by the norms of international law leads to the mass destruction of the civilian population and civilian objects, industrial, economic, cultural, historical, architectural, and artistic works. This crime is objectively characterized by the commission of the listed actions: forcing prisoners, other

persons protected by international humanitarian law, to serve in the armed forces of the party that took them prisoner; do not force citizens of an enemy state to participate in military operations directed against their country.

When talking about the crime of violating the laws and customs of war, the terms "prisoner of war" and "other protected persons" must be clarified. The III Geneva Convention on the Treatment of Prisoners of War defines a "prisoner of war" as a person who falls under the power of the enemy and belongs to one of the following categories: personnel of the armed forces of the party to the conflict, as well as members of those armed forces personnel of self-defense and volunteer units; personnel of other self-defense and volunteer units, including personnel of organized resistance movements belonging to the conflict party located in those territories, even if their own territory and the territory beyond it are occupied, if they meet the following conditions: a) if they have leaders who are responsible for their subordinates; b) has certain distinguishing signs that are clearly visible from a distance; c) when carrying a weapon openly; d) when they follow the laws and customs of war in their actions (Horvitz, 2014).

Other persons protected by international humanitarian law include the civilian population, at the same time, those who are covered by the Convention on the Prevention and Punishment of Crimes Against Persons Benefiting from International Protection, including Diplomatic Agents, as well as participants in UN peacekeeping operations and humanitarian personnel in accordance with the 1994 Convention on the Safety of UN Personnel and Related Personnel, and the employees of non-governmental organizations providing aid. Forcing prisoners of war and other persons protected by international humanitarian law to serve in the armed forces of the detaining party means enlisting the named persons against their will to serve in any of its armed forces against the norms of international law.

According to the Fourth Geneva Convention on the Protection of Civilian Population in Times of War, the occupying power cannot recruit civilians to serve in its armed and auxiliary forces (Article 51) (Christine, 2011). This crime is objectively expressed in the commission of the following actions against prisoners and other persons protected by international humanitarian law: torturing them; not treating them cruelly or inhumanly; conducting medical, biological, and other research on them, including removing internal organs for transplantation; using them as human shields to protect their troops or facilities from military operations; holding them hostage; involving the civilian population in forced labor or forcibly transfer them from their lawful places for other purposes.

Conducting medical and biological research on protected persons means testing new drugs, treatments, and diagnostic methods, and studying their effects on the human body. When it is said to involve the civilian population in compulsory work, it is intended to involve them in doing any work that puts them in front of the obligation to participate in military operations, to the extent necessary to meet the needs of the occupying army.

According to the Fourth Geneva Convention for the Protection of Civilian Population in Time of War of 1949, an occupying power can only compel persons over the age of 18 to meet the essential needs of its army, including utilities, food, housing, clothing, transportation, and the health of the local population. can attract work. Compulsory work can be performed only in the occupied territory where those persons are (Shelton, 2005).

One of the points that stand out during the interpretation of this article is related to the forced displacement of the civilian population from the area where they live. Under this concept, the transfer of the civilian population from the occupied territory to the territory of the occupying state, or to the territory of any other state, regardless of whether it is occupied or not, is understood. The IV Geneva Convention gives the occupying power the right to complete or partial evacuation of any occupied region due to population security or special military considerations (Article 49) (Françoise, 2007).

This article of the Criminal Code of the Republic of Azerbaijan has material content and is considered to have ended from the moment of the consequences specified in the article, i.e. the death of persons or serious damage to their health. A causal relationship must be established between actions leading to death or serious injury and such consequences. If the causal relationship is not established, criminal liability does not arise under the described article.

Article 116 of the Criminal Code of the Republic of Azerbaijan, which defines a wide range of war crimes, is called the violation of international humanitarian law norms during an armed conflict. The most important norms of international humanitarian law regarding armed conflicts are reflected in the 1949 Geneva Conventions on the Protection of War Victims and Additional Protocols to those conventions. As we know, armed conflict is international and internal in nature. According to Additional Protocol II to the Geneva Conventions of 1949, an internal armed conflict is an armed conflict that occurs within the territory of a state and between the armed forces of that state and different armed forces or other organized armed groups.

This article can also be called “use of prohibited methods of warfare”. The methods of waging war determine the methods and rules of using the means of waging war. According to the Convention on the Prohibition or Restriction of Specific Types of Conventional Weapons of Indiscriminate Character or Mass Destruction and Additional Protocol I to the Geneva Conventions of 1949, the following are prohibited methods of waging war: using incendiary weapons against the civilian population, civilian objects, forests attack; killing or wounding the enemy who laid down their arms or surrendered as prisoners; attacking undefended areas or demilitarized zones; attacking buildings and installations with dangerous power, the attack of which is known to cause a lot of human casualties, etc.

Critical damage is defined as the destruction of military or civilian facilities to an extent and volume that cannot be restored. The significance of the destruction is determined by signs such as the military strategic importance, number, material value, etc. of the destroyed objects. According to Additional Protocol I to the Geneva Conventions of 1949, extensive, long-term, and serious damage to the environment is defined as the contamination of the natural, ecological environment, water, soil, and air covering a large area with toxic, radioactive substances, toxic gases, and the life of human and other living organisms and pollution with other substances that seriously endanger their health and significantly damage flora and fauna (Dinniss, 2012).

