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THE COURT'S REFUSAL TO GRANT DEFENCE MOTIONS AS AN INDICATOR OF PROCEDURAL IMBALANCE IN CRIMINAL PROCEEDINGS

Matanat Asgarova*

Abstract

The article examines the judicial practice of refusing to grant defence motions as a systemic indicator of procedural imbalance in criminal proceedings. It is argued that formally lawful court decisions, expressed through the refusal to satisfy procedural initiatives of the defence, when persistent and typical in nature, are transformed into a mechanism of institutional restriction of the right to defence and undermine the principles of adversarial proceedings and equality of arms. Based on the criminal procedure legislation and judicial practice of the Republic of Azerbaijan, the study identifies typical grounds for such refusals, analyses their reasoning, and assesses their compliance with international standards of a fair trial. An empirical model of quantitative and qualitative analysis of refusals to grant defence motions is proposed, enabling the identification of structural defects in law enforcement. The frequency, nature, and reasoning of judicial refusals to grant defence motions should be regarded as indicators of procedural imbalance in criminal proceedings, reflecting structural inequality between the parties.

Keywords: *right to defence, defence motions, court refusal, adversarial proceedings, equality of arms, procedural fairness.*

I. Introduction

Modern criminal proceedings are formally based on the principles of adversarial procedure, equality of arms, and the guarantee of the right to defence. These principles are enshrined both in the Constitution and in criminal procedural legislation and are further reinforced by the State's international obligations. However, law enforcement practice demonstrates the existence of a persistent and systemic discrepancy between the normative model and the actual implementation of the procedural guarantees afforded to the defence.

Stephanos Bibas (2006) divides participants in the criminal justice system into insiders – those who run the criminal justice system (judges, police officers, and especially prosecutors) – and outsiders. Insiders possess information, power, and self-interests that greatly influence the processes and outcomes of the criminal justice system. Outsiders – crime victims, bystanders, and most of the general public – find the system frustratingly opaque, insular, and unconcerned with proper retribution. As a result of this gulf, a spiral ensues: insiders twist rules as they see fit; outsiders attempt to constrain them through new rules; and insiders, in turn, find ways to evade or manipulate the new rules [13, p. 911].

One of the clearest, yet at the same time least conceptualised, manifestations of the discrepancy in the actual implementation of the defence's procedural guarantees is the frequent refusal by courts to grant motions submitted by the defence. This includes refusals to grant motions concerning the summoning and examination of defence witnesses, the disclosure or production of evidence, the appointment of expert examinations, the exclusion of evidence as inadmissible, as well as the inclusion of alternative evidence in the case file.

* Doctor of Laws, Head of the Department of Criminal Procedure, Criminalistics, and Forensic Science at the Justice Academy of the Ministry of Justice of the Republic of Azerbaijan, email: matanatasgarova@yahoo.com

The issue at stake is not isolated, well-reasoned refusals, but a reproducible pattern of judicial behaviour in which the procedural initiatives of the defence are a priori perceived as secondary, excessive, or aimed at delaying the proceedings. In this context, it is rightly noted in the scholarly literature that *"If courts disregard the parties' arguments concerning the inadmissibility of evidence, or conversely, their efforts to obtain additional evidence, this likewise results in the repeated submission of such motions"* [11, p. 166].

II. Discussion

The procedural nature of defence motions. A motion constitutes one of the procedural forms through which the right to defence is exercised. In criminal proceedings, a motion serves as the procedural expression of a party's initiative aimed at the realization of its rights and lawful interests. For the defence, a motion represents a primary instrument for active participation in the evidentiary process, for compensating for the institutional advantage of the prosecution, and for influencing the course of the judicial examination. *"Be that as it may, the presence of a large number of motions – or their complete absence – does not in itself indicate a violation of the rights and lawful interests of persons involved in criminal proceedings"* [8, p. 71].

In circumstances where the defence is deprived of coercive powers, lacks mechanisms for the compulsory collection of evidence, and remains dependent on judicial discretion, the effectiveness of motions acquires system-forming significance in ensuring that the right to defence attains real and substantive content.

The legislative enshrinement of equality in procedural initiatives, without effective guarantees for their practical implementation, unfortunately sometimes remains merely illusory. Formally, the criminal procedural legislation of the Republic of Azerbaijan does not distinguish between motions filed by the prosecution and those submitted by the defence. However, in practice, the criteria applied by courts in assessing such motions may, in certain instances, differ.

Equality of arms in criminal proceedings cannot be reduced to the mere formal right to file motions. It presupposes a genuine possibility of their being granted where they are aimed at establishing circumstances relevant to the case. Systematic refusals of defence motions transform the adversarial principle into a merely declaratory one.

At times, motions filed by the prosecution are generally perceived as being aimed at the *"establishment of the truth,"* whereas motions submitted by the defence are viewed as obstructing the proceedings or lacking evidentiary value. Procedural imbalance manifests itself not so much in the provisions of the law as in persistent patterns of law-enforcement practice.

The systematic refusal to grant defence motions indicates that the court effectively perceives the prosecution's case as the *"baseline"* version of events, imposes an excessive burden on the defence to justify its procedural initiatives, and departs from its neutral position as an arbiter. Such a perception embeds an asymmetrical model of judicial discretion, in which the refusal to grant defence motions becomes not the exception but the norm.

Typology of Judicial Refusals to Grant Defence Motions. Based on an analysis of judicial practice, several stable categories of refusals may be identified:

1. Refusals motivated by the *"sufficiency of the prosecution's evidence."* The most widespread formula for refusal is the assertion that the defence motion is *"irrelevant to the case"* due to the existence of sufficient prosecution evidence. Such reasoning is

conceptually flawed, as the assessment of evidentiary sufficiency is possible only after the completion of the judicial examination. By their very nature, defence evidence is not intended to duplicate the prosecution's case, but to challenge and rebut it. By relying on this formula, the court effectively substitutes the proper examination of evidence with a preliminary endorsement of the prosecution's version of events.

2. Refusals under the pretext of "*procedural economy*." Courts frequently dismiss defence motions by invoking the need to comply with reasonable time requirements or to prevent undue delays in the proceedings. However, the principle of procedural economy cannot be used to curtail fundamental rights, including the right to present evidence and to examine defence witnesses. This approach prioritizes the temporal dimension of the proceedings over the substantive requirements of a fair trial and places the effective exercise of the right to defence at risk.

3. Formally reasoned refusals. This category includes refusals containing standardised, formulaic wording without any analysis of the specific circumstances of the case. Such decisions may formally comply with statutory requirements; yet, in substance, they lack verifiable reasoning, thereby precluding effective appellate review. Such practice, while formally justified by references to "*inexpediency*," the "*sufficiency of the prosecution's evidence*," or "*procedural economy*," in reality deprives the defence of genuine mechanisms for influencing the evidentiary process.

In the absence of officially consolidated statistics concerning the granting of parties' motions, it appears methodologically appropriate to conduct the analysis on the basis of representative hypothetical procedural-typological situations that reflect persistent patterns of judicial refusals to grant defence motions, as observed in the decisions of the courts of first instance and appellate courts of the Republic of Azerbaijan. Judicial practice in various jurisdictions, in certain instances, demonstrates the structural persistence of refusals to grant defence motions. This tendency is particularly evident at the stage of deciding on preventive measures, when motions are submitted for the summoning of defence witnesses, as well as in attempts to challenge the admissibility of prosecution evidence.

Refusal to summon and examine defence witnesses. In proceedings before a court of first instance concerning a serious offence against the person, the defence submitted a motion to summon and examine a witness capable of confirming the accused's alibi. The court dismissed the motion, stating that "*the circumstances relied upon by the defence have already been established by the body of evidence examined during the trial.*" The procedural problem lies in the fact that the court effectively predetermined the evidentiary value of the witness's testimony prior to hearing it, which contradicts the very logic of judicial examination. Such a refusal indicates that the defence's version of events is not treated as an equal and autonomous narrative within the proceedings and undermines the very essence of the adversarial principle. Indeed, "*the adversarial principle in practice requires ... that the parties be afforded the opportunity to file motions for the summoning of witnesses and experts to the court hearing*" [1, p. 113].

Refusal to appoint a forensic examination at the initiative of the defence. In a case concerning an economic offence, the defence filed a motion seeking the appointment of an alternative forensic economic examination due to inconsistencies identified in the expert report submitted by the prosecution. The court dismissed the motion, reasoning that "*the expert report is clear, comprehensive, and raises no doubts.*" The procedural problem lies in the fact that the court substituted a proper examination of the defence's arguments

with a subjective assessment of the sufficiency of the prosecution's evidence, thereby preventing the defence from effectively challenging the expert conclusions. Such an approach reinforces the prosecution's advantage in the sphere of expert knowledge and runs counter to the principle of equality of arms.

Refusal to declare evidence inadmissible. In a case concerning the unlawful trafficking of narcotic substances, the defence submitted a motion to declare inadmissible evidence obtained during a personal search conducted in violation of procedural requirements. The court dismissed the motion, stating that "*the violations committed did not affect the objectivity of the evidence.*" The procedural problem lies in the fact that the court applied an evaluative criterion of the "materiality of the violation" that is not expressly provided for by law, thereby extending the scope of judicial discretion to the detriment of the defence. This demonstrates that an expansive interpretation of judicial discretion operates to the detriment of the defence and creates risks from the standpoint of safeguarding the right to defence.

Refusals at the stage of deciding on a preventive measure. When determining the preventive measure of detention, the defence submitted motions requesting the production of medical records, the summoning of relatives, and the application of an alternative preventive measure. The court dismissed these motions, limiting its reasoning to references to the "*gravity of the charge*" and the "*risk of absconding.*" The procedural problem lies in the fact that such refusals are formulaic in nature, while motions filed by the prosecution are granted without a comparable level of substantiation. This disparity indicates an imbalance in the standards applied in procedural assessment and points to a violation of the principle of equality of arms.

A selective analysis of appellate practice demonstrates that appellate courts, as a rule, reiterate the reasoning of the court of first instance, refrain from conducting an independent assessment of the defence's arguments, and characterize the refusal to grant defence motions as falling within the court's "*permissible discretion.*" This approach leads to the institutional entrenchment of procedural asymmetry and significantly diminishes the effectiveness of judicial oversight mechanisms. In certain cases, higher courts further justify their position by relying on the notion that specific errors are harmless and have had little or no impact on the final judicial decision. "*The conventional approach to harmless error review prohibits reversal of a defendant's conviction or sentence, even when the law was violated during proceedings in the lower court, unless the violation influenced the outcome below*" [6, p. 1413].

4. *International Standards and the Case-Law of the European Court of Human Rights.* In the practice of the ECtHR, it has been consistently emphasized that the principle of equality of arms requires that the defence be afforded a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis the prosecution. The Court has assessed the systematic refusal to grant defence motions – particularly where such refusals lack adequate and individualized reasoning – as a factor capable of undermining the overall fairness of the proceedings, even where each individual decision formally complies with domestic law. In this regard, it is of particular importance that equivalent standards be applied both to the substantiation of defence motions and to the reasoning underlying judicial refusals. In other words, the level of justification required from the defence must be proportionate and equivalent to the level of reasoning provided by the court when dismissing such motions.

In the case of *Bricmont v. Belgium*, the ECHR stated that: “It is normally for the national courts to decide whether it is necessary or advisable to call a witness. There are exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (art. 6)” [2, § 89].

In case of *Murtuzaliyeva v. Russia*, the ECHR formulated the test. According to this test, “Where a request for the examination of a witness on behalf of the accused has been made in accordance with domestic law, the Court, having regard to the above considerations, formulates the following three-pronged test: 1. Whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation? 2. Whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial? 3. Whether the domestic courts’ decision not to examine a witness undermined the overall fairness of the proceedings?” [10, § 158]. This judgment of the Grand Chamber clearly delineates the limits of judicial discretion in relation to procedural initiatives taken by the defence and establishes that defence motions must be assessed not merely in a formal manner, but substantively, as an integral requirement of European human rights standards. In its decision of 18 March 2021, the Plenum of the Constitutional Court of the Republic of Azerbaijan stated that: “The results of the assessment of evidence must be reflected in judicial acts in a detailed and clear manner; the reasons and grounds for the admission or rejection of evidence, as well as for the granting or dismissal of motions submitted, must be indicated, and the conclusion reached must be sufficiently reasoned” [5].

Refusal of procedural initiatives of the defence is permissible only where there exist objective and verifiable reasons that do not place the defence at a substantially disadvantageous position. The Court effectively recognizes that the structural restriction of the defence’s procedural initiative undermines the overall fairness of the proceedings, even where the decisions in question are formally lawful.

The principle of equality requires that the defence be afforded a genuine opportunity to present evidence and arguments and cannot be reduced to the mere formal right to file motions. At the same time, if a party has not submitted any motions at all, this circumstance in itself cannot be regarded as a violation of the principle of equality of arms.

In the case of *Vidal v. Belgium*, the ECHR stated that, as a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the “autonomous” sense given to that word in the Convention system. Within the Convention system, the “autonomous” meaning of this provision implies that it “does not require the attendance and examination of every witness on the accused’s behalf: its essential aim, as is indicated by the words ‘under the same conditions’, is a full ‘equality of arms’ in the matter” [14, § 33].

The ECHR has emphasised that it is not its task to express an opinion on the relevance of evidence that has been admitted or rejected in this manner, nor, more generally, to take a position on the guilt or innocence of the accused. A national court is not entitled to assess in advance the probative value of the testimony of defence witnesses before examining them. Refusal to hear a witness on the assumption that his or her testimony would allegedly be “irrelevant” disrupts the balance between the parties. In this context, the Court stated that: “When the appellate judges substituted a conviction, they had no fresh evidence; apart from the oral statements of the two defendants (at Liège) or the sole remaining defendant (at Brussels), they based their decision entirely on the documents in the case-

file. Moreover, the Brussels Court of Appeal gave no reasons for its rejection, which was merely implicit, of the submissions requesting it to call ...as witnesses." [14, § 34]. This approach directly contradicts the widespread practice of refusing to summon defence witnesses on the pretext of the "sufficiency of the prosecution's evidence" and leads to a violation of the adversarial principle and the requirements of equality of arms.

In case of *Mirilashvili v. Russia*, the ECHR stated that: "*In sum, in order to determine whether there has been a breach of Article 6 §§ 1 and 3, the Court may have to examine separately each limb of the applicant's complaint and then make an overall assessment*" [9, § 166]. According to this approach, repeated refusals to grant defence motions must be assessed cumulatively, even if each individual decision may appear permissible when taken in isolation. It is precisely the cumulative effect of procedural restrictions that may give rise to a violation of Article 6 of the Convention. The principal doctrinal value of this judgment lies in the Court's emphasis not on isolated procedural rulings, but on the application of a systemic and overall assessment. In other words, the fairness of judicial proceedings must be evaluated not on the basis of individual episodes, but with regard to the overall dynamics and impact of the process as a whole.

The approach of the legislation of various states and of the ECHR toward the principle of immediacy in the examination of evidence is essentially of the same nature. Statements based on "hearsay" are not regarded as inadmissible per se; however, preference is given to direct evidence. In case of *Murtazaliyeva v. Russia*, the Grand Chamber of the ECHR stated that: "*Article 6 §§ 1 and 3 (d) of the Convention contain a prohibition on the use of hearsay evidence against a defendant in criminal proceedings, but exclusion of the use of hearsay evidence is also justified when that evidence may be considered to assist the defence. In other words, Article 6 §§ 1 and 3 (d) not only enshrine the defendant's right to confront prosecution witnesses and question defence witnesses, but guarantees the principle of immediacy, which requires that the trial court be able to observe the witnesses' demeanors and thus form its own impression of their reliability*" [10, § 25]. In this context, the Court has formulated seven guiding principles. According to Guideline 1, the principle of immediacy requires that testimonial evidence be produced in proceedings before the competent trial court; therefore, all viable measures, and if necessary, coercive measures, should be taken to bring absent witnesses to the trial hearing.

Guideline 2 provides that the test for assessing any request for the attendance or cross-examination of witnesses – which is identical for the defence and the prosecution – relies on the individual witness's prima facie relevance to the outcome of the trial and to the position of the requesting party. This is an exclusively *ex ante* test. Hence, in assessing any request for the attendance or cross-examination of witnesses, the trial court is not permitted to anticipate the result of the examination of the evidence – except in favor of the defence.

The third and fourth guidelines articulate a structured and restrictive approach to the admission of pre-trial testimonial evidence in criminal proceedings, firmly rooted in the principle of immediacy and the overarching requirement of procedural fairness under Article 6 of the Convention. With regard to Guideline 3, the Court underscores that the reading out of pre-trial statements at trial must remain an exceptional measure. This reflects a normative hierarchy in evidentiary evaluation: oral testimony delivered in open court, subject to adversarial examination, constitutes the primary and preferred form of evidence. The principle of legality in criminal procedure demands not merely flexibility, but precision and foreseeability. Accordingly, the Court requires an exhaustive statutory

catalogue of “*good reasons*” capable of justifying the non-attendance or non-examination of a witness at trial.

The Court systematizes these reasons into two principal categories: (1) unavailable witnesses and (2) witnesses in need of protection. The first category is narrowly defined and includes objective impediments such as death, serious illness or incapacity, disappearance, residence abroad, as well as legally recognized privileges (the right to silence as a co-accused, the privilege against self-incrimination, and family-related exemptions). The second category concerns protective considerations, namely risks to the life or physical integrity of the witness or the safeguarding of particularly vulnerable individuals.

Unavailable witnesses include deceased witnesses, those suffering from physical or mental incapacity, those who have disappeared or reside abroad, as well as situations involving a co-accused's right to silence, the privilege against self-incrimination, and family-related exemptions. Witnesses in need of protection include cases involving the protection of life or physical integrity and the protection of a vulnerable witness's health.

Importantly, the Court introduces a qualitative distinction based on the authority before whom the evidence was originally produced. Testimony taken before a judge at the pre-trial stage is not equivalent, in terms of procedural guarantees, to statements obtained by the police or a public prosecutor. Judicial involvement typically ensures greater procedural safeguards, neutrality, and reliability. Consequently, the scope of acceptable justifications for reading out absent-witness testimony must vary accordingly: it may be broader where the statement was taken by a judge under stronger guarantees and narrower where it was obtained by investigative authorities lacking the same level of structural impartiality. This differentiation strengthens both the principle of immediacy and the principle of equality of arms by preventing the routine substitution of live testimony with investigative statements.

It must be clearly distinguished by whom the statements were taken (a judge, a prosecutor, or the police), since evidence collected at the pre-trial stage by the police or the prosecutor cannot be equated, in terms of reliability and accuracy, with evidence obtained at the same stage by a judge. Accordingly, the range of legitimate reasons capable of justifying the reading out at trial of statements made by an absent witness should be broader where the evidence was taken by a judge—having regard to “the content ... and the context in which he made them” [12, § 38(iii)]—and narrower where it was obtained by a prosecutor or the police. Such an approach is necessary to ensure the effective protection of the principle of immediacy and equality of arms.

Guideline 4 complements this restrictive framework by introducing the requirement of adequate counterbalancing safeguards. Even where a legitimate reason for non-attendance exists, the admissibility of pre-trial testimony does not automatically follow. The trial court bears a positive obligation to verify that measures capable of mitigating the disadvantage to the defence have been implemented. A paradigmatic example is a pre-trial hearing conducted under adversarial conditions, allowing the defence to question the witness at an earlier stage.

Crucially, the Court rejects purely formal or symbolic safeguards. A judicial instruction advising the fact-finder to treat untested testimony with caution is insufficient. Likewise, the mere theoretical opportunity for the accused to challenge the absent witness indirectly—whether by testifying personally or by calling alternative

witnesses—does not adequately compensate for the lost opportunity for direct cross-examination? The Court thus moves beyond formal equality and insists on substantive procedural balance.

Taken together, Guidelines 3 and 4 reinforce a strict evidentiary discipline: exceptional admissibility, narrowly defined justifications, institutional differentiation based on the source of evidence, and a robust requirement of compensatory safeguards. Their combined effect is to preserve the structural integrity of the adversarial process and to ensure that the principle of immediacy remains a living and operative guarantee rather than a merely declaratory norm.

Guideline 5 holds that even where adequate counterbalancing safeguards have been secured to offset the disadvantages experienced by the defence, the trial court must refrain from founding a conviction solely, or to a decisive degree, on the pre-trial statement of a witness who did not appear at trial. To do otherwise would undermine the very substance of the principle of immediacy.

According to Guideline 6, in situations where inconsistencies arise between a witness's pre-trial account and his or her testimony delivered before the trial court, the principle of immediacy dictates that greater evidentiary weight should be attached to the statement given in open court.

Guideline 7 establishes that these constitute strict and non-derogable limits for the trial court. Any departure from them risks infringing the principle of immediacy and, as a consequence, compromising the overall fairness of the proceedings. Evidence obtained or relied upon in contravention of these guidelines cannot be considered by the trial court unless domestic legislation expressly permits the reading out of pre-trial testimonial statements on the basis of an agreement between the prosecution and the defence.

In case of *Ibrahim and Others v. the United Kingdom* "As the Court has explained on numerous occasions, it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence, including evidence obtained unlawfully in terms of domestic law, may be admissible... the Court has explained that the admission of such statements as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair, irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction" [7, § 254].

With regard to evidence obtained in breach of domestic law, the Court has also identified an important exception. Where confessional statements are obtained in violation of Article 3 of the Convention—that is, as a result of torture or other inhuman or degrading treatment—their admission as evidence renders the criminal proceedings as a whole unfair, irrespective of their probative value or of whether they played a decisive role in securing the conviction.

This approach is grounded in the fundamental consideration that the use of statements extracted through torture inherently and irreparably undermines the fairness of the trial. Evidence obtained by such means cannot, under any circumstances, serve as a basis for establishing the facts in criminal proceedings.

In the case of *Ibrahim and Others v. the United Kingdom*, the ECHR held that, when assessing the impact of procedural violations occurring at the pre-trial stage on the overall fairness of criminal proceedings, the proceedings must be examined as a whole and, where appropriate, regard must be had to a non-exhaustive list of factors derived from the Court's case-law: (a) whether the applicant was particularly vulnerable, for

example, by reason of his age or mental capacity; (b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with; where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair; (c) whether the applicant had the opportunity to challenge the authenticity of the evidence and to oppose its use; (d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion; (e) where evidence was obtained unlawfully, the nature of the unlawfulness in question and, where it stemmed from a violation of another Convention Article, the nature of the violation found; (f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified; (g) the use to which the evidence was put, and in particular whether it formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case; (h) whether the assessment of guilt was performed by professional judges or lay jurors and, in the case of the latter, the content of any jury directions; (i) the weight of the public interest in the investigation and punishment of the particular offence in issue; (j) other relevant procedural safeguards afforded by domestic law and practice [7, § 274].

In the ECHR's case-law, a consistent position has been maintained to the effect that every motion submitted by the defence must be examined in an individualized and substantive manner. Such an assessment must include an analysis of the potential role of the motion in the establishment of the facts of the case.

In the practice of certain domestic courts, a formalistic approach tends to prevail. Within this framework, defence motions are dismissed through the use of standardized (formulaic) wording such as *"irrelevant to the case"*, *"the circumstances have already been established"* or *"sufficient evidence has been obtained"* without any meaningful examination of how the requested procedural measure might affect the defence's position. As a result, judicial discretion loses its individualized character and risks being transformed into a mechanism for the mere reproduction of the prosecution's narrative, which is incompatible with the adversarial principle and the requirement of equality of arms.

The ECHR adopts a principled position to the effect that a domestic court is not entitled to predetermine the probative value of evidence submitted by the defence. The ECHR has expressly stated that refusing to hear a defence witness on the basis of assumptions that his or her testimony would be irrelevant is incompatible with the requirements of a fair trial [14, § 33]. This approach confirms that the evidentiary value of defence evidence can be assessed only after it has been examined in adversarial proceedings and with due respect for the principle of equality of arms. Otherwise, the court risks losing its role as a neutral arbiter.