Large-scale devastation not caused by military necessity is used in the destruction of objects where the enemy's armed forces are not located, buildings and facilities that are not considered military objects, a large number of civilian objects, etc. Non-defended areas are areas where all combatants, as well as

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special combat vehicles and equipment, are not used for hostile purposes, stationary military installations and buildings are not used for hostile purposes, authorities and the population do not allow hostile actions, and no actions are taken to assist military operations. The listed places also include demilitarized zones. The 1970 Convention on Cultural Resources has also been implemented into the relevant norms of the Criminal Code of the Republic of Azerbaijan. In this Convention, it is stated that the religious or secular resources considered important for archeology, ancient times, history, literature, art, and science by each state are considered cultural resources (Article 1) (Taşdelen, 2016). One of the issues of particular importance in the Criminal Code of the Republic of Azerbaijan is related to the deprivation of procedural rights of prisoners and other persons protected by international humanitarian law, that is, the deprivation of rights such as to be defended by a qualified lawyer or consultant of their own choosing, to call witnesses, to use the help of an interpreter, to advance to submit motions related to the accusation, etc.

The criminal composition provided for in Article 116 of the Criminal Code of the Republic of Azerbaijan determines criminal liability only for acts committed during the armed conflict. One of the most common types of war crimes, found in the laws of most civilized states, is the issuing of criminal orders during wars.The issue of whether the chief or the official has all the opportunities to prevent the crimes specified in Articles 115 and 116 of the Criminal Code of the Republic of Azerbaijan is determined in each specific case by the court as a result of a comprehensive analysis of the circumstances of the case. In such a case, during an armed conflict, the specific combat conditions in which a chief or an official finds himself, the place where the enemy's military forces are concentrated and his behavior, the conflict side's departure from the methods and means of waging war determined by international legal norms, etc. must be considered.

The mentioned article is taken from the relevant articles of the Hague Convention IV of October 18, 1907, on the Laws and Customs of Land Wars and the Additional Protocol I of 1977 to the Geneva Conventions. It is noted in Additional Protocol I that it is forbidden to declare or gives orders that no one will be left alive, to threaten the enemy with this, or to conduct military operations on this basis (Article 40) (Clapham, 2014). Giving a command or order to a subordinate that no one should be left alive is expressed in the fact that an authorized person demands that his subordinates kill without sparing anyone. The command or order may be written or oral. The command or order can be issued before the start of the battle, during the battle, as well as when a situation of siege arises. Thus, issuing orders and dispositions aimed at the commission of crimes specified in Articles 115 and 116 of the Criminal Code of the Republic of Azerbaijan is expressed in the submission of demands that reflect the commission of those crimes.

The next category of war crimes defined in the Criminal Code of the Republic of Azerbaijan is military robbery. The public danger of military robbery, that is, the crime of looting the property of dead or wounded persons on the battlefield, is expressed in dishonoring the honor and dignity of military personnel, degrading the combat honor of a military unit, and lowering the combat capability of military units. The object of the crime of military robbery is the customs and laws of warfare determined by international legal norms. This crime is objectively expressed in

looting the property of dead or injured persons.

Although robbery is specified as a form of robbery in Article 118 of the Criminal Code of the Republic of Azerbaijan, this crime can also be committed through theft and robbery. Both military personnel and representatives of the civilian population can act as dead or injured persons.

The last war crime reflected in the Criminal Code of the Republic of Azerbaijan is called "Misuse of protected signs" reflected in Article 119. The public danger of this crime is characterized by the commission of acts expressed in occurrence of more serious consequences in armed conflict by using protected signs, i.e. the death of people, serious damage to their health, destruction of civilian objects, etc. The object of the crime established in Article 119, which we have analyzed, is the rules of use of the protected signs determined by international law norms.

A separate legislative act was also adopted in the Republic of Azerbaijan on the regulation of relevant issues: the Law of the Republic of Azerbaijan on the use and protection of the Red Cross and Red Crescent emblems dated May 2, 2001. The signs protected under the mentioned Law include Red Cross and Red Crescent emblems; the name of the Red Cross and Red Crescent; distinguishing signals used for the recognition of medical compounds and sanitary vehicles (www.e-qanun.az).

In accordance with Additional Protocol I to the Geneva Conventions of 1949, medical and religious personnel, medical units, and medical vehicles have the right to use distinguishing marks and distinguishing signals during an armed conflict. In accordance with the 1949 Geneva Conventions for the Protection of Victims of War, sanitary medical personnel, chaplains in the armed forces, personnel of the local Red Cross Society, as well as members of the respective societies of a neutral state with the prior agreement of their government with a party to the conflict mush have an armband with a distinctive insignia on the left arm, a distinctive insignia and special cards furnished with the seal of the military authority. Also, International Red Cross bodies and their staff are permitted to use the Red Cross emblem on a white background at all times. The Red Cross and Red Crescent emblems are used as defensive insignia during military conflict and are the visible symbols are given to medical personnel, medical units, religious personnel, and medical vehicles in accordance with the Geneva Conventions of 1949 and their Additional Protocols.