At the same time, in the judicial practice of certain domestic courts, refusals to grant defence motions are frequently justified by a prior assessment of evidence that has not yet been examined. The court effectively proceeds on a presumption of the sufficiency of the prosecution's evidence and treats the defence's procedural initiatives as secondary or redundant. Such an approach is not only incompatible with the standards developed in the Court's case-law, but also distorts the very logic of judicial fact-finding: the proper examination of evidence is replaced by its preliminary "filtering". This practice runs counter to the adversarial principle, the requirement of equality of arms, and the very essence of a fair trial. In the ECHR's case-law, it has been consistently emphasized that

considerations of procedural economy and reasonable time cannot serve as independent grounds for restricting the rights of the defence. The Court has stated that the need to expedite proceedings cannot justify refusing procedural measures that are relevant and important for the defence [7, § 29–30].

Nevertheless, in domestic judicial practice, even where defence motions are aimed at verifying decisive factual circumstances of the case, references to the “prolongation of the proceedings” or to the alleged “lack of necessity” are frequently invoked as universal grounds for refusal. As a result, the principle of reasonable time is effectively set in opposition to the rights of the defence, whereas, under the ECHR’s standards, these principles are not mutually exclusive but must be maintained in a state of balance.

One of the principal discrepancies between the ECHR’s standards and certain domestic judicial practices concerns the approach to assessing the cumulative effect of procedural restrictions. In the case of *Mirilashvili v. Russia*, the Court emphasized that the fairness of the proceedings must be evaluated as a whole and that, in this context, the cumulative impact of refusals to grant defence motions must be taken into account.

By contrast, in certain domestic courts, each refusal is at times assessed in isolation, without taking into account their repetition or similar nature, which may cumulatively create a persistent imbalance in the procedural position of the parties. Such a fragmented approach prevents the identification of structural deficiencies in the conduct of the proceedings and, in effect, legitimizes the systematic restriction of the defence’s procedural activity.

According to the ECHR’s standards, appellate courts are required to conduct an effective review of the reasoning underlying refusals to grant defence motions and must not confine themselves to a merely formal endorsement of the first-instance court’s discretion. Effective judicial scrutiny necessitates an examination of whether such refusals have affected the overall fairness of the proceedings.

However, in appellate practice, another approach is frequently encountered. Arguments concerning the unjustified dismissal of defence motions are often rejected by reference to the “*court’s discretionary power*”. This creates an institutional effect: procedural asymmetry is not remedied but rather reinforced at the higher judicial level. As a consequence, the mechanism of effective oversight over first-instance discretion is weakened, and the systematic limitation of the defence’s procedural initiatives becomes legally entrenched.

A comparative analysis of the ECHR’s standards and domestic judicial practice demonstrates that the core problem lies not in the formal absence of procedural rights of the defence, but in their practical neutralization through a consistent pattern of refusals to grant defence motions. Unlike the Court’s approach, which focuses on assessing the overall fairness of the proceedings and the substantive effectiveness of procedural safeguards, domestic practice at times tends toward a formalistic and legalistic analysis. Such an approach fails to detect the cumulative procedural harm inflicted upon the defence and, as a consequence, allows structural imbalance within the proceedings to remain concealed.

III. Conclusion

For the purpose of identifying procedural imbalance, an empirical analytical model may be proposed, based on a quantitative and qualitative assessment of judicial refusals to grant defence motions. The purpose of the proposed model is to detect procedural

imbalance through such quantitative and qualitative analysis. Within the framework of the model, both quantitative and qualitative indicators may be distinguished.

Quantitative indicators include the total number of defence motions submitted, the percentage of defence motions granted, the percentage of refusals, and the ratio between motions granted to the prosecution and those granted to the defence. Qualitative indicators include the type of motion (expert examination, witness examination, admission of evidence, challenge/recusal, etc.); the procedural stage at which the motion was submitted; the nature of the reasoning provided for refusal (formulaic/standardized versus individualized and substantive); and the availability and effectiveness of appellate review. It is proposed to calculate a conditional Index of Procedural Disbalance (IPD) according to the following formula:

$$IPD = (R_d / H_d) - (R_p / H_p)$$

where:

R_d – number of refusals in respect of defence motions;

H_d – total number of defence motions;

R_p – number of refusals in respect of prosecution motions;

H_p – total number of prosecution motions.

A positive value of the index indicates asymmetry to the detriment of the defence. When $IPD > 0$, this indicates procedural asymmetry to the detriment of the defence, $IPD = 0$, a formal balance exists in the treatment of motions submitted by both parties, $IPD < 0$, this suggests – albeit in comparatively rare instances – the possibility of asymmetry operating to the detriment of the prosecution. This index enables a comparative measurement of the relative intensity of judicial refusals within court practice. When quantitative indicators are applied in conjunction with qualitative analysis, the IPD may function as an objective indicator of procedural imbalance.

In the context of problems related to the granting of defence motions, the concept of “cumulative procedural harm to the right of defence” refers to the overall negative effect produced by a series of formally lawful, yet repetitive and systematically recurring refusals to grant defence motions of a similar type. This effect is not detectable through the isolated analysis of individual procedural decisions; rather, it becomes apparent only through a systemic and dynamic assessment of the proceedings as a whole, ultimately leading to the deformation of the adversarial principle and the equality of arms.

The proposed doctrine departs from the traditional approach. Under the conventional method of analysis, each refusal is examined separately, primarily through the lens of legality and the absence of a formal violation. By contrast, the suggested approach posits that the chain-like and systematic repetition of refusals may alter the procedural architecture itself and erode the substantive content of the right of defence.

The doctrine of cumulative procedural harm is directly linked to the approach articulated by the Court in case of *Mirilashvili v. Russia* and *Murtazaliyeva v. Russia*. In those cases, the Court focused not on the formal correctness of individual procedural acts, but on the assessment of the overall fairness of the proceedings.

The scientific novelty of the research lies in the substantiation of the concept of “cumulative procedural harm”, which makes it possible to identify latent forms of procedural imbalance in criminal proceedings that remain undetected within the framework of traditional normative analysis, but become visible through a systematic assessment of judicial practice in refusing defence motions.

Judicial refusals to grant defence motions cannot be regarded as neutral procedural decisions. When such refusals assume a systematic character, they become indicative of a disruption of procedural equilibrium, undermining the adversarial principle, the equality of arms, and the overall fairness of criminal proceedings. The analysis of such practices enables the identification of hidden deficiencies in the application of law and provides a basis for formulating well-founded proposals aimed at improving judicial practice and reforming procedural mechanisms.

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THE SCOPE OF APPLICATION OF PROTOCOL NO. 1 – THE CONCEPT OF THE RIGHT TO PROPERTY

Khanimana Gafarova*, Turkan Ahmadova**

Abstract

The main aim of this study is to understand the concept of property and to identify its types. The study examines the scholarly debates on the recognition of the right to property as a human right. The article also includes the application of the 'autonomous meaning' envisaged in Article 1 of Protocol No. 1, that is, how the right to property is regulated not only by domestic laws but also by the ECHR. The right to property has moved beyond a simple framework to become a more complex legal concept. According to this approach, the concept of property is defined within the framework of the Convention's own aims and principles. The research revealed that the concept of property encompasses not only physical assets but also other interests and rights. Using the comparative analysis method, similarities concerning the protection of property rights have been identified between international courts and arbitration tribunals. The study concludes by discussing three rule principles established by the ECHR. These rules regulate the limits of state interference with property and maintain the balance between the interests of the state and those of individuals. Consequently, the protection of property has been resolved by a case-law approach that covers not only its factual existence but also an individual's legitimate expectations.

Keywords: *property, autonomous approach, legitimate expectation, protection of property, interference with property rights, human rights, illegality, European Convention on Human Rights.*

I. Introduction

Both natural and legal persons are subjects of the right to property. This right allows every person to use their property without any hindrance. Article 1 of Protocol No. 1 to the European Convention on Human Rights governs the protection of the right to property [6].

Some jurists contend that the right to own property is a fundamental right, while others claim the opposite. Property rights, in their opinion, cannot be regarded as fundamental rights since they are relative rights rather than unalienable [21].

Everyone has the right to the peaceful enjoyment of his possessions, and no one shall be deprived of his possessions except in the public interest and subject to the payment of just compensation. However, the same article also provides that in certain cases, the state may interfere with property for reasons of public safety, provided that just compensation is paid.

The Court has also put forward its own approach to property rights, known as the “autonomous meaning”. This concept does not concern how property rights are regulated by domestic laws, but how the ECHR interprets them [1, 10].

In the judicial practices of various countries, issues concerning property have been extensively commented upon. The autonomous concept of property rights ensures the same level of and fair protection for property rights, regardless of the different approaches of States to this right and how it is defined by those States. The legal status of property is not limited by national laws; the final decision must be made by the ECHR.

* PhD in law, Lecturer at the Department of Private International law and European law, Faculty of law Baku State University, email: xanim84.84@mail.ru

** Master of Laws, Baku State University, specializing in European Law, email: turkan-ahmed@mail.ru

The concept of autonomous property is of particular importance in certain situations. Even if a state does not recognise a certain asset as property, it may be considered property by the ECHR, provided that the individual has an economic interest and a material advantage in the property, that is, they are able to derive income from it [1, 10].

In the *Sporrong and Lönnroth* case, the court for the first time applied three rules. These three rules included the peaceful enjoyment of property, the confiscation of property, and the state's restriction of the use of property through lawful measures without its direct confiscation. This structure was necessary in terms of which rule the court should apply. The most important of these rules, and the one that serves as the basis for the others, is the rule on the peaceful use of property. The second rule provides that the state may completely restrict a person's property rights, which violates the principle of justice. The final rule, however, provides for the restriction of property use under certain conditions. This rule can be considered relatively lawful.

These three rules ensure that any interference with property is carried out lawfully, that state interventions are related to the public interest and security, and that the principles of fairness and proportionality are upheld [1, 8].

The concept of property rights has recently given rise to certain problems due to conflicts. Any interference with individuals' property, the requirement for fair compensation to ensure the protection of their rights, and the defence of individuals' rights by other means are reflected in the case-law of the ECHR.

II. The General Scope of Application of Protocol No. 1, article 1

The protection of property is considered from various aspects by human rights and international investment law. According to the human rights approach, the right to property is inviolable; the state should not interfere with property, and if it does, such interference must be carried out fairly and in accordance with the law. International investment law, however, approaches the protection of property from an economic perspective. If a state expropriates property, it must provide compensation for the loss. However, alongside these differences, they have common features, and this does not deny their interrelationship. Judicial practice reflects this connection. Investment arbitrations and human rights courts occasionally depend on one another's rulings [21].

According to case law, houses and land on which people live have been regarded as property, even where it is possible to derive an economic income from them. In other words, they can be considered property only if they are capable of being put to actual use [18].

The socio-economic nature of property rights means that they are tied to things like economic activity, human welfare, and how people use their property. As such, it is not regarded as an unalienable right and may be subject to state restrictions under specific conditions. For instance, the government may step in to protect property.

The concept of property also applies to intellectual property [17]. Thus, intellectual property rights, such as copyrights, licences and trademarks, are also protected by the article 1 of Protocol 1 [9].

It has been controversial for lawyers to view property rights as human rights. Some legal experts agreed with this notion. Property rights are human rights, according to their proponents, because they are necessary for people's autonomy more especially, their freedom to make their own decisions. Economic proponents contend that in order to guarantee a minimal standard of living and end poverty, property rights are essential. It can be understood from this that if a person owns property, they can use it freely for their

own purposes, derive an income from it, and provide for their livelihood. Furthermore, growing crops on their property, renting it out, and so on, allows them to make economic use of their property, which is essential for reducing poverty. On the other hand, opponents made the opposite argument. They contend that it is challenging to comprehend the right to property as an essential, or unalienable, human right. Basic rights cannot be violated. Everyone has the right to life, for instance, and this right cannot be restricted in any way. The state may, however, impose restrictions on the right to property because it is a relative one. Furthermore, because it causes inequality and social stratification, some people believe that the right to own property is not fundamental. As a result, while the poor have few opportunities, the upper classes can own more property [21].

The right to property is one of the fundamental rights of human freedom. The development of the individual is directly linked to the right to property. This means that a person can use their property for their own purposes, derive income from it, secure their own well-being, and so on [4].

Although property rights are rooted in land ownership, international courts have broadened their definition, and property is now understood to encompass not only land but also licenses, legal expectations, patents, copyrights, and other assets. Previously thought to belong exclusively to individuals, property has now been enlarged by international law to include legal entities.

The legal force of article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms extends to natural and legal persons. No person or organization may be prohibited from using property, meaning they can sell, donate, lease, etc. their property in any way they wish. No one's property may be taken away illegally.

The state is responsible for protecting the property of individuals and companies, fund, organizations, institutions [23].

In the most famous *Sporrong and Lönnroth v. Sweden* case, the court took a special approach. It highlighted three ways in which property rights are protected by the state. The first of these rules expresses one of the most important principles. This principle shows that people have the right to freely and without any restrictions the movable or immovable property they own. The second of the three rules mentioned emphasizes that property owned by people can be taken away in some cases, that is, the state can intervene in this as an exceptional case. The state may regulate the rights of people to use any property owned by them, more broadly speaking, to sell, rent, carry out construction operations on it, etc. This expresses the essence of the third rule. The first two rules mentioned do not express a general norm, unlike the first rule, that is, they determine the use of movable or immovable property in exceptional cases without any outside interference. Also, these rules should be explained in the view of the 1st instruction, which is specified in paragraph 1 of the first paragraph and establishes uniform norms for all.

There are some ambiguities in relation to the rights provided for in article 1 of Protocol No. 1, which are not fully resolved by the three principles established in the case in question. The person who owns the movable or immovable property is the main cause of the first ambiguities. This relative certainty was easily resolved by the court.

According to article 1, paragraph 1, of Protocol No. 1, without exception, every person or all entities that have rights and duties before the law, or participants in legal relations, more broadly speaking, companies, foundations, enterprises, institutions, etc.,

may freely use the property in their possession. It is also clear from this that the property rights of entities that are not natural persons are also recognized by the court.

Ownership rights must be understood independently, i.e. whether an object is property or not is not determined solely on the basis of domestic law. If a natural or legal person has estate and this property is recognised as property under internal law, then the ECtHR also accepts it as property and this entitlement is protected by Article 1 of Protocol No. 1 [1, 10].

The notion of property that already exists, that is, is already in actual use by a person, has also been expanded to include objects built without official state permission, and documents declared invalid by state or local laws. However, these situations are not considered estate in all cases.

The court is not competent to determine whether a person has property, i.e. the court does not interfere in this. However, it was particularly emphasized by the court that the concept of estate is not limited to national laws, but is also interpreted within the framework of the European Convention on Human Rights.

III. The Autonomous Concept of “Property” under the ECHR

In regards to the idea of property rights, the court has created its own independent concept. A “autonomous approach” to the idea of property rights should be understood in terms of how the ECHR evaluates this right rather than how domestic laws govern it. This idea has broadened the definition of property that Protocol 1's Article 1 protects. Intellectual property rights, licenses, and other rights and interests are also considered property in this context, in addition to physical, material assets.

Licences granted by the state or competent authorities to carry out commercial activities are also considered property. The revocation of these licences is regarded as an interference with the right to property [14].

The clarification of the concept of ownership is very important. There is a case of *Marckx v. Belgium* in this regard. In the case, the main idea that had to be emphasized was that every person who owns movable or immovable property should be able to easily use his property.

Article 1 of Protocol 1 protects the right to property, but this does not mean that a right to property arises. Only in two cases can a future right be regarded as property. Once a right to a benefit that has already been obtained and a right to an enforceable assertion exist, they are regarded as property.

In the Strasbourg case law, one of the decisions and precedents of the ECHR, the concept of property was considered in a broader aspect. As such, this concept encompasses not only the pre-existing legally existing property of people and the duties associated with it, but also their legitimate expectations that these rights will be realized in the future [1, 9].

Also the concepts of legal claim and justified expectation have been given detailed consideration by the court. Where doubts arise as to whether article 1 of Protocol No. 1 applies to a person's legitimate and economic interest in property, the Strasbourg Court gives the final decision.

Landowners are actually using the contested land because the state and other appropriate authorities have long failed to step in and intervene. As a result of this protracted inaction, the ECHR now protects the right to property. [10] At the same time, national legislation provides that the state may confiscate property, provided it pays

compensation to the aggrieved person. However, the state must be regarded as having a property interest because it grants the person such an opportunity.

Similarly in Azerbaijan, if any plot of land is required for state needs, the state acquires it by reaching an agreement with the property owner and paying appropriate compensation; in the absence of such agreement, it is acquired compulsorily. In both cases, compensation is mandatory. The purpose of this is to protect the rights of the property owner [5].

The ECHR applies national laws during the interference, provided they do not conflict with the aims of article 1 of Protocol 1; however, where a conflict exists, the Court disregards this and applies its own independent approach. [7]. Examples from similar cases show that, although structures built without official permission are not recognised as property, the ECHR may, in certain circumstances, treat them as such. In doing so, the court considers how the individual uses the property, derives income from it, and so on.

In certain cases, the competent authority may revoke an individual's rights. Although social positives, licenses, subsidies, etc. may fall under this category of rights, the property status remains unchanged. The primary objective here is to ensure the principles of fairness and transparency [13]. The case law established that the court assessed the applicant's rights to the painting as a property interest, and therefore, compensation was paid to the person for their long-term possession of the work. Although the local authorities considered the contract for the acquisition of the painting to be legally invalid, the fact that he possessed the painting in fact resulted in the protection of his property rights [14].

Peaceful enjoyment of property is understood to mean the comfortable and tranquil use of the asset. This means that for the state to recognise property, the owner must make actual use of it and derive benefit from it; in other words, the ownership must not be merely formal. In the context of the ECHR, positive obligations are also imposed on the state. The protection of property rights should not be understood solely as the state's non-interference with individuals' property; the state must also take several security measures to protect property. For example, if harmful or explosive substances are discovered near the property, the state must render them harmless. Another example is that if there is a risk of a natural disaster in the territory owned the state must take preventative measures.

Interference with property rights manifests itself in two ways. The first principle is that the state completely expropriates property, but this must be carried out in a manner that is consistent with human rights and fair. The second approach is for the state to allow property owners to use their property within a certain framework of rules. If an intervention departs from these two rules, then the general approach is applied, which brings to the fore the principle of a fair balance between the interests of the state and of individuals.

IV. Types of Interests Protected as "Property"

In the case, the appellants were able to maintain their rights to own property over the disputed land for almost a century and to derive income from it by using it for various purposes. Thus, the theory of ownership here is not limited to official documents but also requires the existence of an actual economic interest.

The state may restrict a person's property rights in the public interest [16]. One of the main issues that the ECtHR should highlight is that the existence of the right to property should not be based solely on official documents on paper. In other words,

issues related to the actual situation, such as how the person uses the premises, how much income he receives, and how it is valued by the state, should be addressed.

In accordance with article 1 of Protocol 1, the concepts of property and possessions are distinguished from one another, and each is commented on in detail. Movable or immovable property, income derived from commercial activities by a company or any person, the right to pursue a profession in accordance with one's qualifications or skills, the right to a lawful appeal to a court, etc., are rights protected by article 1 of Protocol No. 1 [2, 6].

The ECHR has held that the financial rights acquired by a person through their professional activity, more specifically through their long-term labour and skill, are akin to the right to property. This means that these rights also fall within the category of property protected by article 1 of Protocol 1. It is reasonably argued that through the work they have established and their continuous efforts, individuals have created a stable client base, which is their source of income. In other words, without their hard work, such a base could not have been created automatically [12].

In the case of *Sporrong and Lönnroth v. Sweden*, the court applied three rules. The case concerned strategically important and high-value properties in central Stockholm. The authorities, having determined that these properties were of significance for planning purposes, issued authorisations for the compulsory purchase of a particular property for the benefit of the state and imposed restrictions on the use of the property. In that case, a forfeiture order was applied to the property for 23 years, and a ban was placed on any construction works on the property for 25 years. The use of other property was also restricted for a period of 12 years, and any construction works were prohibited by the state. Furthermore, confiscation orders were also applied to this property for an 8-year period, which jeopardised its property rights. The sale of these properties on the property market was considerably hampered during the period when the restrictions and permits were in place, as the free sale of the properties was restricted. However, after a certain period, the state lifted these restrictive measures. The individuals whose rights were violated applied to the European Court of Human Rights for their rights to be restored, but received no compensation in return [2, 7].

According to ECHR approach, company shares may be considered property as they grant the owner rights such as receiving profits in the form of dividends, participating in the company's decisions, and so on [15].

As a solution to the problem, the court posed the following question: Has the right to property been violated, or is there an interference with property?

The Swedish government argued that the permits applied to the property, which are considered a risk of future state expropriation, are also part of the state's planning policy, that is to say, they are not specifically aimed at harming property owners' property. The primary objective here is the development of the city. Ultimately, the government notes that the owners' right to use their property is partially restricted, yet it remains with them. This is because the owners could have used their property freely. The court disagreed with these views. It advanced the reasoning that although the owners were legally the proprietors of their property, their rights to use that property were completely restricted. Thus, they could not sell, gift, or let their property. The court concluded that their property rights remained merely a formality.

The court conducted a detailed examination of the second rule and it was established that the complainants' property had not been seized, and that there was no risk of it being seized in the future, i.e., no risk of confiscation. The owners' rights to freely use their

property, sell it to another person, donate it, or otherwise dispose of the property were retained by law. Consequently, all the confiscations and prohibitions that were applied did not make the processes mentioned above impossible, but simply more difficult [2, 8].

The revocation of property rights by law or by a decision of another state authority does not limit the concept of property as it existed prior to such revocation. Intangible rights, such as copyright, patents, licences, etc., must enable the rights holder to obtain a profit in order to be considered property. Patent rights, industrial designs, trade marks, copyright and related rights, internet addresses, and licences granted by a state or competent authority for the use of property are also included in the court's concept of property [22, 89].

The protection of the environment is also a matter of public interest, and the state may interfere with property rights to ensure the safety of the environment [8].

The only fact is that existing property is protected by article 1 of Protocol 1; in other words, if a person currently has no property but hopes to acquire some in the future, it is not protected by article 1 of Protocol 1.

The state may make incorrect decisions regarding property. Nevertheless, if it rectifies these mistakes, this is considered to be in the public interest. In this way, justice is restored and individuals are prevented from obtaining an unfair advantage [11].

If property exists subject to certain conditions and is extinguished upon the failure to fulfil those conditions, it is not considered as existing property. Consequently, it does not fall under the protection of article 1 of Protocol 1.

If a person claims that their property rights have been violated, they must prove that this right, as defined by domestic laws, is legally theirs.

If a problem arises regarding the existence of the applicant's property, the court determines whether the person currently has legal ownership of the property. For example, the applicant inherits from their father. However, their relationship to the father has not yet been proven. Therefore, the inheritance is revoked, and the person is not, in fact, the owner of the property.

Land, water, oil, gas, minerals, forests, etc. are under the jurisdiction of the state and no one's property rights should be infringed upon. There are 3 types of property in the Republic of Azerbaijan: State-owned land, property owned by citizens or legal entities, and property owned by several persons. Under the legislation of the Republic of Azerbaijan, unjust enrichment, compensation for damages, the demand for repayment of a debt, and inheritance rights are considered property rights, as they have economic value [3].

Furthermore, if the existence of property inherited by the applicant from their spouse has been proven before the national courts, and the applicant's spouse notarially confirms that they will bequeath that property and has it officially registered in the property register, the right of ownership is recognised. Article 1 of Protocol No. 1 does not safeguard a person's reasonable hope of obtaining property. However, the article protects it in certain situations. In other words, in accordance with the ECHR's methodology, property must be deemed to exist if there are legitimate aspirations to acquire it although it does not.

The *Pine Valley Developments Ltd. and Others v. Italy* case established the legal notion of legitimate expectation, or a person's well-founded aspirations to purchase real estate. The state may legally grant permits for development or construction projects in a specific area, the court ruled, giving rise to legitimate expectations. Based on the state's official legislation, the applicants think they can develop the land and build specific structures. Buying land based on this state planning permission must be regarded as a

legitimate expectation since it creates in those people a legitimate expectation of property rights. The planning authority was unable to revoke the project planning permission because it was legally sound and stable. Because of this, it needs to be regarded as a part of property rights. Therefore, such issues need to be precise and well-founded in order to be accepted as legitimate [19].

V. Conclusion

The essence of the concept of property as formulated by the ECHR is that the concept of property in a broad sense covers both physical assets and intangible rights, as well as legitimate expectations associated with property. The three main principles established by the Court regulate the legality of state interference with property rights and require a fair balance between public interests and the rights of individuals.

A particularly significant contribution of the ECHR's jurisprudence is the development of the autonomous concept of property, which ensures that the protection of property rights does not depend solely on how domestic legal systems define or classify property. This autonomous interpretation has played a decisive role in expanding the scope of protection to include not only traditional forms of ownership such as land and movable property, but also licences, intellectual property rights, company shares, and legitimate expectations arising from state conduct. The landmark case of *Sporrong and Lönnroth v. Sweden* laid the foundation for this three-rule framework, which remains the cornerstone of the Court's analysis in property-related disputes to this day.

The study also demonstrates that the protection of property rights under Article 1 of Protocol No. 1 is closely intertwined with broader principles of human rights law, including the principles of legality, proportionality, and the public interest. Any interference by the state with an individual's property must meet these criteria to be considered compatible with the Convention. Where a state fails to maintain a fair balance between its own interests and those of the individual, the Court consistently finds a violation. This approach reflects the ECHR's commitment to ensuring that property rights remain meaningful and enforceable in practice, rather than merely formal entitlements recognised on paper.

Furthermore, the comparative analysis conducted in this study reveals important convergences between the approach of the ECHR and international investment arbitration tribunals in their treatment of property rights. Both systems prioritise the protection of investors' and individuals' economic interests, recognise the concept of legitimate expectations, and demand adequate compensation in cases of expropriation. These parallels underscore the universality of the values underpinning property rights protection and suggest an emerging global consensus on the standards that states must observe when regulating or interfering with property.

Thus, the protection of property rights is not limited to the existence of legal documents; it is also based on a dynamic and evolving approach to case law that protects the economic interests and legitimate expectations of individuals. The findings of this research confirm that the ECHR's interpretation of property under Protocol No. 1 has evolved into a sophisticated and nuanced framework that adapts to the complexities of modern economic life, offering robust protection to individuals and legal entities alike against arbitrary or disproportionate state interference.

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FORCED DISPLACEMENTS FROM WESTERN AZERBAIJAN AND THE RIGHT TO RETURN: IN THE CONTEXT OF HUMAN RIGHTS AND INTERSTATE OBLIGATIONS

Gulgun Guliyeva*

Abstract

This article examines the legal aspects of the forced displacement of Azerbaijanis from Western Azerbaijan during various periods of the 20th century and analyzes their right of return within the framework of international law. Key concepts such as the “right of return”, “property rights” and “citizenship rights” are explored within the human rights system, based on UN documents, the European Convention on Human Rights, and other international legal instruments. The article also discusses Armenia’s violations of these rights and possible legal mechanisms through which Azerbaijan may assert its citizens’ rights in the international arena. It emphasizes the importance of recognizing the rights of Western Azerbaijanis and ensuring their return under international legal norms in the context of interstate relations, regional stability, and the restoration of historical justice. The article aims to identify the international legal obligations of states and the potential mechanisms for their implementation. In modern times, the issue of return to Western Azerbaijan is increasingly being discussed at the level of the Republic of Azerbaijan and the diaspora. However, the legal justification and determination of practical mechanisms for this process in accordance with international law norms remains relevant and economical. The legal aspect of the issue is also important because it not only serves to recognize the injustices of the past, but also to create a legal basis for building a stable and lasting peace in the future. The main purpose of this article is to assess the forced displacements from Western Azerbaijan from the perspective of international law, to determine the legal foundations of the right of return, and to recognize this right.

Keywords: *Western Azerbaijan, forced displacement, right of return, human rights, international law, property rights, Armenia-Azerbaijan relations, interstate obligations, historical justice, internally displaced persons (IDPs).*

I. Introduction

The forced displacements of Azerbaijani Turks living in Western Azerbaijan at various stages of the 20th century are not only a historical and ethnic problem, but also a serious legal and human rights issue. As a result of these displacements, hundreds of thousands of people were displaced from their homelands and deprived of their property, civil rights and cultural heritage. The large-scale deportations, especially those that took place in 1948–1953 and 1987–1991, can be clearly assessed as violations of the fundamental principles of international law individual and collective security, freedom of movement and the right to property.

The right of forcibly displaced persons to return to their homeland is recognized in international law and is enshrined in UN General Assembly resolutions, the Universal Declaration of Human Rights, the European Convention on Human Rights and other international legal instruments. At the same time, the obligations of states to recognize and ensure this right should be considered in both international and bilateral relations. The systematic forced displacement of ethnic Azerbaijani Turks living in Western

* PhD in political science, Baku State University, email: gulgun2004@mail.ru

Azerbaijan from their native lands throughout the 20th century remains a serious problem from both humanitarian and legal perspectives. As a result of these mass deportations, carried out in 1948–1953 and 1987–1991, tens of thousands of Azerbaijanis were expelled from their [1, p. 146] These displacements, carried out by Armenia, were in fact part of a policy of monoethnic state-building and violated the basic principles of international human rights law. This article examines the legal aspects of forced resettlement from Western Azerbaijan, determines the place of the right of return in international law, and conducts a legal assessment of interstate obligations between Armenia and Azerbaijan in the context of this issue. At the same time, referring to international experience, the legal solutions to this problem and the possibilities of claims for Azerbaijan are analyzed. The aim of the article is to substantiate the right of return of West Azerbaijani Turks from both legal and fair points of view and to indicate the relevant legal mechanisms.

Object and subject of the study. The object of this study is the investigation of forced displacements from Western Azerbaijan and the right of these persons to return to their homelands in the context of international law. As an object, the role and impact of this issue in Armenia-Azerbaijan relations in terms of interstate legal obligations and responsibilities are also included in the scope of the study. The subject of the research is the legal assessment of the facts of forced resettlement of Western Azerbaijani Turks within the framework of international law, the determination of the legal foundations of the right of return and the analysis of Armenia's obligations under international law. Also, the study of the legal mechanisms, legal claims and defense methods applied in such conflicts in international law is included in the subject of the research. The subject of the research is the legal assessment of the facts of forced resettlement of Western Azerbaijani Turks within the framework of international law, the determination of the legal foundations of the right of return and the analysis of Armenia's obligations under international law. Also, the study of the legal mechanisms, legal claims and defense methods applied in such conflicts in international law is included in the subject of the research. Research in this direction is conducted on the basis of legal documents, examples of international judicial practice, as well as interstate treaties and obligations. The goal is to analyze the issue of Western Azerbaijan from a legal perspective based on modern international law principles and to justify Azerbaijan's position on this issue from a legal perspective.

Methodological foundations. The method of legal analysis was mainly used in this study. A systematic study of the legal aspects of international legal norms, interstate treaties, decisions and resolutions of the UN and other international organizations was conducted. Also, referring to international judicial practice (in particular, the decisions of the European Court of Human Rights and the recommendations of the UN Human Rights Committee), the right of return and cases of forced displacement were assessed from a legal perspective. The study extensively used both normative legal acts, as well as scientific literature and analytical sources. These include scientific works by specialists in international law, human rights, conflict law, and the region. Special attention is paid to the legal aspects of the conflict between Azerbaijan and Armenia, as well as the legal assessments given to similar issues in international law.

II. Legal Framework for the Western Azerbaijan Issue

The Western Azerbaijan issue is not only a historical and political problem, its essence must be analyzed in a legal framework in accordance with international law and

human rights norms. This problem falls, first of all, within the scope of application of such basic institutions of international law as forced displacement, the right of return, the right to property and the right to citizenship. International law considers forced displacement to be unlawful acts that violate human rights and international humanitarian law [17, p. 56]. The forcible displacement of civilians, the deprivation of their native lands, and the violation of property rights are strictly prohibited by international law. In particular, the UN Universal Declaration of Human Rights [34], the special resolutions on the Right of Return, as well as the European Convention on Human Rights and other regional legal instruments aim to protect the rights of internally displaced persons and ensure their return to their homeland. In the case of Western Azerbaijan, the principles of interstate relations and international responsibility are also important. The policy pursued by Armenia in these territories, in addition to contradicting the principle of territorial integrity of states and inviolability of borders of international law, has led to massive violations of human rights [5, p. 45]. The Azerbaijani state is putting forward legal claims at the international level in order to eliminate these legal violations and ensure the return of internally displaced persons.

In this context, it is important to place the issue of Western Azerbaijan in a legal framework, through the analysis of both legal norms and international experience, in order to firmly substantiate the issue at both the national and international law levels. This is a necessary condition for the effective implementation of legal protection mechanisms and interstate dialogue.

III. Major Stages of Displacement in the 20th Century: Historical and Legal Context

Forced displacements from Western Azerbaijan occurred in several major stages in the 20th century, and these events played a decisive role in changing the regional ethnic composition. These processes require in-depth analysis both in terms of historical events and international law.

The first phase covers the years 1948–1953. During this period, large-scale deportations were carried out by the Soviet authorities from Western Azerbaijan. The aim was to increase the Armenian population and strengthen the policy of creating a mono-ethnic Armenian SSR [24, p. 72]. These forced transfers can be assessed as a violation of the fundamental principles of international law - the right to personal security, property and housing [35]. This policy of the Soviet government was criticized internationally as a violation of human rights.

The second phase took place between 1987 and 1991. During the collapse of the Soviet Union, Armenian armed forces and the Armenian authorities carried out a massive expulsion of Azeri Turks from Western Azerbaijan. This period was particularly marked by the outbreak of the Nagorno-Karabakh conflict and the occupation of territories. These forced displacements violated the principle of protection of civilians required by the UN Universal Declaration of Human Rights and other international instruments [10, p. 56]. Legal analysis of these resettlements shows that the policy of the Armenian side contradicted the norms and principles of both international humanitarian law and human rights law. This is the basis for the Azerbaijani state to raise legal claims at the international level [16, p. 143]. International law has special mechanisms to combat forced resettlements and ensure the right to return. These rights are reflected in the UN Universal Declaration of Human Rights of 1948, as well as in the European Convention on Human Rights. The

restoration of the rights of internally displaced persons and their return to their homeland are priority issues in the modern international legal system [4, p. 54].

Legal Basis of the USSR Period and Aspects Contrary to International Law. During the Soviet Union, the forced resettlement of Azerbaijanis from Western Azerbaijan was carried out on the basis of various legal and political acts. Although these processes were officially presented as being carried out in accordance with Soviet legislation, they are considered serious violations of international law. The legal basis of the USSR was based mainly on internal Soviet laws, as well as decisions and decrees of the Central Committee. For example, in 1948–1953, the Soviet authorities carried out large-scale deportations of the population under the guise of “resettlement” [25, p. 54]. These measures were planned in accordance with the security and ethnic policy goals of the Soviet authorities. However, international law, in particular the Universal Declaration of Human Rights [30] and other relevant documents, strictly prohibits such acts as forced displacement and ethnic cleansing. Under international law, individual and mass forced displacements are violations of the fundamental human rights of people the right to life, liberty, property, housing and the right to return to their homeland [27, p. 43]. The internal decisions implemented by the USSR were contrary to international law, as they were not in line with international treaties and customary international law that were supposed to guarantee human rights. This shows that the Soviet Union did not comply with international law and its obligations [18]. Also, the centralized system of governance of the USSR and its repressive apparatus created significant shortcomings in protecting the rights of ethnic minorities. At the same time, the obligations assumed by the USSR at the international level for example, the Geneva Conventions of 1949 required the protection of the civilian population. The USSR’s policy of forced resettlement from Western Azerbaijan was contrary to these conventions and can be assessed as a violation of international law [13]. As a result, the forced relocations carried out during the USSR, although officially carried out on the basis of domestic legal norms, were contrary to the principles of international law and human rights, and led to the violation of the rights of the Azerbaijanis of Western Azerbaijan. This remains an issue requiring legal responsibility within the framework of the modern international legal system.

The Legal Nature of Armenia's Systematic Deportation Policy. Armenia's forced deportation of Azerbaijanis from Western Azerbaijan and the territories of Azerbaijan in general was carried out systematically and systematically in the late 20th and early 21st centuries. This policy is an example of ethnic cleansing and forced displacement, which are prohibited under international law. From a legal perspective, this policy of Armenia is a clear violation of international human rights and humanitarian law. The 1948 UN Universal Declaration of Human Rights (Articles 13 and 17) guarantees everyone the right to live and property in their own country. The systematic deportations implemented by Armenia are a massive violation of these rights. International criminal law recognizes ethnic cleansing and forced displacement as “crimes against humanity.” The Rome Statute of the International Criminal Court classifies such acts as a criminal act (Rome Statute, 1998). This policy of Armenia also contradicts relevant UN Security Council resolutions, which require Azerbaijan to protect the security and rights of ethnic minorities in the occupied territories [36]. The deportations carried out by Armenia also violate the principle of protection of civilians under the laws of war. The 1949 Geneva Conventions prohibit the forcible transfer of civilians and consider such actions to be a serious violation of international humanitarian law [15, p. 65]. Consequently, Armenia’s systematic

deportation of Azerbaijanis from Western Azerbaijan is considered an illegal policy against international law and remains a violation of human rights. It is necessary to hold this policy accountable and determine its legal consequences in the international community.

IV. The Place of the Right of Return in International Law

The right of return is a fundamental right in the system of international human rights and humanitarian law. It guarantees the right of persons who have been forced to leave their homes and homelands as a result of forced displacement, war, violent conflict and persecution. It is reflected in the Universal Declaration, the 1951 Convention relating to the Status of Refugees and the 1966 International Covenant on Civil and Political Rights. Article 13 of the Universal Declaration establishes the right of everyone to freedom of movement within and outside the borders of his country and to leave it as he wishes. Article 14 of the 1951 Refugee Convention emphasizes the right of refugees to return to their country of origin if safety is not ensured and the principle of voluntary return. Article 12 of the International Covenant on Civil and Political Rights recognizes the right of everyone to freedom of movement within and to leave their country, as well as to return to their country. The International Human Rights Committee and other international bodies have emphasized the right of return as a fundamental right for people to return to their homeland in peace and security. The right of return is also essential for restoring peace after conflict, ensuring sustainable development and social justice. Ensuring this right is a priority issue in terms of restoring the rights of refugees and internally displaced persons and fulfilling the international obligations of states. As a result, the right of return is an important component of international law, ensuring the right of people to return to their homeland in peace and security, and states have international obligations to ensure this right.

The Right of Return in UN Instruments. UN instruments constitute the main legal basis for the right of return in international law and ensure the international recognition and protection of this right. In particular, the Universal Declaration of Human Rights [12] and other relevant UN instruments define the legal status of this right. Article 13 of the 1948 UN Universal Declaration of Human Rights establishes the right of everyone to freedom of movement within the borders of his country and to leave his country, as well as to return to his country: "Everyone has the right to freedom of movement and residence within his country". "Everyone has the right to leave his country and to return to his country". UN Security Council Resolution 194 (1964) and other relevant resolutions aim to ensure the right of return in the context of international peace and security. For example, Resolution 194 affirms the right of refugees to return to their homes within the framework of the Israeli-Palestinian conflict, a principle that applies as international law to other conflicts. In addition, the UN High Commissioner for Refugees (UNHCR) places the right of return at the core of refugee rights and emphasizes the importance of ensuring voluntary, safe and dignified return in peace. The right to leave one's country and to return is also recognized in various other UN instruments, including Article 12 of the 1966 International Covenant on Civil and Political Rights. As a result, UN instruments define the right of return as a fundamental right within the human rights system and impose international obligations on States to ensure this right.

The European Convention on Human Rights and the Practice of the European Court of Human Rights. The European Convention on Human Rights (ECHR) is an important international legal instrument in the field of protection of human rights and freedoms. A

number of articles of the Convention guarantee the rights of individuals related to the right of return, and precedents have been established in the decisions of the European Court of Human Rights (ECHR) on the protection of this right [23]. Article 8 of the Convention guarantees the right to respect for one's private and family life: "Everyone has the right to respect for his private and family life, his home and his private life. This article often serves as the main legal basis in disputes over the right of return, as forced displacements result in the disruption of a person's ties with their home and family. The European Court assesses cases of forced displacement and deportation, as well as forced returns, in the light of this article. The Court has held in several cases that the failure to ensure the right of return constitutes a violation of the Convention. For example, in the case of *Chirkin and Others v. Azerbaijan* (2004), the issue of the violation of the rights of forcibly displaced persons was discussed. Furthermore, Article 14 of the Convention provides protection against discrimination, which is important for preventing discrimination on the basis of ethnicity in the implementation of the right of return. The ECtHR's case law also emphasizes that states are responsible for forced displacement and that failure to ensure the right of return has legal consequences. The Court obliges states to provide compensation and other remedial measures when they breach their human rights obligations. Consequently, the European Convention on Human Rights and the case law of the European Court of Human Rights play an important role in the international protection of the right of return and guarantee the protection of the rights of persons affected by forced displacement.

In the Context of the Right to Property, the Right to Citizenship and the Right to Personal Identity. The right to return is not limited to the physical return to one's homeland, but is also related to the restoration and protection of other fundamental rights, such as the right to property, the right to citizenship and the right to personal identity. The right to property is recognized in international law as the right to own and use one's personal and collective property. Article 17 of the 1948 UN Universal Declaration of Human Rights states that everyone has the right to property. Forced displacement involves the taking or appropriation of land, houses and other property, which is contrary to international law on property rights. The right of return also includes the restoration of this property right.

The right to nationality ensures that a person has the rights and duties of a citizen of a particular state. In the event of forced displacement, a person may lose or have their nationality restricted. This makes it difficult for them to return to their country and exercise their rights there. International law, in particular the 1961 Convention on the Rights of the Child and other instruments, offers safeguards against the unjustified deprivation of nationality. The right to individual identity encompasses the right to preserve a person's cultural, ethnic and national identity.

In the context of forced displacement and ethnic cleansing, individual identity and cultural heritage are threatened. The right to return is essential in this respect for the individual to restore his or her identity and return to his or her cultural environment. In international law, these rights are interrelated and must be guaranteed together. For example, Article 1 of Protocol No. 1 to the European Convention on Human Rights guarantees the right to property, Article 14 of the Convention guarantees protection against discrimination, and Article 8 guarantees the right to family and private life. Consequently, the right to return is closely linked to the right to property, the right to

citizenship, and the right to personal identity, and the restoration of these rights is necessary for the normalization of the living conditions of internally displaced persons.

Interstate Obligations and Legal Responsibility. Ensuring the right to return is not limited to the legal protection of individuals; this issue also acts as a subject of interstate legal relations and international obligations. States, as subjects of international law, are obliged to recognize and ensure the rights of persons forcibly displaced from the territory of other States. In this context, the legal status of both the violating and the injured State is determined. According to the 2001 draft articles of the International Law Commission on the Charter of the United Nations and the Responsibility of States for Internationally Wrongful Acts, the systematic commission of human rights violations by a State against the population of another State (such as ethnic cleansing, forced displacement, expropriation of property, and prevention of return) gives rise to the responsibility of that State under international law. From this perspective, the deportation, confiscation of property and deprivation of citizenship carried out by the Republic of Armenia against Azerbaijanis from Western Azerbaijan during the USSR period and in subsequent years can be assessed as acts prohibited by international law. In this context, the Azerbaijani state has the right to both protect the rights of its citizens and file legal claims on international platforms. The International Court of Justice, the European Court of Human Rights, the UN International Court of Justice and national courts with absolute jurisdiction can act as legal instances for the consideration of such disputes [7]. The Azerbaijani side can use legal mechanisms to recognize *de jure* and *de facto* violated rights, compensate for damages, ensure return and adopt relevant international decisions. In addition, international humanitarian law (in particular the Geneva Conventions and their Additional Protocols) constitutes an important legal framework for the protection of displaced persons in armed conflict and for enabling their return. As a result, the concepts of fulfillment of interstate obligations and legal accountability are one of the fundamental mechanisms for the realization of the right of return of forcibly displaced persons. States are legally responsible when they fail to fulfill their international obligations, and demanding this responsibility through legal means ensures the stability of the international legal system.

V. Armenia's Obligations Under International Law

The Republic of Armenia, as a member of the UN and other international organizations, has obligations under international law in various areas. These obligations include the protection of human rights, the prevention of ethnic cleansing, the prohibition of forced displacement, and the right of return.

Commitments to protect human rights. Armenia has ratified key international instruments such as the UN Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) [33]. These instruments establish the right of every individual to life, property, freedom of movement and return to his homeland. The systematic forced deportation of Azerbaijanis from Western Azerbaijan on the basis of their ethnicity is a clear violation of these rights.

Obligations on deportation and forcible transfer. Under international humanitarian law, including the 1949 Geneva Conventions, the mass transfer or deportation of civilians, particularly when carried out on the basis of ethnicity or nationality, constitutes a war crime and a crime against humanity [29, p. 361]. Armenia is a party to these

conventions, and as a result, the ethnic cleansing and forcible transfer that took place between 1948 and 1991 can be considered a serious violation of international law.

Rights of refugees and internally displaced persons and the right to return. The 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, as well as the UN Principles on the Return of Refugees, impose legal responsibilities on Armenia to ensure the voluntary, safe and dignified return of refugees and internally displaced persons to their homeland. Armenia's failure to recognize these rights and to prevent real returns demonstrates its failure to comply with its international obligations [32].

Prohibition of ethnic discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) is another important document to which Armenia has acceded. Under this Convention, states must not discriminate on the basis of nationality and must treat citizens and non-citizens fairly. The state policy implemented against Azerbaijanis from Western Azerbaijan, the renaming of villages and cities, the erasure of cultural heritage, and the legal and factual impossibility of return are contrary to the requirements of this Convention.

Obligations under the European Convention on Human Rights. Armenia is a member of the Council of Europe and a party to the European Convention on Human Rights. Article 8 of this Convention provides guarantees on the right to private and family life, and Article 1 of Protocol No. 1 provides guarantees on the right to property. Armenia's failure to recognize these rights of forcibly displaced persons and to establish mechanisms for restitution and compensation for their property may be considered a violation of the Convention.

VI. Rights of Claim and Responsibility of the Republic of Azerbaijan.

In the context of the systematic forced displacement of Azerbaijanis from Western Azerbaijan, ethnic cleansing, violation of property rights and denial of the right of return, the Republic of Azerbaijan has the right to bring a claim and demand responsibility under international law. These rights are based on the relevant principles of international law, treaties and the doctrine of state responsibility.

Diplomatic protection and the right to bring a claim on behalf of the state. The Republic of Azerbaijan, in accordance with international law, may apply diplomatic protection in cases of violation of the rights of its citizens of displaced persons held in its citizenship. This is a mechanism recognized in the practice of the International Court of Justice (for example, the *Nottebohm* case, 1955). The state of Azerbaijan has the right to bring a claim on behalf of persons whose rights have been violated in international courts and organizations.

Access to international legal forums. Azerbaijan can take the issue to the international level through the following legal avenues: a lawsuit against Armenia for violations of rights at the International Court of Justice (ICJ); individual or state applications (on property, return, identity, etc.) at the European Court of Human Rights (ECHR); relevant UN Committees (e.g., the Human Rights Committee, the Office of the High Commissioner for Refugees, the Committee on the Elimination of Racial Discrimination); claims regarding the destruction of tangible and intangible cultural heritage at organizations such as UNESCO and ISESCO [21].

Collection and presentation of historical and legal evidence. To strengthen the legal claim of the Republic of Azerbaijan: witness statements of persons deported from Western Azerbaijan; property documents and archival materials; evidence of the change of place names and the destruction of cultural heritage; official documents obtained from

the archives of the USSR and Armenia. should constitute the legal basis of this process. It is also important to strengthen archiving, documentation and legal expertise activities in this direction at the state level.

VII. Potential for Appeal to International Courts (UN, ECHR, etc.)

The violations of the rights of Azerbaijanis from Western Azerbaijan, their forced displacement, appropriation of their property and denial of the right to return, in addition to being contrary to international law, create legal grounds for appeal to international courts and tribunals. The Republic of Azerbaijan and the affected individuals have the opportunity to use several legal mechanisms in this direction.