In accordance with Additional Protocol I to the Geneva Conventions of 1949, improper use of the Red Cross, Red Crescent, Red Lion, and sun emblems, as well as preemption of internationally recognized emblems, signs, or signals (white flag, etc.) during an armed conflict intentional misuse is prohibited. It is forbidden to use the distinctive emblems of the UN without its permission (Article 38) (Barker, 2011).

Conclusions. Thus, from what was mentioned in this paragraph regarding the implementation of international legal norms on war crimes in the criminal legislation of the Republic of Azerbaijan, it can be concluded that the legal basis for the implementation of international legal norms in the legal system of the Republic of Azerbaijan is defined in the Constitution of the Republic of Azerbaijan. The superior position of international legal norms compared to national law has found its place in many articles of the Constitution of the Republic of Azerbaijan.

The main international norms related to war crimes are mainly concentrated in the Geneva Conventions of 1949, the Additional Protocols of 1977 and 2005, and the Rome Statute of 1998. However, the Republic of Azerbaijan ratified only the Geneva conventions from these documents. However, almost all of the war crimes found in those documents have found a place in the Criminal Code of the Republic of Azerbaijan. Compared to some states whose legal system is close to the Republic of Azerbaijan, the level of implementation of international legal norms on war crimes in the Criminal Code of the Republic of Azerbaijan can be highly evaluated.

Thus, in the Criminal Code of the Republic of Azerbaijan, separate chapters and articles are devoted to this category of crimes, and the requirements of international law norms are taken into account during the normative determination of each war crime. Ultimately, significant changes in the Criminal Code of the Republic of Azerbaijan would be expected and significant even after the Republic of Azerbaijan became a member of the International Criminal Court.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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Мехрібан ЕЙЮБОВА

ВІЙСЬКОВІ ЗЛОЧИНИ: МІЖНАРОДНО-ПРАВОВІ НОРМИ ТА КРИМІНАЛЬНО-ПРАВОВЕ ЗАКОНОДАВСТВО АЗЕРБАЙДЖАНСЬКОЇ РЕСПУБЛІКИ

Анотація. У статті на основі взаємного аналізу міжнародно-правових норм і кримінального законодавства Азербайджанської Республіки розглянуто питання боротьби з військовими злочинами. Перш за все, було зазначено, що міжнародно-правові норми відіграють пріоритетну роль у правовій системі кожної цивілізованої держави. Держави зазвичай включають у свої конституції та до законів положення про перевагу міжнародно-правових норм над національними правовими нормами.

У правовій системі Азербайджанської Республіки міжнародно-правові норми

мають дієвий вплив і відіграли важливу роль у становленні та розвитку різних галузей права. Проте, поряд із позитивними моментами, неминуче виникнення і негативних ситуацій, в основному, в практиці правоохоронних органів такі проблеми неминучі. Слід також зазначити, що проблеми у відповідній сфері характерні не тільки для Азербайджанської Республіки, різноманітні колізії та проблеми виникають при застосуванні міжнародно-правових норм і в інших цивілізованих державах.

Наприкінці статті зроблено висновок, що основні міжнародні норми, пов'язані з військовими злочинами, в основному, зосереджені в Женевських конвенціях 1949 року, Додаткових протоколах 1977 та 2005 років та Римському статуті 1998 року. Проте Азербайджанська Республіка ратифікувала лише Женевські конвенції з цих документів. Однак майже всі військові злочини, що містяться в цих документах, знайшли своє відображення в Кримінальному кодексі Азербайджанської Республіки.

У порівнянні з деякими державами, чия правова система близька до Азербайджанської Республіки, можна високо оцінити рівень імплементації міжнародно-правових норм щодо військових злочинів у Кримінальному кодексі Азербайджанської Республіки. Так, у Кримінальному кодексі Азербайджанської Республіки цій категорії злочинів присвячені окремі глави та статті, а при нормативному визначенні кожного військового злочину враховуються вимоги міжнародно-правових норм. Нарешті, значні зміни в Кримінальному кодексі Азербайджанської Республіки очікуються після того, як Азербайджанська Республіка стане членом Міжнародного кримінального суду.

Ключові слова: *військові злочини, міжнародно-правові норми, національно-правова імплементація, правова система, права людини, міжнародне кримінальне право, міжнародне гуманітарне право.*

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THE ROLE OF PROCEDURAL LEGAL CAPACİTY OF İNTERNATİONAL NON-GOVERNMENTAL ORGANİZATİONS İN THE PRACTİCAL ACTİVİTY OF İNTERNATİONAL JUDİCİAL İNSTİTUTİONS

Abstract. The article was prepared on the basis of scientific-theoretical provisions, judicial practice, international-legal documents and decisions of international organizations, focusing on the issues of procedural legal capacity of international non-governmental organizations and its manifestation in participation in international judicial institutions. In addition, the relevant provisions of the Constitution of the Republic of Azerbaijan were reviewed. Also, the specific differences of the international judicial institutions, the specificity of the participation of international non-governmental organizations in the considered cases, as

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