European Court of Human Rights (ECHR). Both Azerbaijan and Armenia are parties to the European Convention on Human Rights (1950) [6], Under this Convention, Azerbaijani citizens, individually, and the Republic of Azerbaijan, as a state, have the opportunity to bring inter-state claims:

Legal Mechanisms and Practices for the Return of West Azerbaijani Turks. The return of West Azerbaijani Turks to their historical homelands is both a fundamental human right based on international law and a pressing issue in terms of ensuring regional stability. In order to implement this process on a legal basis, it is important to systematically use international practice and legal mechanisms,

The right of return based on international law. The right of return is a fundamental right recognized and protected by various international legal instruments. The main normative framework is: the Universal Declaration of Human Rights (1948), Articles 13 and 17, which affirm the right of everyone to return to their country and to own property; UN Resolution 194 (1948) recognizes the right of ethnically displaced persons to return to their homeland and calls on states to create conditions for this; the European Convention on Human Rights, Protocol No. 8 and 1, which legally protect return through the rights to private life, family and property [31].

Legal mechanisms and possible ways to apply. a) Restoration of individual rights:

Individual appeals by Western Azerbaijanis to the European Court of Human Rights (ECHR) are an important means for restoring their violated rights. The right to property, the right to private life and the right to personal identity can be the main areas of claim. b) Organization of collective return at the state level: The Azerbaijani state can act towards ensuring the right of return against Armenia, based on cooperation with international organizations (UN, OIC, Non-Aligned Movement, etc.): through bilateral negotiations and diplomatic pressure; by filing legal claims in international courts; by activating international mechanisms for compensation and reintegration mechanisms.

International experiences: a comparative approach. There are a number of examples of the return of expelled ethnic groups around the world: Bosnia and Herzegovina (1995, Dayton Peace Agreement) established international control and legal mechanisms for the return of internally displaced persons; Kosovo Albanians and Serbs were returned under the supervision of the interim administration established by the UN and the EU; These experiences show that the participation of international organizations and the activation of legal mechanisms play a key role in the legal and safe implementation of the return process.

Formation of a legal and institutional framework for return. The following measures are necessary to support return in the Republic of Azerbaijan from a legal and technical perspective: Creation of a legal register of forcibly displaced persons from Western

Azerbaijan; Collection and legal documentation of property documents; Documentation of cultural heritage and social ties; Demanding compensation and legal restitution mechanisms from Armenia. These measures are important both for the implementation of the right of return and for strengthening the legal basis before the international community [2, p. 115]. Based on these examples, Azerbaijan can accuse Armenia of systematically violating the rights of Azerbaijani Turks from Western Azerbaijan.

VIII. Precedents of similar cases in the world (Balkans, Cyprus, Palestine)

Throughout history, many ethnic and religious minorities have been forcibly displaced, and their right to return to their homelands has been the focus of attention of the international community. Studying the legal precedents and international practices formed worldwide in the context of the right of return of West Azerbaijani Turks is important for putting this problem into a legal framework and choosing legal struggle mechanisms. Balkans (Bosnia and Herzegovina Dayton Peace Agreement) Hundreds of thousands of people became internally displaced persons as a result of the Yugoslav war that took place in the 1990s. Within the framework of the Dayton Peace Agreement signed in 1995, the UN and the international community recognized the right of these persons to return to their homelands: Annex VII of the Agreement recognizes the “Right of Return of Refugees and Internally Displaced Persons”; The mechanisms of the International Executive Commission and the European Court of Human Rights have been activated for the implementation of this right; The rights to property restitution and compensation, covering both individual and collective, have been established [8, p. 87], This precedent shows that the return of a population subjected to ethnic cleansing can be legally ensured with the support of international law and organizations. Cyprus (*Loizidou v. Turkey and the Turkish-Cypriot Population Issue*). As a result of the events in Cyprus in 1974, thousands of Greek Cypriots were expelled from their homeland. The case of *Loizidou v. Turkey* (1996) at the ECtHR set an important precedent for international law in this context: The Court recognized the right of an individual to return to their homeland and did not consider the fact of occupation as an obstacle to return; It confirmed the continuity of property rights and ordered Turkey to pay compensation; This precedent showed that the right to individual property cannot be violated even in cases of occupation and ethnically based deportation, This case also provides an important legal basis for the international protection of the right of displaced persons from Western Azerbaijan to return to their lands and reclaim their property. Palestine (Resolution 194 and International Discussions). Hundreds of thousands of Palestinians were forced to leave their homes when Israel was established in 1948. Following this event, UN General Assembly Resolution 194 (1948) reaffirmed the right of return as follows: “Those who wish to return shall be permitted to return as soon as possible. If return is not possible, the right to compensation should be applied; this principle has created the experience of millions of internally displaced persons as the right of return is recognized at the international level. Although the implementation of this right has not been fully ensured to date, the Palestinian issue illustrates how the issue of internationally recognized ethnically based expulsion and the right of return lives in the political and legal framework in the context of Western Azerbaijan These three precedents (Balkans, Cyprus, Palestine) show that: The international community and legal mechanisms recognize the rights of return, compensation and property of deported persons; These rights can be restored at the legal and diplomatic level on the basis of the ECHR, UN

Resolutions and bilateral agreements; These experiences can serve as the main basis for the international recognition and legal protection of the rights of West Azerbaijani Turks..

IX. Possibilities for Ensuring Return through Legal and Diplomatic Means

The return of West Azerbaijani Turks to their ancestral lands is not only a restoration of historical justice, but also a legitimate legal demand based on international law. For the realization of this right, it is necessary to optimally coordinate the use of both legal mechanisms and diplomatic means.

Use of international legal mechanisms:

The right of return is protected and guaranteed by the following key instruments of international law: UN General Assembly Resolution 194 (1948) recognizes the return of persons expelled from their homelands as a result of ethnic cleansing; Universal Declaration of Human Rights (1948), Articles 13 and 17, guarantee the right of everyone to leave and return to the country of their residence, as well as to own property; The European Convention on Human Rights, in particular Article 8 (right to private and family life) and Protocol No.1 (protection of property), provide the legal basis for individual applications. Based on these documents, legal action can be taken both at the individual level (e.g., claims to the European Court) and at the interstate level (e.g., applications by Azerbaijan to the ECHR and UN structures).

Diplomatic channels and cooperation with international allies:

Along with the legal basis, diplomatic efforts are also one of the leading pillars of the process. Diplomatic initiatives are important in the following areas: Bilateral and multilateral negotiations: Seeking an agreement on return through negotiations with Armenia directly or through intermediaries (UN, OSCE, OIC); Using the resources of global and regional organizations: Azerbaijan can gain international support by keeping this issue on the agenda in associations such as the Organization of Islamic Cooperation (OIC), the Non-Aligned Movement and the Organization of Turkic States and adopting legal documents in decision-making bodies, Humanitarian diplomacy: presenting the safe and voluntary return of internally displaced persons within a humanitarian framework, presenting the issue as a legal-humanitarian issue rather than a political one.

Strategic opportunities of the Republic of Azerbaijan:

The Azerbaijani state can contribute to the legal and diplomatic provision of return through the following means. National registry and legal archives: Lists of persons deported from Western Azerbaijan, property documents, evidence of family history and cultural heritage should be collected and systematized; Special state program: A legal strategy and communication plan should be adopted to ensure the right of return and promote it internationally; Claims in international courts: The Azerbaijani state has the opportunity to file interstate claims against Armenia for violating human rights (ECHR, UN International Court of Justice, etc.).

Presentation of reliable precedents as a legal basis:

There are already well-known similar precedents in the world *Loizidou v. Turkey*, *Bosnia and Herzegovina*, *Palestinian refugees*, etc. These cases can be used to promote the rights of Western Azerbaijanis in international courts.

X. Regulation of this Issue in the Domestic Legal System of Azerbaijan (Current Gaps in Legislation and Proposals)

The right to return of persons deported from Western Azerbaijan should be established and protected not only by international law, but also within the national legal framework of the Republic of Azerbaijan. Although the current legal system addresses this issue to some extent, there are serious gaps in the concrete and functional provision of the legal basis for the return process.

Existing legal framework. A number of normative documents in the legislation of the Republic of Azerbaijan indirectly address this issue: Constitution of the Republic of Azerbaijan – Articles 69 and 71 stipulate the fundamental rights of citizens, including the rights to property, citizenship and security; Law on Refugees and Internally Displaced Persons (1999) this document mainly covers internally displaced persons, but does not separately regulate the legal status of compatriots deported from foreign countries, Documents such as the State Migration Program and the National Action Plan on Human Rights do not specifically address the issue of Western Azerbaijan; although the Azerbaijani state has demonstrated political will by adopting the Concept of Return to Western Azerbaijan, the legal implementation mechanisms of this document are still not supported by legislation.

Existing gaps in the legislation. The legal status of deported persons is not defined. The legal status of persons expelled from Western Azerbaijan (and their children) is not specified in the legislation as a separate category; There is no normative basis for the recognition and protection of the right of return; the legal grounds for the right of return of these persons, property claims or compensation mechanisms are not regulated by the normative order, Procedures for the restoration of property and ownership rights do not exist; there is no legislative mechanism for the recognition of property, either individually or collectively, or for filing claims with international bodies; Alignment with international law is weak; international instruments on the right of return have not been fully integrated into the domestic legal system [3, p. 143].

Legal and institutional proposals. A special law “On the legal status of deported persons” should be adopted. This law should: define the rights and legal status of persons expelled from Western Azerbaijan and their families; explain the mechanisms for claims related to return, compensation, property and citizenship. A State Program or Action Plan on the right of return should be developed, which should: where: Legal, diplomatic, social and information measures should be determined. Mechanisms for appeal to international courts should be indicated. A formalized base should be created for the collection and archiving of legal documents. A register for the protection of property rights should be formed - evidence and documents related to the property rights of deported persons should be collected and classified on a legal basis.

Towards harmonization of national legislation with international law: ECHR precedents and documents adopted by the UN should be taken as a basis; These documents should be transferred to national law at the level of normative legal acts

XI. Conclusion

For the legal guarantee of the right of return of West Azerbaijani Turks, it is not enough to rely solely on international law. The domestic legal system of the Republic of Azerbaijan should: create an appropriate legislative framework, harmonize it with international norms, and develop a specific implementation mechanism. This approach

is necessary both for the fulfillment of the state's responsibility to its citizens and for the strengthening of legitimate claims in the international legal arena. The return of West Azerbaijani Turks is not only a humanitarian, but also a legal issue. International law establishes this right and allows for its implementation through various mechanisms. The Azerbaijani state must organize its activities in this direction, both at the individual and state levels, in accordance with the possibilities of international law. The Republic of Azerbaijan has the right, based on international law, to demand that Armenia recognize its state responsibility and eliminate its consequences. These claims are of great importance not only in terms of restoring historical justice, but also in terms of maintaining stability and legal norms in the region.

Return is possible through legal and diplomatic means, and international law recognizes this right. For this to happen, political will, systematic legal documentation, international support, and consistent diplomatic initiatives are required. The Azerbaijani state and civil society must continue to engage in this process both nationally and internationally.

Armenia has serious obligations under international law in many areas, including human rights, humanitarian law, refugee protection, and the fight against discrimination. The forcible and systematic expulsion of Azerbaijani Turks from Western Azerbaijan from their homeland, the denial of their rights, and the obstruction of their return process are violations of these obligations. This raises Armenia's international responsibility and creates legal grounds for Azerbaijan to file claims in international courts and organizations. The forced resettlement of Azerbaijani Turks from Western Azerbaijan is the result of a planned policy of ethnic cleansing and deportation carried out by Armenia in the 20th century. This process is not only a humanitarian tragedy, but also a serious violation of international law [9, p. 43]. The right of return, property rights, citizenship rights and the right to individual identity of deported persons are recognized and protected by international legal documents. The analysis conducted in the article showed that, The right of return is based on the fundamental principles of international law and is reflected in UN documents and ECHR precedents; The deportations carried out by Armenia are contrary to international law and give rise to specific legal responsibility of this state; The Republic of Azerbaijan has the right to appeal to international courts both at the individual and state levels; This issue is still not systematically regulated in domestic legislation from a normative perspective, which creates legal gaps.

Proposals:

1. Legal measures: Adopt a special law "On the legal status of West Azerbaijani Turks"; Develop a regulatory framework for the right of return, property restoration and compensation mechanisms; Bring national legislation into line with international legal norms,

2. International legal struggle: The Azerbaijani state should submit interstate claims to the European Court of Human Rights; the possibility of appealing to the UN International Court of Justice and other tribunals should be assessed; the ECHR *Loizidou* and *Cyprus* precedents should be used.

3. Diplomatic and political efforts: The issue of Western Azerbaijan should be permanently placed on the agenda of international organizations (UN, OIC, OSCE, etc.); The support of the international community should be ensured on humanitarian and legal grounds,

4. Documentation and formation of evidence base: Lists of deportees, property documents, family archives and witness statements should be systematically collected

and formalized; Archives that can be used as legal evidence at the national and international levels should be created and preserved.

5. Awareness and strengthening of national memory: The history and rights of Western Azerbaijan should be more widely covered in educational programs and social media so that younger generations are aware of this issue; The implementation of the Return Concept should be ensured with public support.

The return to Western Azerbaijan is not only a political and historical issue, it is a fundamental human right recognized and protected by international law. The Azerbaijani state and society must continue a consistent legal and diplomatic struggle both nationally and internationally for the realization of this right. This is not only a response to the injustice of the past, but also the restoration of legal and historical justice for future generations.

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TECHNOLOGICAL INNOVATIONS AND HUMAN RIGHTS: THE CHALLENGE OF THE FUTURE

Asmar Panahova*, Sona Khalilli**

Abstract

The article explores the impact of technological innovations, in line with the demands and opportunities of the modern era, on human rights and highlights major challenges for the future. With the development of technology, issues such as privacy protection, censorship, artificial intelligence ethics, and similar matters come to the forefront. These issues generate various social and legal problems, both due to the rapid advancement of technology and the changing needs of society. It is emphasized that there is a growing need for more legal and ethical norms in these areas, and the importance of finding regulatory approaches that not only consider the positive aspects of technology but also its potential risks. The article broadly discusses how the rapid development of technology affects human rights and what can be done to prevent these impacts. It also explores the relationship between international law, ethics, and technological innovations, stressing that this connection will require more attention in the future. Furthermore, the article highlights the importance of international cooperation and the establishment of appropriate legal frameworks in regulating new technologies. Such regulatory measures can not only increase the positive impacts of technology on social, economic, and cultural fields but also minimize its negative effects.

Keywords: *technological innovations, ethical norms, legal regulation, impact of technology, technology risks, data privacy, cybersecurity, biotechnology.*

1. Introduction

In recent years, the rapid advancement of technology has had a profound impact not only on individual lives but also on the structure of society. The implementation of integrated artificial intelligence systems, the analysis of big data, developments in biotechnology, and other advanced innovations have penetrated every aspect of life, transforming everything from business operations to daily activities. While the swift pace of technological progress offers numerous opportunities, it simultaneously raises significant ethical, social, and legal concerns. In particular, these new waves of technological innovation have intensified threats to human rights and individual freedoms.

While the implementation of innovations can contribute to societal development and improve the quality of human life, it also carries a number of risks and potential negative consequences. The relationship between human rights and technology has become increasingly complex in the contemporary era. Issues such as information security, the protection of personal and family privacy, equality, and principles of social justice have gained heightened importance in parallel with the expansive growth of technological innovations. As technology continues to evolve, the globalization of these challenges and risks appears inevitable. The protection of human rights is not solely the responsibility of law enforcement agencies or the state; rather, it is a shared obligation involving technology companies, specialized professionals, and every member of society. Although technological advancements hold the potential to facilitate human life and

* PhD in law, UNESCO Chair on Human Rights and Information Law, Baku State University, email: esmerpanahova@gmail.com

** Scientific Secretary, Training Center of the Azerbaijani Bar Association, email: xalillisona@gmail.com

promote global equity, they can also result in violations of personal freedoms, discrimination, and injustices. Therefore, addressing these challenges requires not only legislative and policy reforms but also the active involvement of individuals and organizations operating within the field of technology.

The protection of human rights is not solely the responsibility of states and corporations; it is a collective duty shared by all individuals. Approaching these issues with sensitivity and in the right direction is vital for the well-being of both current societies and future generations. As beneficiaries of modern technological advancements, every member of society must also be mindful of the ethical and legal boundaries of these technologies, adhering to principles of transparency and accountability to prevent harm to human rights. Respect for human rights is not limited to the actions of governments and companies, it is inherently linked to our individual behaviors, choices, and ways of thinking. In this context, public and legal awareness, as well as the development of ethical guidelines, are essential. Only through such contemporary approaches can we effectively safeguard against the potential negative impacts of technology and ensure that innovation serves the common good without compromising fundamental rights and freedoms.

II. The power and reach of technology: its relationship with human rights

Technology has become an integral part of modern society and daily life. Innovations such as the development of electronic devices, artificial intelligence, biotechnology, the rapid expansion of data infrastructures, and the widespread use of social media platforms have triggered significant transformations on a global scale. The influence of technology on human life is no longer limited to the domains of business and science; it now extends to social structures, cultural norms, and even legal frameworks, leaving a profound impact on contemporary systems of social justice. It is widely acknowledged that information and communication technologies (ICT) now facilitate the convergence of individual efforts into collective knowledge. Through interconnected digital environments, individuals can collaborate, contribute information, and co-create knowledge in ways that were previously unimaginable. This capacity for collective intelligence highlights the transformative role of technology not only as a utility but also as a social and structural force actively shaping the foundations of modern society [2]. Social networks, wiki platforms, open-source projects, and other online tools enable individuals to share their knowledge and contribute to the creation of collective intelligence. This development has also led to more interactive, interconnected societies with enhanced capacities for rapid decision-making. As a result, such technological shifts have elevated everyday life, individual rights, social relationships, and cultural values to a new dimension. In this evolving context, technology has transcended its role as a mere instrument, emerging as a powerful agent actively participating in the shaping of society. Simultaneously, the rapid dissemination of information through social media platforms has made the formation and spread of public opinion more globalized and influential than ever before. Thus, beyond the use of technology itself, it is now equally important to critically assess its broader impacts and guide its integration into society in a deliberate and responsible manner.

Recent global economic statistics indicate that the rate of development in the field of Information and Communication Technologies (ICT) is, on average, three times higher than the combined growth rate of all other economic sectors [2]. This rapid advancement in the ICT sector enables economic spheres to become more agile, competitive, and

innovative. For instance, digital transformation drives the modernization of business structures, facilitates the establishment of more efficient management systems, and leads to the emergence of new business models. Simultaneously, technological developments contribute to increased job creation and enhanced productivity.

The development of the ICT sector remains a critical catalyst for the future growth of the global economy, delivering economic and social benefits at both individual and collective levels. In this new phase of economic evolution, it becomes evident that the pace of progress in the ICT sector is one of the key drivers accelerating the advancement of other economic sectors.

In societies grounded in scientific and technological achievements and knowledge, “information” has become one of the most valuable assets for individuals, organizations, and sovereign states alike [3, p. 4]. On one hand, this has led to significant advancements in the collection, storage, and processing of data; on the other hand, it has increased the value and importance of information itself. In light of these developments, the advancement of ICT can be regarded as a vital tool for ensuring and protecting various human rights. These technologies play a crucial role in upholding fundamental human rights and freedoms, including the right to education, access to information, freedom of expression, and access to healthcare services.

The protection of human rights in the context of the growing power and reach of technology will only be achievable through the advancement of legal frameworks and ethical principles. Both states and technology developers must align new technological applications with human rights standards, ensuring regulation through transparency, accountability, ethical norms, and appropriate legislation. Furthermore, addressing digital inequalities and ensuring the ethical and responsible use of data are essential for safeguarding fundamental human rights.

III. Protection of human rights and technological threats

While technological advancements offer new opportunities for individuals, they simultaneously pose significant risks related to data collection and surveillance by both state actors and the private sector. In particular, personal information can be easily accessed through social media platforms, which has emerged as a prominent global concern in the modern era. This issue raises serious concerns regarding the protection of individual freedoms and privacy. Many users remain unaware of how and by whom their personal data is being utilized when sharing information online. Consequently, this increases the likelihood of technology being transformed into a tool of control. This situation underscores the dual nature of technology, not only as a means of progress and convenience but also as a potential instrument of power and surveillance. Through the data collected, it becomes possible to monitor individuals' behaviors, influence their choices, and even manipulate them.

Currently, virtually all countries worldwide recognize the institution of human rights and prioritize the protection of human rights and freedoms as a fundamental principle in their state policies [1, p. 283]. Many countries have established the protection of human rights as a priority in their constitutions and legal frameworks, and by joining international treaties and conventions, they have assumed obligations in this domain. The formation of the global information society has inevitably influenced the concept and practice of human rights. Such an open and interconnected society has contributed to the positive evolution of the human rights institution, promoting greater awareness, accessibility, and

enforcement of fundamental rights on a global scale [1, p. 283]. The relationship between the protection of human rights and technological threats is highly complex and timely. While the rapid advancement of technology facilitates many aspects of societal life, it simultaneously poses risks to individual rights and creates opportunities for new violations. Although the expansion of ICT enables progress across various sectors, it can also seriously threaten fundamental rights such as privacy, freedom of expression, and personal integrity. Measures to prevent such threats are implemented within the framework of information law, particularly through the institution of information security.

Traditionally, information security refers to the protection of information and its supporting infrastructure from unauthorized, harmful threats—whether natural or artificial, accidental or deliberate (pre-planned) - that may adversely affect the participants in information relations. The primary objective of information security is to ensure the protection of information in accordance with the principles of integrity, confidentiality, and availability. Information security is a critical concern for both individual users and organizations, as security breaches can lead to severe consequences and significant damage [3, p. 8]. Information security is not limited to technological issues alone; it encompasses a broad spectrum of organizational, legal, and human resource aspects. This field requires strategic approaches and continuous measures to effectively combat various threat factors.

Thus, technological advancement has created significant opportunities in the field of human rights protection while simultaneously introducing new threats and risks. The relationship between human rights and technological threats demonstrates that these two areas are complementary and interconnected elements. States, international organizations, relevant institutions, and technology developers must promote and utilize technology within ethical and legal frameworks. A balance between human rights protection and technological development should be established in such a way that advancements serve both individual and societal well-being, improve living standards, address public interests and needs, and enhance the effectiveness of combating rights violations and injustices.

IV. International cooperation and technology

International cooperation forms the foundation for joint activities among states in economic, social, cultural, and scientific fields. In recent years, this cooperation has gained significant importance in the technological sector as well. Technology plays a crucial role not only in addressing global problems and issues that transcend national borders but also in promoting international relations and integration. The rapid advancement of technology has heightened the necessity for collaboration and joint initiatives at the global level. Such cooperation is evident both among developed and developing countries. The global development and dissemination of technology present both opportunities and challenges for international cooperation. Various scholars have analyzed these dynamics extensively, offering diverse conceptual frameworks. Notably, Clayton M. Christensen's central thesis is of particular interest: just as successful companies sometimes fail to respond to disruptive technologies, similar challenges may arise in interstate cooperation. The rapid transformation of innovation and technology necessitates that countries reconsider their modes of collaboration and models for sharing technology [4]. The development of technology can transform not only markets and businesses but also countries and international relations. International cooperation must

respond to these changes by promoting innovation and remaining flexible enough to adopt new technological models. Otherwise, forms of cooperation risk becoming obsolete, trapped in the dilemma of outdated technological systems [4].

Research indicates that various scholars present the role of technology in international cooperation as both an opportunity and a risk. According to Stiglitz, globalization does not guarantee the equitable distribution of existing technological capabilities among all countries [5]. Developed countries maintain their technological advantages, thereby limiting access to technology for developing nations. This situation leads to inequities in international cooperation concerning technology use. If the global dissemination of technology is not properly regulated, it may further increase the dependency of developing countries. This, in turn, can exacerbate the problematic policies of the “powerful yet less accountable” international institutions criticized by Stiglitz [5].

Technology is not merely an economic tool; it can also bring significant transformations in the fields of education, healthcare, and governance. In healthcare, the application of technology enables more effective diagnostics, digitization of patient records, and the provision of remote medical services. Artificial intelligence and analytical tools play a crucial role in early disease detection and the development of personalized treatment plans. In governance, technology enhances transparency and accountability. E-government systems and open data platforms simplify citizen interactions with the state, help prevent corruption, and improve the overall efficiency of public administration.

Technology can promote development only if its dissemination is carried out on an equitable basis. Otherwise, technological advancement may deepen disparities and exacerbate global inequality [5]. Therefore, international cooperation, open knowledge sharing, and infrastructure support are essential for the inclusive and equitable distribution of technology. Developed countries and leading technology companies must consider more just models of technology transfer and actively promote digital equality.

The advancement of international cooperation in the field of technology faces several challenges, including technological disparities, unequal distribution of resources, and the technological lag of certain countries. Nevertheless, these issues can be addressed through collaborative international efforts and joint initiatives. To ensure a more inclusive and equitable technological development, the support of international organizations and close cooperation among countries are essential. Organizations such as the United Nations, the World Trade Organization, UNESCO, and other international bodies can create platforms to promote the fair global distribution of technology and provide technical and financial assistance to developing countries. Enhancing digital skills, increasing transparency in technology transfer mechanisms, and establishing fair regulatory frameworks are crucial components of this process.

The equitable development of technology at the global level is not merely a technical issue; it requires political will, ethical responsibility, social commitment, and sustained cooperation. Every step taken in this direction will contribute to building a more equal, just, and sustainable world for future generations.

V. The impact of technological innovations on the Political Strategy of the Republic of Azerbaijan: human rights and future prospects

In consideration of the technological revolution of the 21st century, the Republic of Azerbaijan is implementing the “Digital Azerbaijan” program. Within the framework of this program, the state has identified the application of innovative technologies and the

development of the digital economy as one of its strategic priorities. E-government services, artificial intelligence, blockchain technologies, and other contemporary innovations are being deployed with the aim of optimizing public administration and service delivery across the country. In the Republic of Azerbaijan, information security is ensured through legal, organizational, operational-investigative, intelligence and counterintelligence, scientific-technical, educational, analytical, communicative, personnel, economic, and other coordinated measures. These are designed to identify national security threats in the information domain, eliminate vulnerabilities and gaps that could be exploited by such threats, and mitigate potential consequences, either by neutralizing them or reducing their impact to predefined acceptable levels. The implementation, coordination, oversight, and continuous improvement of these measures are carried out in accordance with legal safeguards and protective mechanisms as defined by national legislation [3, p. 29]. In recent years, the Republic of Azerbaijan has achieved significant progress in the field of technology, and these advancements have had a positive impact on the country's political and economic strategies. Technological innovations play a crucial role in the modernization of the economy, the enhancement of public administration, and the overall improvement of societal well-being. At the same time, the rapid pace of technological development inevitably brings forth new challenges and prospects concerning human rights. These challenges have become increasingly relevant, particularly in light of the expanding digital space. The implementation of digital governance systems in Azerbaijan - including the ASAN service centers, the Electronic Government Portal, and various other e-services—has facilitated more efficient and transparent service delivery to citizens. The swift advancement of technology, as well as the integration of artificial intelligence and automation into various sectors of society, has contributed to the emergence of new professions in the labor market. However, this development also raises concerns regarding the potential obsolescence of traditional occupations, thereby increasing the risk of social inequality. This evolving landscape necessitates the adoption of new approaches to ensure social equity, adapt education systems, and safeguard labor rights. In response to these trends, Azerbaijan has taken steps to reform its education system by aligning it with contemporary technological competencies and preparing the workforce for the demands of the digital age.

Technological advancements exert a significant impact on the rights of both the state and its citizens. The Constitution of the Republic of Azerbaijan outlines fundamental principles aimed at aligning these advancements with the protection of human rights. A particularly noteworthy provision is Article 50 of the Constitution, which guarantees freedom of thought and expression: "Everyone has the right to freedom of thought and speech" [7]. While this article affirms the right to free expression, it is important to note that the development of technology can, in certain instances, lead to limitations on this freedom. For instance, the regulation of content and discourse on the internet and social media can lead to certain security measures and restrictions. Nevertheless, in order to strengthen the implementation of technological innovations, it is also relevant to interpret Articles 8 and 9 of the Constitution within the framework of its fundamental principles. From the perspective of information security, these constitutional provisions emphasize the need for the state to enhance protective measures aimed at safeguarding citizens' personal data [7]. These articles affirm the state's responsibility to ensure that technological developments do not compromise individual rights, particularly in relation to privacy and data protection.

While the impact of technological innovations on Azerbaijan's political strategy is largely positive, it also raises several legal and ethical issues. The Law on State Secrets of the Republic of Azerbaijan, along with other relevant legislative acts, ensures the protection of rights, data security, and social justice in parallel with technological development. These legal frameworks provide guarantees to uphold citizens' rights and safeguard sensitive information in the context of rapid technological progress.

Information security in Azerbaijan's state policy is primarily regulated by the Law on State Secrets of the Republic of Azerbaijan. This law is aimed at protecting the state's classified information and has gained increased significance with the application of technological innovations. The Law on State Secrets also covers issues related to the protection of technological infrastructure, data security, and the safeguarding of citizens' personal information [6].

In the future, technological innovations are expected to expand further and be applied more broadly across various sectors, including healthcare, education, business, and public services. Alongside these developments, the protection of human rights and the establishment of new legal regulations addressing technological innovations will become increasingly important. Cooperation between the public and private sectors, the enhancement of legal and technological security measures, and the further refinement of legislation related to the protection of personal data will lay the foundation for sustainable progress in these areas.

Overall, Azerbaijan's political strategy aims to build a modern and digital state through the application of technological innovations. However, for this process to be successful and sustainable, it is essential to respect human rights and freedoms, and to implement effective legal and social measures to mitigate the negative impacts of technological development. Only by doing so can technological innovations both protect individuals' rights and freedoms and positively contribute to the country's socio-economic progress.

This requires a governance model that prioritizes accountability, transparency, and ethical use of digital tools. Legal institutions must be continuously updated to respond to emerging technologies and new forms of digital risk. At the same time, social policies should address issues such as digital inequality and data protection. Investing in education and innovation will strengthen human capital and long-term resilience. Inclusive digital development can enhance economic competitiveness and public service efficiency. Ultimately, balancing technological progress with social responsibility will define the success of Azerbaijan's digital future.

VI. Conclusion

The relationship between technological innovations and human rights has become one of the most important and complex topics of the 21st century. In recent years, rapid technological advancements have permeated every aspect of society, fundamentally transforming our way of life and creating various new opportunities. At the same time, the new risks and threats posed by technology have brought the protection of human rights to the forefront. Issues such as the protection of personal data, social justice, equality, and individual freedoms represent some of the primary challenges arising from technological innovations. Addressing these challenges requires collective responsibility, not only from governments and law enforcement agencies but also from technology companies, experts, and every member of society.

One of the primary challenges arising from technological development is ensuring that technological tools and systems align with human rights. The illegal use of personal data, issues of confidentiality and security, as well as occurrences of discrimination and injustice, continue to persist. Therefore, legislation and regulatory frameworks related to technology must be further improved, with a clear focus on protecting human rights.

Moreover, the development of technology is not only a matter of laws and regulations but also involves ethical principles and the responsibility of technology companies. Technology companies must adopt more transparent and ethical approaches in the processing and use of data. The algorithms and decision-making systems they implement should be fair and must not create any form of discrimination or injustice. It is essential that companies do not solely pursue profit but also prioritize activities aimed at promoting societal welfare and protecting human rights.

At the same time, states and international organizations play a crucial role in addressing this issue. International cooperation and the development of normative standards can help bridge legal and technological gaps between different countries. States must update their legislation in light of technological advancements and implement progressive regulations to protect the rights of their citizens. However, national-level approaches alone are insufficient, as technological innovations have a global character. Therefore, international collaboration and the adoption of common rules are essential.

Most importantly, every individual in society must be vigilant about this issue, know their rights, and actively defend them. Human rights are not solely the responsibility of the state and corporations but represent a collective responsibility of society as a whole. A collective approach is necessary to address the challenges posed by the rapid advancement of technology. This approach entails each individual striving to understand the impacts of technology on human rights and taking action to minimize these effects. Furthermore, it aims to ensure that technological development occurs within ethical frameworks, thereby establishing a strong foundation for the protection of rights.

In conclusion, the relationship between technology and human rights has become one of the fundamental factors shaping the future of society. To effectively respond to the new challenges arising from technological advancements, attention must be paid not only to innovations themselves but also to their ethical and legal implementation. The protection of human rights will be possible not only through legislation but also through the mutual cooperation and responsibility of individuals and all stakeholders involved in the technological field. This represents a crucial step toward building a more just, equitable, and human rights-respecting future. The interaction between technology and human rights emerges as a vital factor in shaping society's future. Balanced and proper management of this relationship will serve as an important step toward establishing a future grounded in justice, equality, and respect for human rights. Achieving this balance requires the intertwined development of legislation, technological progress, and ethical, social, and cultural values.

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LEGAL AND INSTITUTIONAL FOUNDATIONS OF THE ORGANIZATIONAL STRUCTURE OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE)

Karamat Ganbarov*

Abstract

PACE, as the main consultative body of the Council of Europe, is a key structural unit that ensures the legal, political, and institutional foundations of the organization. Its organizational structure is formed within the framework of international legal norms and principles, based on values such as democratic legitimacy, the rule of law, and the protection of human rights. The Assembly's structure creates a functional integrity through its supreme bodies, executive and administrative mechanisms, and special committees and commissions. Proportional representation of each member state, transparency of decision-making mechanisms, and principles of political pluralism within the structure ensure the legal and institutional stability of PACE. This research systematically analyzes the organization of PACE's main bodies and functional units, their operational directions, and their compliance with international law. This structure is regarded as one of the institutional models of regional cooperation within international organizations.

Keywords: *PACE, organizational structure, international law, institutional mechanisms, Council of Europe, parliamentary diplomacy, rule of law.*

I. Introduction

The Parliamentary Assembly of the Council of Europe (PACE), as one of the main political institutions of the Council of Europe, operates as a significant international forum aimed at promoting democracy, human rights, and the rule of law across the continent. Established simultaneously with the Council of Europe in 1949, the Assembly performs political dialogue, legislative initiatives, and democratic oversight functions through representatives from the national parliaments of the member states.

PACE's structure consists of complex institutional mechanisms that ensure its effective operation and diversity of opinion, including plenary sessions, political factions, thematic committees, and governing bodies such as the presidency and bureau. This institution is not only a platform for mutual understanding and cooperation among member states but also of strategic importance for the promotion of European values.

PACE's Structural, Functional, and Normative Integration Model Although the Council of Europe is a regional organization, its status has significantly expanded since its inception. Initially created with a specific objective, its functions have evolved in accordance with the dynamics of societal development. The organizational structures of international organizations play a major role in regulating their activities and building their operational systems.

The executive organs of international organizations, like their governing supreme bodies, are also composed of representatives elected from member states and fulfill the following key functions:

Ensuring the efficient functioning of the organization;

Facilitating communication with member states and other international organizations;

* PhD Candidate in Law, Department of Law, Academy of Public Administration under the President of the Republic of Azerbaijan, email: karamat.ganbarov@dia.edu.az

- Drafting the organization's budget;
- Preparing agendas for meetings of the supreme body;
- Addressing personnel-related matters [5, p. 123].

Both the member states and the organization of their representation in executive bodies are governed by concrete legal patterns. Representation of states in executive bodies is based on specific principles (criteria):

Principle of fair geographical representation (e.g., UN Security Council, World Meteorological Organization);

- Principle of special interests (e.g., IMO);
- Principle of equal representation of groups of states with divergent interests (e.g., Council of the International Seabed Authority);
- Principle of greater financial contribution (e.g., IMF, IBRD, INMARSAT, etc.).

The administrative body (secretariat of the international organization) performs the following functions:

- Publication of documents adopted by the organization's bodies;
- Preparation of reports on the organization's activities;
- Collection of information on all matters relating to the organization's work;
- Drafting of the budget proposal, etc.

The administrative body generally includes the following staff:

- Senior administrative officials: Secretary-General and deputies;
- Specialists;
- Service personnel.

Special committees and commissions are established on either a permanent or temporary basis to address specific issues related to the organization's operations and act as auxiliary bodies (e.g., in the UN: Disarmament Commission, Committee on Natural Resources, Committee on the Peaceful Uses of Outer Space; in ICAO: Air Navigation Commission) [4, p. 124].

II. The Council of Europe: Establishment, Structure, and Role of the Parliamentary Assembly

The Statute establishing the Council of Europe was supported by ten European countries in 1949 and signed in London on May 5 of the same year. Currently, the Council of Europe has 47 member states. The Republic of Azerbaijan became a member of the Council on January 25, 2001.

The Parliamentary Assembly of the Council of Europe (PACE) initially began functioning as the parliamentary body of the Council of Europe, which at the time comprised 46 European states as part of an international organization.

The roles of parliamentarians and parliamentary committees are diverse and multifaceted. These include:

- establishing the legal framework for security policies and practices;
- monitoring policies and practices through plenary sessions and specialized committees;
- engaging in the formulation, development, adoption, or rejection of policies, legislation, and budgets, not only in the areas of defense, law enforcement, and intelligence oversight, but also in human rights, audit, budgetary, and financial matters;
- participating in the appointment processes for senior positions within security institutions to minimize political interference.

Such functions require a high degree of motivation and focused involvement from interested parliamentarians [5, p. 55].

The structure and organization of PACE are rooted in its historical development. It emerged as a result of the historical, social, and political events that led to the formation of the Council of Europe. Much like the European Parliament, the creation of PACE played a significant role in the evolution of international law.

The Assembly's legal status is pivotal in promoting the idea of European cooperation and its broader prospects across the continent and to the international community.

The Council of Europe's official languages are English and French; however, PACE also uses German and Italian as working languages. Each delegate has access to individual headsets and a control panel to select the language in which they wish to follow proceedings. Foreign guests who intend to speak in languages other than the Assembly's official or working languages are advised to bring their own interpreters.

As a historical and consultative institution, PACE plays a key role in coordinating inter-parliamentary cooperation among member states. Today, it operates as an international parliamentary body dedicated to the promotion of democracy and the rule of law. PACE works with 306 representatives delegated by member states, each representing their respective national parliaments. Unlike legal institutions of the European Union, PACE does not possess the authority to adopt binding legislation [6, p. 47].

The structure of any organization is shaped by the nature and scope of its activities. International organizations typically maintain an internal organizational framework, which includes the following bodies:

- a supreme body,
- an executive body,
- an administrative body (such as a secretariat),
- special committees and commissions.

The executive body generally holds the following responsibilities:

- admitting new members to the organization;
- electing the organization's top officials;
- selecting members of the executive body;
- determining the organization's budget;
- reviewing and assessing reports on organizational activity;
- discussing all matters related to the organization's functions.

In many international organizations, the executive body (e.g., the Council in the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), and the Food and Agriculture Organization (FAO); the Executive Council of the Universal Postal Union; or the Administrative Council of the International Telecommunication Union) is responsible for overseeing and directing the organization's activities between sessions of the supreme body [4, p. 123].

III. Structural Analysis in the Context of International Law, Parliamentary Diplomacy, and Jurisdictional Boundaries

Assemblies are established by representatives authorized to operate at the international level, with open access to participation. The functions of an assembly depend on the scope of its mandate and internal organization, and may be either broad or limited in purpose. Generally, assemblies operate in two primary formats: as supreme governing bodies in large international organizations - such as the General Assembly of

the Council of Europe - or as national legislative bodies, such as the National Assembly in individual countries.

One distinctive power that sets certain parliaments apart from others is the ability to obtain special international status. For example, a parliament that receives the status of “Partner for Democracy” and demonstrates strong support for the Council of Europe may participate in the work of the Assembly and its committees without voting rights. This is a special form of recognition, and each parliament must independently qualify for this status.

The Council of Europe itself was originally established with such aims in mind, reflecting the core political traditions of its member states. However, it is important to distinguish between the Council of Europe and the European Parliament - another legislative body in Europe - whose legal mandates and authorities differ significantly. Unlike the European Parliament, the Parliamentary Assembly of the Council of Europe (PACE) does not possess public law authority. In legal terms, public legal status confers jurisdictional powers, including the right to conduct judicial proceedings.

The concept of jurisdiction encompasses not only the authority to assess the legality of the actions of legal and natural persons but also includes the power to resolve disputes and impose sanctions. A state’s jurisdiction, within defined boundaries, arises from its domestic legal system. If no other international legal norms apply to a given case, the state has the authority to act in accordance with its national legislation. This principle often applies to maritime or offshore areas such as the continental shelf, which lies beyond a state’s formal borders.

In addition, states often exercise what is referred to as “national and personal jurisdiction”, which entails protecting the material, moral, economic, and political rights of their citizens living abroad.

The core issue here is that, whether referring to a sovereign state or any of its institutions, jurisdiction grants the authority to make binding legal decisions concerning individuals or entities, based on applicable laws and normative acts. In some legal systems, this authority is also termed competence, referring to the legally grounded and autonomous decision-making power of a body or institution within its assigned legal framework.

The legal dimensions that fall within PACE’s jurisdiction primarily serve to maintain the integrity of the organization itself. However, despite lacking public law authority, PACE is sometimes capable of more effective action than individual state bodies. Because it is not vested with public legal powers, PACE cannot be considered a subject of public international law in the same manner as sovereign states or certain international institutions.

Public authority, as a legal and political concept, is necessary to carry out governance at various levels. It is generally divided into two categories: state institutions and local self-government bodies. Prior to 2020, the latter category had not been clearly formalized in many jurisdictions. Public authority typically governs and oversees institutions and organizations - such as political parties, fiscal control agencies, security services, prosecutorial bodies, and central election commissions - through constitutionally recognized and legally binding instruments.

Regardless of whether the institution is state-run or otherwise, public authorities share three defining characteristics:

1. Their activities are primarily oriented toward serving the public interest.
2. Public authorities cannot operate beyond the boundaries set by established legal norms.

3. Their decisions must be documented in written form to carry legal force.

If the bearer of public authority is the state, it exercises jurisdiction over both national and regional bodies. If the bearer is a local self-government body, such as a municipality, it exercises public authority within a constitutional framework established by the state [1, p. 4].

The Parliamentary Assembly of the Council of Europe (PACE) is an international institution that implements responsibilities and legal norms derived from society and the public authority of various states in a more structured and elevated manner, while simultaneously upholding human rights, fundamental freedoms, and civil liberties. The resolutions, normative standards, legal documents, and acts adopted by PACE as an international entity may, in certain cases, possess a level of authority and influence that exceeds those of documents issued by domestic public law institutions.

Nevertheless, the legal jurisdiction of PACE—namely, its explicitly defined and codified competences—is limited. This is a matter of principle, stemming directly from the rights and obligations enshrined in the Statute of the Council of Europe. Jurisdiction exercised within a specific territorial framework is traditionally regarded as a sovereign matter of the state. However, when a state or its institution integrates into the system of international law, the nature of its jurisdiction evolves toward a more federal or shared legal competence.

In individual states, the structure and operational framework of public authorities are defined by the ruling political force and codified in supreme legal-normative acts. In various countries, the constitutions or decrees of supreme state institutions allow for the creation of bodies and mechanisms responsible for overseeing the activities of citizens, as well as national, regional, local, and international organizations, public authorities, and political parties. In contrast, international organizations are not governed by a single legal act defining their establishment, structure, and operational procedures. Instead, these features are derived from the founding objectives and functions of the organization, and are systematized through a range of international instruments and treaties that are subsequently incorporated into the framework of international law.

In the field of the law of international organizations, no unified codified legal act exists. As such, legal norms governing the status, structure, and functions of international organizations are dispersed across a variety of international agreements with differing legal characteristics.

- Constitutive acts (statutes) of international organizations: Each organization is established and functions on the basis of an international treaty (statute) prepared and ratified by its founding member states. Such statutes define the organization's aims, institutional structure, competencies of its organs, operational rules, membership criteria, procedures for expulsion, and matters relating to administrative and budgetary governance.

- Universal conventions regulating specific issues concerning the legal status of international organizations, including: the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

- Headquarters agreements concluded between international organizations and the host countries where their secretariats are based, such as the Agreement of 26 June 1947 between the United Nations and the Government of the United States of America [4, p. 118].

Similar to national parliaments, PACE also operates through specialized committees corresponding to its areas of activity. The most significant among these are the Committee on Political Affairs, the Committee on Legal Affairs and Human Rights,

and the Committee on the Honouring of Obligations and Commitments by Member States. The President of PACE, along with Vice-Presidents, leaders of political groups, and chairs of committees, forms the Bureau of the Assembly. The Bureau is responsible for guiding the Assembly's work, including setting the agenda of sessions and identifying issues warranting discussion and reporting [4, pp. 44-45].

The Committee of Ministers of the Council of Europe (CMCE) is the principal decision-making body of the organization, vested with the authority to issue both advisory and binding opinions for member states. It is also charged with overseeing the implementation of judgments delivered by the European Court of Human Rights, as well as supervising internal matters of the Council of Europe. For instance, it holds the competence to authorize the establishment of new working committees. The CMCE is composed of the foreign ministers of all member states, who convene annually, while their deputies hold weekly meetings. The Committee is presided over by a rotating Chair, who moderates its proceedings for a six-month term, succeeded thereafter by the next candidate in alphabetical order based on the English language.

PACE functions as the principal consultative and advisory body within the Council of Europe's institutional structure. It brings together parliamentary delegations from all member states. The composition of each delegation is determined in proportion to the population of the respective country and reflects the political configuration of its national legislature. According to procedural rules, the number of representatives per country ranges from a maximum of 18 (e.g., France, Germany, and the United Kingdom) to a minimum of 2 (e.g., Monaco, Andorra, and Liechtenstein).

In total, the Assembly is composed of 612 parliamentarians, including both representatives and their substitutes. In addition, PACE includes 30 observers and partner representatives. During sessions, members deliberate and adopt final documents on agenda topics that reflect the organization's strategic priorities and core values. PACE conveys its positions to the Committee of Ministers in the form of formal recommendations. Sessions are presided over by a President elected from among the representatives of all member states. The President does not engage in debates or vote on decisions and remains in office until the next session. PACE held its inaugural session on 10 August 1949 in Strasbourg, thus becoming one of Europe's earliest international parliamentary assemblies.

IV. Achievements of PACE and Its Legal-Institutional Architecture

Throughout its operational period, the Parliamentary Assembly of the Council of Europe (PACE) has accomplished a number of significant achievements, including:

- The abolition of the death penalty across Europe by demanding a moratorium on all executions in member states;
- The establishment and development of the European Convention on Human Rights (ECHR);
- The adoption of reports exposing human rights violations in Council of Europe member states;
- Providing assistance to former Soviet countries in their transition to democracy after 1989;
- Supporting the development of numerous progressive national laws;
- Assisting member states in conflict resolution and in reaching consensus on contentious political or social issues.

According to Article 1 of its Statute, the primary objective of the Council of Europe is “to achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.” To this end, the Council pursues the protection of human rights, freedoms, and democracy, and fosters cooperation in areas such as law, culture, education, information, environmental protection, and health. Relevant institutions include financial supervisory authorities, security councils, prosecutorial bodies, and central election commissions [2, p. 17].

At the regional and local levels, the number and types of state or self-governing institutions may vary depending on the constitutions of the respective states or regions, as well as the decrees and statutes of central and subnational authorities. The Statute of the Council of Europe stipulates three principal criteria for accession (the organization is open only to European states): pluralist democracy, respect for human rights, and adherence to the rule of law.

To date, the Council of Europe has adopted more than 200 conventions, protocols, and agreements addressing issues such as human rights, education, culture, health care, social security, sports, civil, administrative, and criminal law and procedure. The most important of these is the European Convention on Human Rights, adopted in 1950 and entering into force in 1953. It is difficult to imagine the Council of Europe without this Convention and the mechanisms created on its basis, notably the European Court of Human Rights.

Thus far, 14 Protocols have been added to the Convention. Protocol No. 11 introduced significant amendments and improvements. The various organs of the Council of Europe carry out its main activities.

The primary organs of the Council of Europe are as follows:

- The Committee of Ministers;
- The Parliamentary Assembly;
- The Congress of Local and Regional Authorities of Europe;
- The Secretariat.

The Committee of Ministers is the supreme decision-making body of the Council of Europe. It is composed of the foreign ministers of the member states. At the ministerial level, the Committee holds at least two sessions per year, and operates on a permanent basis at the level of permanent representatives. The Committee discusses political aspects of cooperation, prepares the Council's programme of activities, adopts the current budget, examines PACE recommendations, and issues recommendations to member states based on the principle of unanimity [4, p. 137].

In certain areas, the Committee of Ministers adopts legally binding decisions. PACE, by contrast, functions as an advisory body and does not possess legislative authority. It is composed of representatives elected or appointed by the parliaments of member states. Each national delegation should reflect the diversity of the country's political landscape, including the representation of opposition parties. The number of delegates varies among member states, ranging from 2 to 18. For example: Germany, the United Kingdom, Italy, and Russia each have 18 seats; Spain, Turkey, and Ukraine - 12; Greece and Belgium - 7; the Republic of Azerbaijan - 6; and Moldova - 5 [2, p. 132].

The Parliamentary Assembly holds three plenary sessions per year. It issues recommendations to the Committee of Ministers and the governments of member states on various issues, organizes conferences and colloquia, and elects the Secretary General

of the Council of Europe as well as judges of the European Court of Human Rights. The Congress of Local and Regional Authorities is composed of representatives from relevant territorial entities of the member states, with representation proportional to each country's delegation in PACE. The Secretariat functions as the administrative organ of the Council of Europe and is headed by the Secretary General, who is elected by the Assembly for a five-year term.

V. Conclusion

The Parliamentary Assembly of the Council of Europe (PACE) constitutes a unique institutional platform that plays a vital role in promoting democratic values, human rights, and the rule of law within the contemporary legal and political landscape of Europe. Its structural framework-comprising plenary sessions, political groups, thematic committees, the Bureau, and the Presidency-serves as a decisive mechanism for ensuring functional flexibility, preserving multilateral representation and political pluralism, and upholding the legitimacy of decision-making processes.

As the structure of PACE is based on the principle of national parliamentary representation from member states, the institution contributes not only to intergovernmental cooperation but also to strengthening Europe's democratic integration at the level of inter-parliamentary dialogue. The politically balanced composition of each national delegation ensures PACE's ability to function impartially and objectively. Furthermore, through its thematic committees, expert-level monitoring and policy recommendations are formulated across a wide range of domains-including legal affairs, social issues, political relations, gender equality, and the protection of minority rights-thereby accelerating normative convergence and the harmonization of standards across the European space.

The institutional design of PACE also enhances its accountability and democratic oversight functions. Its monitoring missions, election observation activities, and human rights reporting exert not only political but also legal and societal pressure on member states. In this respect, the Assembly-particularly through its coordinated engagement with other European institutions, notably the European Court of Human Rights-contributes significantly to the effectiveness of the regional legal system.

Taking all of these factors into account, it can be concluded that the structure of PACE is organically linked to its functions and provides a solid institutional foundation for democratic representation, multilateral dialogue, and long-term sustainability. Even in a period marked by growing geopolitical challenges in the international system, PACE continues to serve as a strategic center for the preservation of political stability, legal norms, and humanitarian values across Europe, owing to its structural resilience and functional adaptability.

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THE PREVENTION OF DISCRIMINATION AND VIOLENCE AGAINST CONVICTED WOMEN

Gunay Hajiyeva*

Abstract

The article describes the discrimination and violence faced by imprisoned women, especially torture and cruel treatment. The main topic here is the situation in the criminal justice system that concerns women convicted, as well as women sentenced to imprisonment. It deals with the risks faced by women in the private sphere or society, and also emphasizes the important link between prison culture and society. Violence against women is often contained in social and cultural values and practice. Other groups of convicted women at risk of cruel treatment and torture include women with limited health, foreign citizens, ethnic and racial minorities, and women belonging to Indigenous Peoples. The criminal justice system and the legislature cannot completely avoid the impact of these values and therefore their attitude towards women has not always been as serious as their attitude towards other forms of violence. Thus, the possibility of cruel treatment and torture available to women in places of deprivation of Liberty is a problem that can not be solved only by work aimed at correcting the situation in these institutions. The root causes of the special vulnerability of women in penitentiary institutions are often found outside the walls of prisons, although in places of deprivation of Liberty this vulnerability is even greater. Women are not only vulnerable to torture and cruel treatment, they also have special needs in places of deprivation of Liberty, which, as a rule, are often neglected (for example, women's special medical problems) or are greatly aggravated by the fact of being in prison (for example, some female prisoners are rejected by relatives as a result of stigma associated with convicted women). In this context, the needs of female prisoners should also be taken into account. As a rule, the main responsibility for the care and upbringing of children is assumed by women, as a result of separation from the mother and co-existence with the mother in prison, the child can be greatly harmed. In this regard, for pregnant women and mothers with underage children, the need for maximum consideration of the interests of the child is increasingly perceived, with an emphasis on penalties not related to deprivation of Liberty.

Keywords: *discrimination against women, violence, Penitentiary institutions, female prisoners, criminal justice system, torture and cruel treatment.*

I. Introduction

The protection of fundamental rights and the improvement of prison conditions in places of deprivation of liberty are among the main goals of many organizations around the world. The ongoing struggle to reduce the use of imprisonment, humanize detention, and prevent discrimination and inequality in its application is as old as the history of prisons themselves. It should be noted that public opinion does not generally show much sympathy toward offenders. Members of society are often more willing to demonstrate harshness toward crime, especially when they are either unwilling or unsure how to be strict about social inequalities. When the general state of society, as well as commonly accepted norms and values, somehow lose their obligatory character, the majority of the population begins to question their relevance and fairness. In other words, the rights of female prisoners were not a significant issue in the past century. Nevertheless, there has always existed a general culture and a set of tools available to human rights defenders

* PhD in Law, Lecturer at the Department of Human Rights and Information Law UNESCO, Faculty of Law, Baku State University, email: agamirova-gadjiyeva@mail.ru

seeking to provide assistance: the culture of human rights itself, the system of international human rights law, the body of international norms developed to promote human rights globally, and the corresponding regional and domestic frameworks.

The change in the percentage ratio between male and female prisoners reveals the shortcomings of almost all penitentiary systems in terms of meeting the specific needs of female inmates. International standards established by international organizations are intended to apply equally to all persons in detention. However, in practice, cases of discrimination against women are frequently observed, and these standards are not always effectively implemented. Therefore, it is necessary to develop recommendations aimed at changing management practices in correctional institutions, improving the living conditions of female prisoners, and taking into account their specific characteristics. Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines the concept of “discrimination against women” as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field” [2, p. 491].

II. The prevention of discrimination and violence faced by imprisoned women

The most extreme form of discrimination faced by women is gender-based violence, which refers to “violence that is directed against a woman because she is a woman, or that affects women disproportionately. This includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.” Gender-based violence, depending on its conditions and nature, constitutes torture as a form of cruel treatment and exploitation.

Rape is one of the most serious forms of gender-based violence. Women may be subjected to violence in places of detention for the purpose of extracting confessions, humiliating them, depriving them of their dignity, or simply because the perpetrator decides to exploit their complete helplessness. Rape may also occur when female prisoners are forced to provide sexual services in exchange for food, privileges, or even access to basic human rights [12, pp. 189-194].

Furthermore, sexual violence against women may also be committed by male inmates, sometimes with the involvement of prison staff. When violence is committed directly by officials, or with their instigation or consent, it is recognized as a form of torture. The International Criminal Tribunal for the former Yugoslavia has also recognized in its judgments that rape and other forms of sexual violence may, in certain circumstances, constitute torture [3, p. 225].

Women who have been subjected to violence not only struggle with the trauma caused by the abuse and its physical consequences – such as possible pregnancy or health issues – but also must overcome feelings of shame and social stigma commonly associated with rape, particularly in societies where discrimination against women is widespread due to cultural or religious norms.

Many women who are raped in prison do not report it, partly for the reasons mentioned above, as well as due to inadequate responses by authorities or fear of retaliation. Violence against women in prisons includes many forms beyond rape. Such

acts include threats of rape, unwanted touching, sexual insults and humiliation, the use of physical restraints during childbirth, virginity testing, and others.

Other practices and behaviors may also constitute cruel treatment, depending on their nature and frequency. Women in prisons face various forms of discrimination not only on the basis of sex but also because they represent a small minority in penitentiary systems worldwide – in most countries, women make up only 2–9% of the prison population [10, pp. 30–33].

Most researchers who highlight discrimination against women on ethnic and religious grounds also emphasize another crucial aspect – those women are treated differently depending on the nature of the crimes they commit or the sanctions imposed upon them. They link the resolution of this issue to the positive and negative obligations of states. In fact, the general framework of international legal instruments related to the protection of women in prison is designed to take into account women’s specific characteristics – particularly from a maternal/biological perspective – while analyzing other sociological aspects of women’s imprisonment through a universal lens. Therefore, it can be argued that women in prisons, despite the inevitable restrictions of a closed environment, must still be able to benefit from human rights protection. This framework, similar to many other international instruments for the protection of prisoners and their rights, should be guided by specific anti-discrimination provisions aimed at reducing potential gender inequality. A wide range of international human rights protection mechanisms regulating the legal status of convicted persons – accepted in most countries and adhered to by states that are parties to these conventions – have been developed and apply to persons deprived of liberty.

Among them are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, it should be noted that none of these instruments are specifically devoted to the legal status of prisoners, or female prisoners in particular. Although there is no single convention focused exclusively on prisoners’ rights, there exist numerous international and regional documents designed to protect those rights. These instruments can be roughly divided into two categories: binding (“hard law”) standards and non-binding (“soft law”) standards.

International treaties specifically aimed at protecting women’s rights address the dimension of non-discrimination within the broader human rights framework. For instance, the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not explicitly refer to women in prison, yet it provides a fundamental basis for the adoption of positive measures ensuring women’s full development. The Convention is one of the most important binding (hard law) instruments at the international level. Certain provisions of CEDAW – both general and specific – serve as legal tools in the protection of prisoners’ rights. According to the Convention: Persons deprived of liberty must be “treated with humanity and with respect for the inherent dignity of the human person” (obligation to respect). The primary purpose of the prison system should be the “reformation and social rehabilitation” of prisoners (obligation to fulfill). As for the UN’s soft law standards concerning the rights of prisoners, these include the UN Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Code of Conduct for

Law Enforcement Officials, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules), among others.

With the growing number of female prisoners worldwide, the need for greater clarity regarding the special considerations that must be applied in their treatment and the ways to address their issues within prisons has become increasingly important and relevant.

Recognizing the need to establish global standards for the treatment of female offenders and prisoners – and taking into account several relevant resolutions adopted by various UN bodies calling on Member States to adequately address their needs – the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted on 21 December 2010. The Bangkok Rules do not replace the Standard Minimum Rules for the Treatment of Prisoners but rather complement them. Even when combined with the principle of non-discrimination, the Bangkok Rules reject the illusion of universality in prison human rights: while the Standard Minimum Rules apply to all prisoners without discrimination, the particular needs and realities of female prisoners must be duly considered. The earlier rules, adopted more than 50 years ago, did not adequately address women’s specific needs. Thus, with the global increase in the number of female prisoners, clarifying the special considerations applicable to their treatment has gained significant urgency and relevance. Before the adoption of the Bangkok Rules, the UN had already emphasized the growing need to address the situation of female offenders in various contexts. For example, in 1980, the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders adopted a Resolution recognizing the special needs of women prisoners and the necessity of providing means to address them, noting that programs and services serving as alternatives to imprisonment – where such systems had not yet been implemented – should be made available to female offenders on an equal basis with men.

Furthermore, the UN General Assembly Resolution on Human Rights in the Administration of Justice (22 December 2003) called for increased attention to the problems faced by women in prison, including those accompanied by their children. Another resolution, adopted on 19 December 2006 – Resolution 61/143 on Intensification of Efforts to Eliminate All Forms of Violence against Women – emphasized that “violence against women” constitutes any gender-based act that results in or is likely to result in physical, sexual, or psychological harm or suffering to women. States were urged to review and, where necessary, amend or repeal all laws, regulations, policies, practices, and customs that contribute to discrimination. At the same time, most international legal norms declaring human rights and freedoms also include provisions concerning female prisoners. For instance, Article 10 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.

The Human Rights Committee, which monitors compliance with the ICCPR, has emphasized that states bear special obligations toward individuals whose status as detainees makes them particularly vulnerable. It has stated that persons deprived of liberty should not be subjected to any deprivation or restriction other than those resulting from their lawful detention, and that respect for their dignity must be ensured under the same conditions as for free individuals. Articles 3, 7, 10, 23, and 24 of the ICCPR also regulate the rights and specific needs of persons deprived of liberty, particularly women prisoners, pregnant women in custody, and imprisoned mothers. Pregnant women in

detention must always be treated with respect, especially during childbirth and in caring for newborns. States Parties are obliged to provide appropriate facilities, medical care, and health services for such mothers and their children.

Finally, the Inter-American Commission on Human Rights has stressed that deprivation of liberty entails strict control, loss of privacy, limitation of living space, and, above all, a drastic reduction in the means of self-protection. According to the Commission, the act of deprivation of liberty “imposes concrete and material obligations to preserve the human dignity of the prisoner”.

The Criminal Code of the Republic of Azerbaijan recognizes and prescribes punishment for the following acts directly aimed against the rights of women: sexual violence (Article 108); rape (Article 149); acts of a sexual nature involving violence (Article 150); coercion to engage in acts of a sexual nature (Article 151); sexual intercourse or other acts of a sexual nature with a person under the age of sixteen (Article 152); and forcing a woman into marriage (Article 176-1).

Thus, during policy formulation and program development, the specific needs of women are often overlooked, and their security concerns are not given sufficient attention. Although more focus is given to the needs of women in women’s prisons, at the central administrative level, the lack of attention to women’s specific needs in the formulation of strategies, policies, and programs, as well as in the allocation of corresponding budgets, is reflected in the living conditions within such institutions.

In addition, since there are fewer women’s prisons compared to men’s prisons, women are often held far from their families. As a result, one of their fundamental needs – maintaining family contact – is jeopardized. Discrimination manifested in the lack of access to special programs and services for women, as well as in restrictions on family contact, while not necessarily amounting to cruel treatment, may in some cases evolve into forms of cruel or degrading treatment [4, pp. 382–410].

According to Article 11 of the Criminal Procedure Code of the Republic of Azerbaijan, criminal proceedings in Azerbaijan are conducted on the basis of equality of all persons before the law and the courts. The bodies conducting criminal proceedings shall not grant privileges to any participant in the process based on citizenship, social status, sex, race, nationality, political or religious affiliation, language, origin, property status, official position, beliefs, place of residence or stay, or other grounds not justified by law.

For a deeper study of the issue, it is necessary to examine more precisely the terms “gender” and “gender mainstreaming.” According to the World Health Organization’s definition, the term “gender” refers to the socially constructed roles, relationships, personality traits, attitudes, behaviors, and values that a society attributes to men and women. Unlike the term “sex,” which refers to biological differences between men and women, gender roles vary greatly across different cultures [11, p. 113]. From a sociological perspective, the term “gender role” refers to the artificially constructed distinctions between men and women.

In 1997, the UN Economic and Social Council (ECOSOC) introduced the term “gender mainstreaming” (a strategy to achieve gender equality) when it identified the need for “the integration of a gender equality perspective into all policies and programmes of the United Nations system.” The Council defined gender mainstreaming as follows:

“Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and

experiences an integral dimension in the design, implementation, monitoring, and evaluation of policies and programmes so that women and men benefit equally, and inequality is not perpetuated” [8, pp. 115–120].

When applied to policies and programmes in places of deprivation of liberty, the concept of gender mainstreaming occupies a central role. The closed environment of prisons, where certain societal attitudes and orientations are reinforced, intensifies women’s feelings of helplessness and lack of rights.

At the same time, paradoxically, the specific needs of women in penitentiary institutions are taken into account even less than in society as a whole. This is because prisons—especially correctional facilities—are predominantly male-oriented institutions that neither recognize nor understand gender-specific needs, excluding, for example, those related to childbirth and pregnancy. Promoting gender mainstreaming in places of detention is a long-term process aimed at achieving sustainable change not only within such institutions but also in the broader societal attitudes, policies, and practices. Nevertheless, concrete changes in laws, regulations, procedures, and policies can have a noticeable and direct impact on protecting women from torture and cruel treatment [7, p. 144–157].

Provisions of the Criminal Procedure Code of the Republic of Azerbaijan also take into account the need to protect the rights and interests of individuals on the basis of gender during investigative actions. For example:

- Personal examinations involving the removal of clothing must be conducted with the participation of persons of the same sex (Article 238.4).

- If it becomes necessary to undress a person of the opposite sex, the investigator, defense counsel, or other male participants cannot take part in that investigative action. In such cases, the examination is carried out by a physician or forensic specialist upon the investigator’s instruction (Article 238.5).

- A personal search and seizure must be conducted in the presence of at least two witnesses of the same sex as the person being searched, as well as a relevant specialist (Article 246.3).

To date, very limited attention has been paid to the specific risks of torture and cruel treatment faced by women in detention. Efforts to combat violence against women generally focus on issues encountered by women in private or public life, with much less attention given to gender-based violence against women prisoners.

Although the issue of torture and cruel treatment is of deep concern to the public, its gender dimensions have not received sufficient attention. State reports regarding the implementation of the Convention on the Elimination of All Forms of Discrimination against Women often lack specific and adequate information about women, even though gender is emphasized as a key factor in preventing torture. Monitoring groups can play an important role in closing this gap by encouraging their countries to address deficiencies in this area, assess risk factors in places where women are held, and evaluate the security measures if any provided by official authorities [1, p. 195].

When analyzing the risks faced by women in places of deprivation of liberty and approaching the problem comprehensively, monitoring organizations should not only consider the specific conditions and circumstances within detention facilities but also examine the broader context to identify potential root causes of the problems detected. Problems identified during visits to correctional institutions may stem from external factors, making it necessary to analyze the legal framework, policies, and practices of the criminal justice system as a whole.

To effectively consider gender-specific aspects, members of monitoring groups must possess certain competencies. Ensuring that the members of these groups have adequate professional knowledge is crucial for correctly identifying gender-related risks faced by women, exploring possible solutions, and taking appropriate measures to mitigate such risks. Monitoring activities yield the most effective results when carried out with attention to gender requirements—that is, when women are included among the members of monitoring groups [5, p. 384].

In addition, female doctors and psychologists should be included in monitoring groups. At least some members of the group should have experience working with individuals suffering from post-traumatic stress and other emotional traumas characteristic of women who have experienced violence, particularly sexual violence. It is desirable that all members of monitoring groups receive specialized training on violence against women, including sexual violence and other gender-specific issues [9, pp. 452–457]. They must be able to ask gender-sensitive questions and formulate them appropriately.

Members of monitoring groups should be fully familiar with the provisions of key international normative documents aimed at protecting women from violence and discrimination and at ensuring that the specific needs of women in prisons are met. Monitoring groups should also include representatives of ethnic and racial minorities, indigenous peoples, and foreign nationals, reflecting a significant portion of the female prison population in their respective countries.

These groups of women face particular challenges and multiple risks that are often best understood by members of the same ethnic or racial communities [6, pp. 77–101]. To ensure that interviews with female juvenile prisoners are conducted appropriately, taking into account their specific needs, and to maintain the professional quality of actions and recommendations, monitoring groups should include at least several members with knowledge of child psychology.

Transparency in state administration and the existence of independent oversight are integral components of any system based on the principles of democracy and the rule of law. This is especially true regarding the monitoring of the state's power to deprive individuals of their liberty. Regular, unannounced visits to monitor the treatment and living conditions of persons deprived of liberty represent one of the most effective methods of preventing torture and cruel treatment.

III. Conclusion

The idea of independent monitoring of places of detention by external actors has made significant progress in recent years. It is now widely recognized that one of the strongest safeguards against torture and ill-treatment is ensuring that places of deprivation of liberty remain as transparent as possible and are regularly visited by credible representatives of civil society.

Preventive monitoring helps reduce the number of acts of torture and cruel treatment, which are most often committed in facilities not subject to independent or external oversight. By visiting places where women are held—or may be held—monitoring groups perform this crucial function.

The continuous violation of the rights and legitimate interests of women held in correctional institutions indicates the necessity of constantly developing, improving, and strengthening legal safeguards for their implementation and protection. One of the main

forms of such safeguards is the supervision of institutions and bodies responsible for the execution of sentences.

According to Article 5 of the Internal Disciplinary Rules of Correctional Institutions, the Minister of Justice of the Republic of Azerbaijan and the Head of the Penitentiary Service have the authority to inspect (supervise) the activities of correctional institutions. Alongside such supervision, it is also of particular importance to allow various entities to visit correctional institutions. These matters are regulated by Article 22 of the Criminal-Executive Code. Among the entities, the Ombudsman and the National Preventive Group have been granted broader powers – including the right to enter such institutions without prior notice and at any time. However, we believe that it is essential to further improve monitoring activities in order to ensure the protection of the rights and freedoms of all prisoners, especially female inmates. In this regard, literature notes that monitoring detention conditions requires certain professional skills. Therefore, it is particularly important for the monitoring group to include not only individuals with legal knowledge but also medical professionals. In our opinion, the monitoring groups should also include psychologists and educators, and such monitoring activities should be organized on a regular basis.

Through the inspection of relevant regulations, procedures, and practices, monitoring groups help identify shortcomings and gaps in detention conditions and develop recommendations aimed at addressing these deficiencies. Such efforts contribute to the implementation of institutional reforms and the adoption of best practices to reduce the risk of torture and cruel, inhuman, or degrading treatment.

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CHARACTERISTICS OF GENERAL AND SPECIAL LAW AND THE BASIS FOR THEIR DISTINCTION

Roya Mirtalibova*

Abstract

This article explores the distinction between public law and private law, which constitutes a fundamental element in the structural classification of legal systems. The relevance of the topic stems from the fact that the correct identification of whether a legal relationship falls under public or private law is not only of theoretical significance, but also directly affects legal practice, including the applicable legal norms, procedural mechanisms, available legal remedies, and most importantly, the determination of which court has jurisdiction over the dispute. Particularly in legal relations involving public authorities and private individuals, the lack of clear boundaries between public and private law gives rise to jurisdictional conflicts and divergent legal interpretations. The article provides a comparative analysis of the historical development and conceptual foundations of public and private law within various legal traditions, especially focusing on civil law and common law systems. Furthermore, it examines the legal framework and judicial practice in the Republic of Azerbaijan, identifying specific instances in which the distinction becomes practically significant and legally complex. The study emphasizes the need for stronger theoretical underpinnings, more systematic treatment in legal education, and clearer legislative criteria to delineate public and private legal spheres. It concludes that establishing precise legal criteria for distinguishing public and private law, and ensuring uniform interpretation in judicial practice, would enhance legal certainty, protect the integrity of legal processes, and contribute to the efficient regulation of legal relations. The research employs methods of systematic analysis, comparative legal study, and normative legal interpretation.

Keywords: *legal relations, court, administrative procedure, public law, jurisdiction, citizen, subordination, law.*

1. The history and necessity of the division into general and special law

A recurring issue in legal practice is the uncertainty that arises when the legal nature of a relationship is not properly assessed at the outset. This can lead to misdirection of legal claims, whether to administrative courts or to courts of general jurisdiction and may result in procedural delays, annulment of decisions, or ineffective legal protection [1, p. 391].

First of all, the division of general and private law was formed in the stages of development of legal theory and systematized over time in accordance with the nature of legal relations. The main historical roots of this division lie in Roman law, and it was during this period that the need arose to classify legal relations according to whether they serve state interests and private interests [6, p. 14].

The division of general and private law was first systematically formed within the framework of Roman law, and in the formation of this division, along with the social and political structure of the Roman state, the objective necessity for the regulation of legal relations played a decisive role. In ancient Roman society, the concept of law was understood not only as a set of legal norms, but also as a means of protecting public order and regulating relations between individuals. In this regard, the classification of legal

* PhD Candidate in Law, State Cadastre and Register of Real Estate, Baku Territorial Department No. 1 of the public legal entity, Legal Department, email: royalmiriyeva@gmail.com

relations according to whether they were directed towards the interests of the state or the interests of individuals arose from objective necessity [4, p. 34].

In the classical period of Roman law (1st century BC - 3rd century AD), according to the classification put forward by the famous Roman lawyer Domitius Ulpianus, law was divided into two main categories: "ius publicum" and "ius privatum". Ulpian's famous expression accurately reflects the legal philosophy of this division: "Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem." That is, "General law concerns the state of the Roman state, and private law concerns the interests of individuals." This division was based not only on the objective content of the legal relationship, but also on the functional purpose of the law [5, p. 312]. Ius publicum general law, covered the areas of law regulating the organizational structure of the state, the activities of the governing bodies, the system of religion and cult, public order, tax and administrative relations. In this area, the state, which was a participant in legal relations, had a will superiority, and the principle of equality was not applied in these relations. It is for this reason that the violation of the general law norm was socially dangerous, and the mechanisms of punishment were directly related to the sovereign power of the state. This created a conceptual basis for the formation of the criminal and administrative law areas in the future [5, p. 65].

On the other hand, ius privatum (private law) regulated the relations arising between persons with equal legal status. According to this area of law, it was intended that persons could conclude contracts, acquire property, establish family and inheritance relations in accordance with their will. In these relations, the state only served as a guarantor of law and an arbiter of disputes, but did not participate directly between subjects. Thus, private law played the role of a system that formed the legal foundations of private property and individual freedoms and limited the state's ability to intervene in relation to law.

In Roman law, this division was not only a theoretical construct, but also permeated the processes of law application and codification. The development of such areas of law as ius civile, ius gentium, and ius honorarium took place within this division, and special legal relations developed especially within the framework of ius civile, while ius publicum was reflected more in the legislation of the senate and the emperor. The process of codification of Roman law - most clearly in the Corpus Juris Civilis collection compiled in the 6th century at the initiative of Emperor Justinian - systematized this division and turned it into the main methodological structure of legal teaching.

This division of general and private law was later revived by the study of Roman law in medieval universities, especially in the Bologna law school, and became a fundamental structural principle of European legal systems. Thus, this classification, formed in Roman law, became an integral element of legal theory until the modern era and was one of the main mechanisms ensuring normative specialization in the application of law. This classification was later developed in the legal system of the Byzantine Empire and substantiated in Justinian's "Corpus Juris Civilis". Here, the concepts of general and special law played an important role in further specifying the scope of application of law and creating a typological classification of legal relations.

In the middle ages, the ius commune system developed in European legal traditions, especially in the 12th-13th centuries during the teaching of law at the University of Bologna. The division of general and special law in this system emphasized the universality of law and its difference from local legal norms. In the modern era, along with the development of legal science and the formation of a legal state, the hierarchical

structure of legal systems has become more complex. At this stage, the boundaries of general and special law have become more clearly defined, and with the expansion of the administrative functions of the state, the need arose to form administrative law as a separate field from special law. In modern legal systems, especially in continental law, the concept of general law encompasses the general principles and rules of law, and special law encompasses the private normative systems of different areas of law. This requires specific approaches in legislation, judicial practice and legal education.

Thus, the historical development of the division of general and special law has emerged as a necessary legal tool for the structuring of law and the effective regulation of legal relations. This division both strengthens the theoretical and legal basis and serves to clarify relevant issues in the practical application of law. The division of general and special law is of great importance in terms of the systematic structuring of law and the correct regulation of legal relations. This division allows you to determine the area of law to which the legal relationship belongs, which in turn plays a key role in determining which court the dispute will be considered in. For example, a dispute arising between a citizen and an administrative body should be submitted to an administrative court, not a general court. This is based on the specific recognition of the relationship as an administrative law relationship. If the legal relationship is not correctly classified, the dispute may be considered in the wrong court, which leads to ineffective legal protection and a delay in the process.

In general, the correct determination of the jurisdiction of the court is important for the practice of applying law, since then it becomes possible to correctly select legislative acts and in general, the correspondence of theory and practice increases the effectiveness of the legal system. Therefore, the distinction between general and special law serves to reconcile theoretical knowledge with legal practice. The accuracy and clarity of this division is also important in legal education, because it allows students to correctly understand the characteristics and areas of application of various areas of law.

Although the division of law into general and specific areas is accepted as one of the fundamental principles of classical legal theory, a number of well-known legal theorists have argued that it is inappropriate to apply this division in the structuring of legal science in general and have opposed the principle of division. The formation of such opposing approaches has emerged primarily as a result of the requirements for a systematic and analytical approach arising from the complex and dynamic nature of law, and is justified by the idea that explaining law only with a dual structure is incomplete both theoretically and practically.

One of the main arguments of theoretical approaches opposing the traditional division is based on the concept that law is a single and indivisible normative system and that artificially dividing such a system into separate categories contradicts the general goals and functions of law. Theorists speaking in this direction, including some representatives of the German legal school, have evaluated the division of law as a conceptual framework that was formed only in a historical and sociological context, but does not meet the requirements of modern legal systems. In this regard, theorists such as lawyer Rudolf von Ihering By highlighting its social-functional character, he took the degree of service of law to society and its development as the main criterion in the classification of law, and criticized the division of law into general and specific parts as an abstract and normative-schematic approach. According to Ihering's approach, law is a means of social regulation, and its division serves not to fulfill this function, but, on the contrary, to dogmatize legal thought.

At the same time, in modern legal philosophy, especially in postmodern legal theories, it has been suggested that the normative structures of law are not stable and unchangeable, but rather are formed as contextual and social constructions. In this regard, it has been emphasized that any division of law is not absolute, but relative in nature, and instead of the public-private dichotomy of law, functional, cross-sectoral or problem-based classification forms have been proposed. Some lawyers opposed this division and criticized it as a product of positivist legal theory. In their opinion, the explanation of law with a normative content based only on the will of the state ignores its social, ethical and economic functions. In this regard, the classification of law into public and private rather than a deeper analysis of the transitions, interactions, and sociological realities between normative and non-normative legal relations should be preferred.

Another important argument is that in modern times, many areas of law, for example, environmental law, tax law, corporate law, digital law, etc. has the character of a hybrid or mixed regulation that does not fit into the framework of the classical division. Thus, in these areas, both state interests and the rights of private subjects exist at the same time, and in these relations there is neither complete dependence nor complete equality. For this reason, the dual division of law cannot adequately express the legal essence of such new relations, and more flexible legal methodologies are needed. In addition, the division of law into general and special parts encourages artificial legal formalism in some legal systems and creates difficulties in the practical application of law. For example, in some cases, it is necessary to apply both general law and special law norms to a legal relationship at the same time, but in this case there are no clear and unambiguous criteria regarding which legal regime should prevail. This can lead to legal uncertainty, contradictions in the activities of law enforcement agencies, and legal inequality.

In addition to the above, a number of lawyers have proposed to accept the division of law into general and special areas only as a theoretical and technical tool in terms of legal teaching and systematization. In their opinion, this division is independent does not have a legal nature and can only be used for the perception and organization of legal material, but such a strict division of legal relations themselves cannot be scientifically justified.

As a result, theoretical positions opposing the division of law into general and specific areas are becoming increasingly relevant against the background of the evolution of legal science and the increasing complexity of legal relations. These approaches suggest that law is a dynamic system that should be analyzed not only on formal categories, but also on social, contextual and functional grounds, and encourage the development of legal doctrine in a more adaptive, pragmatic and consistent with real life. In this regard, positions opposing the division can be regarded as a manifestation of legal modernity and the need for renewal of legal science.

II. Legal criteria for distinguishing between general and private law

One of the main issues at the center of scientific discussions on the classification of legal relations and their essence has been the division of law into general (public) and private (private) spheres, as well as the scientific substantiation of the criteria used in determining this division. This division is not only theoretical in nature, but also of great importance in terms of determining specific legal regimes, the content of the state's law-making and law-enforcing activities, as well as the correct determination of the nature of legal relations between subjects. Although the issue of dividing law into general and private spheres seems simple at first glance, the diversity of conceptual and methodological approaches behind this

division, as well as the existence of different theories put forward to justify this division, indicate that this issue has a deep scientific and historical context.

The disagreements and mutual theoretical polemics that have formed among lawyers over the centuries around the issue of the division of law have become even more relevant, especially with the formation of medieval European law, starting from Roman law, as well as modern constitutional and administrative law theories. The idea of dividing law into general and private parts was first introduced in classical This dual division of law was put forward by the Roman jurist Ulpian and was assessed by him as an attempt to distinguish between norms and institutions expressing the interests of the state and norms and institutions regulating the interests of individuals. This division of Ulpian became the main structural element of subsequent legal teachings and an important reference point in the development of legal systems.

However, over time and with the multifaceted nature of legal relations, the division of law into two parts according to the Ulpian division was not enough. In some cases, legal relations are regulated neither by completely general nor by completely special legal norms. Taking into account this reality, a number of lawyers emphasized the need to put forward additional criteria and theoretical constructs to determine the division of law, and numerous scientific approaches were formulated in this area. The necessity of the emergence of these approaches arose primarily from the need for a correct and systematic classification of the nature of legal relations. In terms of practical law application, the consequences of attributing a legal relationship to general or special law lead to the application of different legal regimes, legal Since it leads to the type of liability, the determination of the instance where legal disputes will be considered, and other important legal consequences, the precise determination of this issue is considered important in terms of the integrity and effectiveness of the legal system. In addition, the division of law into general and special areas also plays a fundamental role in clarifying the nature of legal regulation tools. While general law usually includes norms that express the will of the state, are normatively binding, and necessarily determine one side of legal relations as the state or a body authorized by the state, special law regulates relations between equal subjects based on the principles of free will and freedom of contract.

The formation of existing theories on the division of law into these two areas was also closely related to the development of the philosophical foundations of legal science, the formation of scientific directions such as legal positivism, legal realism, and natural law. For example, the theory of the subject criterion, taking the participants in legal relations as a basis, attributed the relationship between the state and the citizen to general law, and the relationship between equal persons to the field of special law. In other approaches, regulation method, nature of interests, purpose of relations and other elements have been put forward as a justification factor.

The promotion of these different approaches is explained, on the one hand, by the rapid complexity of legal relations, and on the other hand, by the emergence of new areas of law - for example, economic administrative law, environmental law or digital law. These new areas necessitate a reconsideration of the classical principles of division and the application of more flexible and contextual approaches to the classification of law As a result, the application of different theoretical models in approaches to the problem of dividing law into general and specific areas demonstrates the dynamism and open nature of legal science, as well as acts as a fundamental factor ensuring the flexibility of the legal system. In this context, the parallel existence of different theories is not only an indicator

of disagreements, but also a sign of the potential for adaptation in accordance with the multidimensional structure of legal systems.

The distinction between general and special law has long been a hot topic of discussion in legal theory and practice, and various approaches and criteria have been developed to make this distinction. In order to determine the field to which a legal relationship belongs, several theories have been put forward in the legal literature, for example, the theory of subordination, the theory of interests, and the theory of subjects (as well as others).

The first approach is the theory of subordination. According to this theory, if one party in a legal relationship is legally subordinate to the other party and this relationship is not based on the principle of equality, but on the basis of subordination, this relationship belongs to general law. In other words, here one of the parties is the state or an authorized representative of the state, and the other is a subject legally subordinate to it [2, p. 44-47]. For example, the relationship between a citizen and a tax authority, or the relationship between a police officer who imposes an administrative fine and a citizen, falls under the general law field according to this criterion. However, the drawback of this theory is that in some cases, although the legal relationship contains an element of subordination, this relationship is not fully the subject of general law. For example, in the labor relationship between an employee and an employer, although the employee is in a certain sense subject to the instructions of the employer, this relationship belongs to labor law, that is, to the field of private law. This shows that the criterion of subordination is not always valid as an independent and universal basis for differentiation.

The second approach is the theory of interests. According to this theory, in order to determine which field of law a legal relationship belongs to, attention should be paid to what interests it serves [4, p. 35]. If a legal relationship is aimed at protecting general and public interests, it belongs to the field of general law. On the contrary, if the relationship is aimed at ensuring individual and personal interests, then the relationship is considered a subject of private law. For example, property donation, purchase and sale agreement, inheritance, debt relations and other such relationships are included in the field of private law because they serve personal interests. However, this approach also has certain shortcomings. Thus, in some cases, even if a legal relationship is established on a personal initiative, it can serve general interests. For example, although a citizen's creation of a public fund, establishment of a political party or establishment of a public association are based on the subjectivity of personal law, general and public goals are at the forefront in these relations. This also prevents the unambiguous application of the criterion of interests.

Another approach is the theory of subjects. According to this theory, whether a legal relationship belongs to general or special law depends on its participants - that is, its subjects. If one of the parties in a legal relationship is the state or an agency acting on behalf of the state, the relationship belongs to the field of general law. On the contrary, if the participants in the relationship are only individuals and legal entities, and the state does not act as a party with a willful advantage, this relationship is included in the subject of special law. For example, according to this theory, the relationship between the tax authority and the entrepreneur belongs to general law, and a lease agreement concluded between two citizens belongs to special law. However, this theory is not absolute either. Thus, not all relations in which the state participates can be attributed to general law. For example, when selling or leasing state-owned real estate, it acts as a commercial entity and the relationship has the character of a classical civil law relationship.

Although each of these theoretical approaches contains useful points for determining the affiliation of legal relations to general or special law, none of them can be fully applied in legal practice as an independent and universal criterion. In some cases, these criteria overlap and complement each other, and in some cases, one excludes the other. Therefore, a complex and systematic approach is required to correctly determine the legal nature of a legal relationship.

In the Resolution of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the interpretation of Articles 2.0.1 and 2.0.2 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", it was clearly established that the distinction between general and special legal relations is the main criterion for determining the jurisdiction of legal relations [7]. In this Resolution, the Constitutional Court considered it necessary, first of all, to assess the legal essence and legal nature of a legal relationship in order to determine whether a legal relationship should be considered within the framework of administrative proceedings.

Thus, the field of law to which the dispute that has arisen between the parties belongs determines in which court it should be considered, and here, one should proceed from the content and nature of the legal relationship, not from formal criteria. The Resolution indicates that the belonging of legal relations to general or special law should be determined not by their form, but by the basis of their emergence. That is, the legal basis on which the subject of the dispute and the legal relationship between the parties arose, the relevance should be determined accordingly. In this context, it is noted that even if one of the parties is a state body or a state-owned legal entity, if the legal relationship that has arisen is formed on the basis of a contract and this contract can be attributed to the subject of civil law, such a relationship belongs to the field of special law and falls within the jurisdiction of general courts. In that Decision, the legal nature of the dispute arising from the relationship regarding energy supply in a specific case was examined and it was determined that the dispute that arose between a citizen and an energy supplier - a legal entity - arose from a civil law contractual relationship [3]. In this relationship, there are no elements of subordination of administrative authority. The Court concluded that since the dispute arose on the basis of a contract, this relationship should be attributed specifically to civil law and the dispute should be considered in a general court, not an administrative court.

Thus, the aforementioned Decision of the Constitutional Court once again confirms that the belonging of a legal relationship to general or special law is determined not by the identity of its parties, but by the legal nature of that relationship and the legal basis for its emergence. This approach, in addition to being a practical confirmation of the application of the theories of differentiation between general and special law, also acts as one of the main structural criteria of normative law in terms of the correct and objective resolution of relevant issues [9].

Based on the generalization of the obtained analyses, it is possible to conclude that the issue of whether a legal relationship belongs to the general or special field of law should be determined in a comprehensive manner, not only on the basis of formal criteria, but also on the basis of its legal essence, the basis for its formation, the purpose of regulation and the nature of the legal relationship between the subjects. This distinction serves as a fundamental subject not only for theoretical considerations, but also for practical application of law, in particular, for the correct determination of the jurisdiction of the court and the normative acts to be applied. According to the legal position of the

Constitutional Court, the fact that one of the parties to a legal relationship is a state or a public legal entity does not necessarily mean that the relationship belongs to administrative law. If this relationship is based on a civil legal basis, for example, a contract, and there is no element of subordination, then it should be assessed as a special law relationship and general court jurisdiction should be applied.

Therefore, in distinguishing between general and special law relationships, along with a number of theoretical criteria, the source of the formation of the legal relationship, the status of the participants and the legal nature of the interests should be carefully examined. Law enforcement authorities should then approach each legal invoice and context individually, applying existing legal doctrines, case law and regulatory acts with a comprehensive assessment. [8, p. 56-59]. Only in this case can the precise legal nature of the legal relationship be determined and adequate legal mechanisms be activated.

III. Summary

Based on the obtained scientific results, it was concluded that the issue of distinguishing between general and special law is quite complex and multidirectional in modern legal doctrines and legal practice, both theoretically and practically. The correct determination of the area of law to which legal relations belong is of fundamental importance not only for the scientific construction of legal systematics, but also for determining in which court specific legal disputes should be considered, which normative act should be applied, which legal regime should be applied, and finally, the characterization of legal remedies. For this reason, the issue of whether a legal relation belongs to general or special law should be considered not as an isolated independent issue in legal theory, but as a methodological problem that requires a complex analysis, closely related to the mechanisms of law application.

The study showed that although modern legal science has formulated various theoretical criteria for explaining this division, none of them is universal, and therefore the differentiation should be carried out not only on the basis of one criterion, but as a result of a comprehensive, multi-plan and systematic analysis of the legal nature of the legal relation. Although the theory of subordination, the theory of interests and the theory of subjects have a certain explanatory power in the relevant contexts, the separate application of these approaches sometimes gives rise to legal contradictions. For this reason, it is necessary to develop integral and normative approaches for differentiation in legal theory.

The assessment of the relevant legal situation has also been reflected in the precedent-based decisions of the courts, and the importance of applying key factors such as the nature of the legal relationship, the basis for its formation and the purpose of regulation as criteria has been emphasized. At the same time, the failure to codify these criteria as a separate legal standard in the normative legal environment leads to uncertainties and different interpretations in the application of law in practice.

In this regard, it is proposed that:

- Fundamental legal studies devoted to an in-depth analysis of classical and contemporary theories on the distinction between general and special law should be given priority, and legal doctrines should be systematically re-evaluated;

- The legal approaches of foreign countries, especially Germany, France, Italy and the European Court of Human Rights, should be involved in comparative analysis and their differentiation criteria should be systematized by adapting them to the Azerbaijani legal system;

- The specific criteria and criteria for attributing a legal relationship to general or special law should be reflected in the Law “On Administrative Proceedings” and other relevant normative acts in a precise and normative form in terms of legal technique;
- Methodological tools for lawyers, judges and other persons practicing law, specialized commentaries, legal publications based on precedent analysis should be prepared and made available to the legal community;
- Scientific and practical conferences, seminars and training programs on this issue should be held within the framework of legal awareness measures, and these issues should be systematically integrated into the curricula for law students;
- Finally, in order to form a general and stable legal approach that determines which area of law a legal relationship belongs to, the legal positions of the Supreme Court and the Constitutional Court should be brought together and normative explanatory acts should be encouraged.

The implementation of these measures will facilitate the correct assessment of the content and forms of legal relations, the prediction of the application of law, and the provision of legal certainty, and ultimately will create conditions for the systematic nature of law and the effective implementation of the principles of the rule of law.

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MEDICAL COERCIVE MEASURES AGAINST LEGALLY IRRESPONSIBLE PERSONS: COMPARATIVE STUDY OF NATIONAL AND EUROPEAN STANDARDS

Lala Mammadova*

Abstract

This article examines the procedural and legal standards governing the application of medical coercive measures against offenders who are deemed legally irresponsible due to mental disorders. Focusing primarily on the Azerbaijani context, the study analyzes relevant provisions of the Criminal Code and the Code of Criminal Procedure, including judicial practice, Supreme Court decisions, and Plenum resolutions such as the 2012 therapeutic intervention guidelines. By exploring these instruments, the article highlights the mechanisms available for balancing public safety with the rights and medical needs of individuals who are not criminally responsible. In parallel, the article considers European legal frameworks, with particular emphasis on the standards established by the European Court of Human Rights and national legislations of selected European countries. This comparative approach allows for the identification of best practices, procedural safeguards, and the ways in which European states reconcile the protection of human rights with societal interests in security and crime prevention. Through a critical comparison of Azerbaijani and European approaches, the study identifies gaps in national legislation, inconsistencies in procedural implementation, and challenges faced by judicial authorities in applying medical coercive measures. The findings underscore the necessity of harmonizing Azerbaijani law with international human rights standards, ensuring both effective protection of society and respect for the fundamental rights of legally irresponsible offenders. The article concludes with policy recommendations and legal reform proposals aimed at strengthening the procedural framework, enhancing judicial oversight, and promoting a rights-compliant approach to medical coercive interventions. By bridging the gap between national practice and European standards, the study contributes to the broader discourse on human rights protection, criminal justice reform, and the ethical treatment of mentally disordered offenders.

Keywords: *public dangerousness, elements of a crime, objective aspect, criminal omission, criminological characteristics, passive conduct, criminological prevention, latent crime.*

I. Introduction

The intersection of criminal law and mental health represents one of the most sensitive and complex areas in contemporary jurisprudence. Offenders deemed legally irresponsible due to mental disorders present unique challenges for judicial authorities. On the one hand, society has a legitimate interest in preventing recidivism and ensuring public safety; on the other hand, the protection of individual rights, access to medical care, and the provision of therapeutic interventions remain paramount. Striking an appropriate balance between these considerations is critical for maintaining both legal legitimacy and societal trust in the justice system.

In Azerbaijan, the Criminal Code and the Code of Criminal Procedure provide specific provisions for the application of medical coercive measures to individuals who are not criminally responsible. Judicial practice, including decisions by the Supreme

* PhD in Law / Lecturer, Faculty of Humanities and Social Sciences, Karabakh University / Lecturer, Department of Criminal Procedure, Faculty of Law, Baku State University, email: lala.mammadova@karabakh.edu.az

Court and Plenum resolutions such as the November 8, 2012 therapeutic intervention guidelines, plays a crucial role in clarifying the legal framework and ensuring its practical implementation [14]. Despite these mechanisms, challenges persist, including procedural inconsistencies, gaps in legislative regulation, and occasional tensions between ensuring public safety and safeguarding the rights of mentally disordered offenders [14].

From an international perspective, the practices of European countries and the jurisprudence of the European Court of Human Rights provide valuable insights. European standards emphasize the necessity of procedural guarantees, proportionality, and continuous judicial oversight when applying coercive medical measures. These principles serve as benchmarks for evaluating and improving national systems, highlighting opportunities for harmonization with international human rights norms.

This article aims to conduct a comprehensive comparative analysis of Azerbaijani and European procedural standards regarding medical coercive measures. It examines legislative provisions, judicial interpretations, and practical challenges, with a view to identifying gaps, highlighting best practices, and proposing concrete legal reforms. The study ultimately seeks to contribute to the development of a coherent, rights-compliant framework in Azerbaijan, balancing the protection of society with the fundamental rights of individuals who are legally irresponsible.

II. Legal Framework in the Republic of Azerbaijan

2.1. Concept and Significance of the Procedure for the Application of Medical Coercive Measures

According to the provisions of the criminal legislation of the Republic of Azerbaijan, medical coercive measures are applied by a court to individuals who suffer from a mental disorder and pose a danger to themselves or others, or to individuals who have committed a criminal offense and require treatment for alcoholism or drug addiction. These measures aim both to provide appropriate treatment to the individual and to ensure public safety.

Article 93 of the Criminal Code of the Republic of Azerbaijan identifies the categories of persons to whom medical coercive measures may be applied. The selection and implementation of these measures are tailored to the individual's psychiatric condition, level of mental health, and the degree of potential danger posed. The application of such measures is carried out solely on the basis of a court decision, which is guided by recommendations issued by the Plenum of the Supreme Court [2, p.456].

Under the Criminal Procedure Code, medical coercive measures may take the following forms: compulsory outpatient supervision and psychiatric treatment; compulsory treatment in general or specialized psychiatric hospitals; and compulsory treatment under intensive supervision in specialized psychiatric institutions. For individuals suffering from alcoholism or drug addiction, these measures are designed to facilitate therapeutic and social rehabilitation.

Articles 467.1–467.11 of the Criminal Procedure Code regulate the duration, extension, and termination of medical coercive measures, as well as their judicial enforcement. The duration of measures is determined on an individual basis, and may be extended or terminated every six months based on the opinion of a medical-psychiatric commission. Time spent under inpatient treatment is credited toward any subsequent custodial sentence [1, p. 176].

Azerbaijani legislation regulates the application of medical coercive measures in accordance with the principles of both protecting individual rights and ensuring public

safety. Nevertheless, certain gaps and procedural ambiguities exist in the law, which create challenges in practical implementation and underscore the necessity for additional legal measures to align with international standards.

2.2. Pre-trial and judicial procedure for the application of medical coercive measures

The pre-trial procedure for applying medical coercive measures, particularly for individuals who committed a crime while mentally incapacitated, is established under Articles 469 and 480 of the Criminal Procedure Code. This procedure is conducted in the form of a preliminary investigation and is intended to protect the rights of mentally incapacitated offenders and to determine the specific subject matter of evidence.

During the pre-trial stage, the investigator or prosecutor makes decisions regarding the application of medical coercive measures. Persons entitled to participate in the proceedings include the individual subject to the measures, their defense counsel, and legal representative. If the individual's mental state prevents participation, this is documented, and the matter is referred to the court for resolution [6, 263].

The specific subject matter of evidence includes: details of the criminal act, the individual's mental state, behavior at the time of the act, and analysis of any harm caused. If the act was committed jointly with others, medical coercive measures are addressed in a separate proceeding.

In court, the public prosecutor presents the case for the application of medical coercive measures, the parties submit evidence, and the views of the defense counsel and legal representative are considered. The court assesses the degree of public danger posed by the individual and the necessity of the medical measures before issuing a decision.

Medical coercive measures are not criminal punishments; they are criminal-law-related measures aimed not at punishing or rehabilitating the individual but at providing treatment and ensuring public safety. Decisions regarding the extension, modification, or termination of such measures are made by the court of the jurisdiction where the measures were initially applied.

III. European legal standards and the procedural framework for medical coercive measures

The regulation of medical coercive measures in the context of criminal law and mental health is defined not only within national legislation but also under European and international legal norms. The Council of Europe and the European Court of Human Rights (ECtHR) play a pivotal role in shaping these standards, striving to balance individual rights protection with societal interests, particularly public safety and the prevention of harm. Articles 5 and 8 of the European Convention on Human Rights establish fundamental principles for the application of medical coercive measures: Article 5 permits deprivation of liberty only when legally justified, necessary, proportionate, and accompanied by procedural safeguards; Article 8 ensures that interference with private life—including involuntary medical treatment—is permissible only on a lawful basis, according to necessity and proportionality.

Case law from the European Court of Human Rights (ECtHR), notably *Stanev v. Bulgaria* (2012) and *Winterwerp v. Netherlands* (1979), highlights the fundamental importance of judicial oversight, individualized assessment, medical necessity, and the right to appeal in the implementation of medical coercive measures. In *Stanev v. Bulgaria*, the Court condemned the prolonged detention of a person with a mental disorder

without sufficient periodic review and individualized justification, emphasizing that the lack of continuous judicial supervision constitutes a violation of Article 5 of the European Convention on Human Rights [8]. Similarly, in *Winterwerp v. Netherlands*, the ECtHR stressed that institutionalization based on mental illness must rely on proper medical diagnosis, continuous evaluation, and safeguards against arbitrariness. These cases collectively demonstrate that insufficient procedural protections, including inadequate individualized evaluation or failure to respect informed consent, infringe upon fundamental human rights [9].

Moreover, the Council of Europe's Committee of Ministers has recommended that member states harmonize national legislation with European standards by ensuring robust protection of individual rights, periodic review of compulsory measures, adherence to medical and ethical principles, and the availability of effective appeal mechanisms. Integrating these jurisprudential principles into domestic legal frameworks is essential to balance public safety concerns with the protection of the rights and dignity of persons subjected to medical coercive interventions [15, p. 1230].

The practical implementation of medical coercive measures varies across European countries due to differences in legal traditions, healthcare systems, and human rights protection frameworks. In Germany, involuntary psychiatric treatment is regulated under the Mental Health Acts, requiring judicial authorization and regular evaluation, guided by the principle of the "least restrictive intervention." In France, the law permits compulsory hospitalization only when an individual poses a real danger to themselves or others, considering medical, legal, and social factors; during implementation, family members are informed, and judicial review is periodically ensured. In the United Kingdom, the Mental Health Act allows involuntary treatment solely on grounds of necessity, with applications reviewed by Mental Health Tribunals. In Italy, community-based alternatives, regular judicial supervision, and proportionality principles play a central role; compulsory measures require court authorization and systematic individualized assessment. Other European countries, such as Spain, the Netherlands, and Sweden, adopt similar procedural safeguards, emphasizing judicial oversight, periodic review, proportionality, and individualized evaluation as core principles.

Comparative research indicates that the effective regulation of medical coercive measures requires several essential conditions. Measures must serve security and preventive objectives; the purpose and duration of application should be clearly defined; treatment and monitoring procedures must be accompanied by safeguards against abuse, including judicial oversight, periodic review, appeals, and compensation mechanisms. Experiences from countries such as Australia, Japan, China, South Korea, Brazil, and Nicaragua provide additional insights, including age-specific safeguards regarding criminal responsibility, legal regulation of specialized institutions for compulsory treatment, and precise application of proportionality and necessity principles [6]. These international and comparative experiences offer valuable guidance for aligning national legislation with European and international human rights standards, enhancing procedural transparency, and strengthening the legitimacy and effectiveness of medical coercive measures within the context of criminal law.

IV. International experience in the application of compulsory medical measures for mentally ill offenders

The history of international cooperation, particularly in the field of criminal and criminal-procedural law, including the responsibility and treatment of individuals with mental health issues who have committed crimes, spans a considerable period. A critical analysis of how different countries address this issue has enabled the identification of how national legislation regulates the application of compulsory medical measures for mentally ill or disordered offenders. The application of such compulsory medical measures remains highly relevant today, as the international community monitors this area, taking into account certain abuses of authority that occurred during the former USSR era [13, p. 205].

International legal instruments governing the investigation of criminal proceedings involving the application of compulsory medical measures generally conform to widely accepted principles and norms of international law. These norms are enshrined, in particular, in the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights and Fundamental Freedoms, the 1955 Standard Minimum Rules for the Treatment of Prisoners, the 1966 International Covenant on Civil and Political Rights, the 1985 UN Beijing Rules on juvenile justice, and other international treaties and instruments.

UN General Assembly Resolution 46/119 of 18 February 1992 emphasized that national legislation should provide ethical, legal, and medical safeguards for the protection of mentally ill individuals. These safeguards include treatment methods, protection against the uncontrolled use of advanced scientific techniques in psychiatry that modify human behavior during the implementation of compulsory medical measures, and other forms of treatment.

It is noted that many countries' national legislation considers state intervention in the private lives of individuals permissible only when it aims to protect the health of mentally ill persons and the personnel providing care. This approach is further reinforced by the Council of Europe Committee of Ministers Recommendation R(83)2 of 22 February 1983.

Azerbaijani legislation also takes these international standards into account by incorporating provisions in Articles 93–99 of the Criminal Code that establish liability for violations of legal and medical principles governing psychiatric care. These provisions serve as preventive measures against potential abuses, ensuring that physically healthy individuals are not wrongfully subjected to psychiatric institutions.

The right to mental health is intrinsically linked to the right to life and legal capacity. Mental illness does not deprive a person of these rights. However, mental disorders can sometimes pose a threat to the life and health of others, thereby justifying the application of compulsory medical measures. The isolation, treatment methods, and legal protection of mentally ill individuals within the criminal-procedural framework remain subjects of intense debate in contemporary practice.

The purpose of this research is to improve national legislation and law enforcement practices. To this end, the experiences of various countries, particularly regarding the application of compulsory medical measures, have been analyzed. In most jurisdictions, such measures are considered security measures and are applied to individuals exempted from criminal responsibility.

For instance, in European civil law countries such as Germany, Poland, Spain, Italy, Greece, Portugal, Belgium, Austria, Switzerland, Russia, post-Soviet states, Israel,

Australia, Brazil, Nicaragua, and Argentina, as well as in common law countries such as England and the United States, these measures are applied. In contrast, in Japan, China, South Korea, and Thailand, although compulsory medical measures are recognized, they are regulated outside criminal law, often through civil or administrative law frameworks.

Under Article 39 of the Japanese Criminal Code, acts committed by persons with mental disorders are exempt from punishment. Australian legislation exempts individuals from criminal responsibility if, due to mental illness, they could not comprehend the nature and wrongfulness of their actions; however, specific provisions apply to children aged 10–14 regarding subjective awareness of wrongdoing [10, p.208].

Similarly, legislation in China, South Korea, and Brazil establishes specific rules on the criminal liability of mentally ill persons. In Nicaragua, specialized medical institutions are established to implement compulsory medical measures [4].

Thus, examining the experience of foreign countries regarding compulsory medical measures highlights both the positive and negative aspects of this legal institution. It also confirms the importance of: (a) treating such measures as a form of security measures, (b) standardizing the terminology of compulsory medical measures, (c) clarifying the objectives of these measures, and (d) combining compulsory measures with guardianship, judicial restrictions on alcohol access, use of medications to reduce sexual potential, and other control mechanisms.

V. International legal framework for the application of compulsory medical measures

The primary international legal instruments regulating the application of compulsory medical measures include the Universal Declaration of Human Rights (1948), the European Convention on Human Rights and Fundamental Freedoms (1950), the Standard Minimum Rules for the Treatment of Prisoners (1955), the International Covenant on Civil and Political Rights (1966), and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985).

It has been established that the legislation of many countries incorporates provisions in line with the Principles for the Protection of Persons with Mental Illness and the Improvement of Psychiatric Care. These principles are also reflected in Recommendation R(83)2 of the Committee of Ministers of the Council of Europe regarding the legal protection of involuntarily hospitalized individuals with psychiatric disorders, as well as in other international instruments, taking into account negative practices by law enforcement authorities in the former socialist bloc [3, p. 280].

Comparative legal research has allowed for the analysis of several legal systems, identifying both common and divergent features. This approach supports the argument for introducing specific norms into national criminal law and procedural legislation, consistent with the practices of foreign countries concerning the application of compulsory medical measures.

In most foreign jurisdictions, cases involving compulsory medical measures are treated as a type of other criminal-legal or procedural measure, that is, preventive state measures applied to mentally ill individuals deemed dangerous, and are generally considered security measures. Such measures are reflected in the legislation of European Union countries, Nicaragua, and Brazil.

In contrast, in countries such as the People's Republic of China, Japan, the Republic of Korea, and other jurisdictions, compulsory medical measures have been removed from criminal law and are instead regulated by civil or administrative law frameworks [5, p.

276]. Their implementation is conducted under civil or administrative, rather than criminal, proceedings. From a doctrinal perspective, this approach raises concerns regarding: (1) establishing the guilt of a specific person for a specific criminal offense; (2) confirming through forensic psychiatric expertise that the individual was legally insane at the time of committing the offense; and (3) ensuring that the court, rather than another authority, decides on the application of compulsory medical measures. These requirements, in our view, can only be adequately addressed within the framework of criminal law and criminal procedure, rather than through other branches of law.

The international community actively monitors these issues regarding the implementation of corresponding international legal instruments in Ukraine. In particular, the European Court of Human Rights (ECtHR) ensures compliance with human rights and fundamental freedoms under the Convention and pays special attention to complaints arising in criminal proceedings of this category.

For instance, in the case of *Haidn v. Germany* (Application No. 6587/04, decision of 13 January 2011, final decision of 13 May 2011) and *H. v. Finland* (Application No. 34806/04, decision of 3 July 2012), the Court established that, to achieve the objectives of subparagraph “e” of paragraph 1 of Article 5 of the Convention, a person may be deprived of liberty or detained as a mentally ill individual for psychiatric examination only if three minimum conditions are met: (1) a competent authority, based on objective medical expertise, reliably determines that the individual is mentally ill; (2) the mental disorder requires mandatory isolation; and (3) the continuation of isolation depends on the persistence of the mental condition [11, p. 178].

The Court further specified that such detention or hospitalization is considered lawful for the purposes of subparagraph “e” of paragraph 1 if it is carried out in a hospital, clinic, or other suitable treatment facility. These ECtHR decisions complement and clarify the existing national legal framework and the practices of investigators, prosecutors, and courts regarding the issues raised in this study, and contribute to the development of Ukrainian criminal law theory, criminal procedure, and law enforcement practices. Nevertheless, the questions raised are not fully resolved and require further consideration.

VI. Conclusion

The comparative analysis of national practices regarding compulsory medical measures clearly demonstrates that their effective and lawful application requires careful integration within the criminal law framework. Jurisdictions that retain these measures within the framework of criminal law, supported by independent judicial oversight and comprehensive forensic psychiatric assessments, strike a careful balance between safeguarding public safety and protecting the rights of individuals with mental health disorders. Conversely, systems that remove compulsory medical measures from the criminal law context and place them under civil or administrative jurisdictions risk undermining procedural safeguards, weakening transparency, and increasing the potential for arbitrariness or misuse.

A key finding from the analysis is that compulsory medical measures should serve dual objectives: preventive and therapeutic. As preventive tools, they ensure that individuals who pose a risk to themselves or others are appropriately managed, thereby protecting society. Simultaneously, as therapeutic interventions, these measures aim to address the offender’s mental health needs through evidence-based treatment protocols.

Countries such as Germany, Australia, and the United States exemplify this integrated approach, combining judicial authorization with medical oversight, structured treatment plans, and ongoing evaluation to ensure proportionality and necessity.

Standardization is another essential aspect highlighted by the comparative review. Clear and uniform terminology, procedural rules, and assessment criteria across cases and jurisdictions reduce legal ambiguities, prevent inconsistent application, and strengthen alignment with international norms [9, p. 7]. This includes establishing objective criteria for determining legal insanity, the necessity of compulsory medical intervention, and the duration and scope of such measures. Furthermore, age-specific provisions and tailored approaches for minors are critical, recognizing their limited capacity to comprehend criminal responsibility and the need for developmentally appropriate interventions, as exemplified by Australian legislation and similar provisions in other jurisdictions.

Effective implementation also relies on robust oversight and monitoring mechanisms. Regular judicial review, independent psychiatric evaluation, transparent documentation of treatment progress, and reporting systems are crucial to prevent abuse, ensure proportionality, and uphold the rights of mentally ill offenders. Lessons from jurisdictions such as China, Japan, and South Korea underscore the risks of regulating these measures outside the criminal law framework, where procedural protections may be insufficient, and the evaluation of mental health and criminal responsibility may lack consistency or legal authority.

In addition, the comparative study demonstrates that judicial authority must remain central to the decision-making process. Only courts, rather than administrative or civil authorities, can guarantee that the application of compulsory medical measures adheres to legal standards, respects fundamental human rights, and maintains legitimacy. Forensic psychiatric expertise should form the cornerstone of judicial decisions, ensuring that measures are based on reliable medical evidence regarding the offender's mental condition and the necessity of intervention.

Recommendations based on the comparative analysis include:

1. Integration within criminal law: Compulsory medical measures should remain embedded within the criminal law system to ensure proper establishment of guilt, application of forensic psychiatric evaluation, and judicial authorization. Removing them to civil or administrative domains risks weakening procedural safeguards and undermining legitimacy.

2. Judicial oversight: All compulsory interventions must be subject to independent court approval, ensuring transparency, legality, proportionality, and protection of human rights. Judicial review guarantees that measures are necessary and properly applied.

3. Standardization of procedures and terminology: Countries should adopt uniform legal definitions, procedural rules, and assessment criteria to minimize inconsistencies and ensure predictable and fair implementation.

4. Integration of therapeutic and preventive objectives: Compulsory medical measures should simultaneously address public safety concerns and the offender's mental health needs through structured, evidence-based treatment protocols.

5. Oversight and monitoring mechanisms: Clear mechanisms for reporting, supervision, and review should accompany compulsory measures to prevent misuse, maintain accountability, and protect the rights of individuals. These mechanisms may

include periodic judicial review, independent psychiatric oversight, and systematic documentation of progress.

In conclusion, maintaining compulsory medical measures within criminal law, coupled with rigorous judicial and medical oversight, provides a balanced, ethical, and effective approach. By integrating preventive and therapeutic functions, standardizing procedures, ensuring judicial authorization, and implementing transparent oversight mechanisms, states can protect public safety, uphold human rights, and enhance the legitimacy and effectiveness of compulsory medical interventions for mentally ill offenders. This approach ensures that the criminal justice system addresses both societal and individual needs, creating a comprehensive framework for responsible and humane management of offenders with mental health disorders.

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SMART CITIES PROJECT AND ITS EVALUATION IN THE CONTEXT OF LEGAL REGULATION OF CYBERSECURITY

Kamran Khalilov*

Abstract

The expanding integration of digital technologies into the physical and administrative layers of modern cities has brought the smart city model to the forefront of urban development strategies. These environments rely on sensor-based infrastructures, interconnected operational systems, and continuous data circulation, forming complex digital ecosystems that reshape how public services function and how urban resources are managed. Yet the same technological density that enables efficiency also amplifies exposure to security breaches, intrusive data practices, and governance uncertainties. This study explores the legal dimensions of safeguarding these digitally dependent urban systems, with particular attention to how cybersecurity requirements intersect with data protection, infrastructural reliability, and the rights of city residents. Drawing on international regulatory experience, especially European approaches that integrate cybersecurity obligations with structured data protection rules, the article evaluates the capacity of Azerbaijan's existing legal instruments to respond to the risks associated with smart city development. A comparative legal assessment reveals several gaps in national legislation, including fragmented responsibilities, limited procedural safeguards, and the absence of tailored norms for high-interconnectivity urban systems. Although Azerbaijan has established a baseline framework for information security and personal data handling, the operational complexity of smart infrastructures requires more adaptive, technically grounded, and enforceable regulatory measures. The article concludes by outlining direction-specific recommendations intended to strengthen legal resilience, refine cybersecurity governance, and support the secure and accountable development of smart city initiatives.

Keywords: *smart cities, cybersecurity governance, regulatory analysis, data protection, digital urban systems, Azerbaijan.*

I. Introduction

The rapid pace of urbanization, coupled with the growing complexity of metropolitan infrastructures and the widespread integration of digital technologies into everyday life, has transformed the "smart city" concept from a theoretical model into a practical urban development paradigm. Smart cities rely on the deployment of information and communication technologies (ICT), sensor networks, big data analytics, and artificial intelligence to optimize the functioning of transportation systems, public utilities, energy distribution, municipal governance, and a wide range of public services. This technologically enhanced model, however, inherently requires the continuous collection, processing, and interconnection of large volumes of data, thereby introducing substantial legal, ethical, and cybersecurity challenges [16].

The increasing digitalization of urban environments heightens the vulnerability of smart city ecosystems to cybersecurity incidents, unauthorized data access, system manipulation, and privacy violations. As international research demonstrates, highly interconnected infrastructures, particularly those involving real-time monitoring, integrated control systems, and automated decision-making processes can expand attack

* PhD Candidate in Law, Criminal Procedure Department of the Faculty of Law, Baku State University, email: kamran.khalilov.isa@bsu.edu.az

surfaces and expose residents to new forms of risk. Consequently, the development and operation of smart cities must be supported by robust legal frameworks that establish clear standards for data governance, cybersecurity safeguards, accountability mechanisms, and the protection of individual rights.

In Azerbaijan, the introduction of smart city and smart village policies has been formalized through governmental directives, reflecting the country's broader agenda of digital transformation and sustainable urban development. These initiatives aim to incorporate advanced technologies into public administration and urban infrastructure, yet their effectiveness largely depends on the adequacy of existing legal and regulatory structures concerning cybersecurity and data protection. Although national legislation establishes a foundational framework for information security and personal data governance, questions remain regarding its capacity to address the complex risk landscape associated with smart city environments, particularly in the context of large-scale sensorization, algorithmic decision-making, and cross-system interoperability.

Given these dynamics, this article aims to examine the regulatory dimensions of smart city development through the lens of cybersecurity and data protection. By analyzing international norms with particular emphasis on European Union regulatory approaches alongside Azerbaijan's national legislation and strategic policies, the study evaluates existing frameworks, identifies structural gaps, and explores opportunities for harmonization. The article proceeds by outlining the conceptual and technological underpinnings of smart cities, examining their threat landscape, assessing the legal safeguards required for secure and rights-respecting implementation, and offering a comparative review of international and domestic regulatory models. This analytical framework contributes to a more comprehensive understanding of how smart city initiatives can be implemented in a manner that is technologically efficient, legally coherent, and aligned with fundamental principles of security, transparency, and human rights [4].

The study is based on a combination of primary legal texts and secondary academic literature to analyze the legal and regulatory dimensions of smart city cybersecurity and data protection. Primary materials include Azerbaijan's national legislation, such as the Law on Personal Data (2010) [18], the Strategy of the Republic of Azerbaijan on Information Security and Cybersecurity for 2023–2027, [26] and related national standards governing digital infrastructure and ICT security. European Union legal frameworks were also considered, including the General Data Protection Regulation (GDPR, 2016/679) [10], the NIS2 Directive (2022/2555) [11] on the security of network and information systems, and the EU Cybersecurity Act (2019/881) [12]. In addition to legal texts, academic publications and institutional reports providing insights into smart city technologies, cybersecurity, and comparative legal frameworks were utilized. This combination ensures that both technological and legal dimensions of smart cities are considered in a comprehensive manner.

The methodology relies on comparative legal analysis, focusing on identifying and evaluating how existing laws address the challenges posed by smart city ecosystems. Legal provisions from Azerbaijan and the European Union were reviewed to assess the coverage of cybersecurity governance, data protection obligations, institutional responsibilities, and enforcement mechanisms. Each provision was coded according to its scope, level of obligation, mechanisms for compliance, and alignment with technological requirements. The study also developed a framework for comparison that

examines the adequacy of national legislation relative to international standards, highlighting gaps in accountability, risk management, and operational applicability.

The collected information was synthesized using both tabular and thematic approaches. Tabular analysis allowed for direct comparisons of specific legal provisions, while thematic synthesis helped identify broader patterns, structural gaps, and potential areas for reform [13]. This approach made it possible to evaluate not only whether Azerbaijani legislation addresses cybersecurity and data protection concerns, but also how it aligns with EU best practices, particularly regarding citizen rights, infrastructure security, and institutional coordination. By combining qualitative assessments of legal content with quantitative consideration of the comprehensiveness of regulations, the study produced evidence-based insights applicable to policymakers, urban planners, and cybersecurity professionals.

Overall, this approach provides a structured yet flexible methodology that bridges technology, law, and governance. It enables a clear understanding of how smart city initiatives can be supported by adaptive and enforceable legal frameworks capable of addressing the complexity of highly interconnected urban systems while ensuring compliance with both national requirements and international standards.

II. Understanding smart cities as a reality of the modern digital world.

A smart city is an urban development model in which information and communication technologies (ICT), sensor systems, analytical platforms, and digital decision-making tools are employed to optimize city management and service delivery. In this model, urban infrastructure elements operate in a coordinated manner, utilizing real-time data to improve efficiency, transparency, and accountability in governance. The core objective of smart cities is to enhance public services, increase resource efficiency, boost social welfare, and support sustainable urban growth [13].

Smart cities are complex socio-technical systems that integrate technological, social, and institutional dimensions. They are not merely collections of advanced technologies, but also ecosystems that facilitate data-driven governance, citizen participation, and inter-agency collaboration [15]. This comprehensive approach distinguishes smart cities from traditional urban frameworks and highlights the critical interplay between technology, policy, and human factors. The essence of smart cities lies in their capacity to provide coordinated and adaptive services based on large-scale data collection and analysis [7]. Integrated infrastructures enable predictive planning and real-time adjustments across sectors such as transportation, energy, public utilities, and emergency management. For instance, intelligent traffic management can optimize signal timings based on congestion patterns, energy grids can dynamically balance supply and demand, and public safety responses can be adjusted using real-time information.

Furthermore, smart city initiatives aim to enhance social engagement by enabling citizens to participate in decision-making through digital platforms and improving access to e-government services. Therefore, the essence of smart cities encompasses technological innovation, social dynamics, and institutional governance [3].

Smart cities represent an extensive framework that brings together multiple structural and functional components. According to a report issued by the European Parliament, and based on Cohen's conceptualisation, smart cities encompass six principal dimensions. These include smart people, smart governance, smart economy, smart mobility, smart environment, and smart living [6, pp. 131-132]. Within this framework,

smart living particularly emphasizes an urban setting in which residents can maintain their daily lives with no anxiety regarding personal security. Ensuring that individuals can move freely at any hour without fear for their safety, and that they can communicate effortlessly with others, stands as an essential requirement – and indeed a necessity – for a smart-living model free from security concerns [14, pp. 126].

For such an environment to emerge, smart security systems must deliver services that protect residents from adverse environmental conditions, accidents, and crime. These systems include technological infrastructures that secure urban spaces and roadways, rely on data analytics to identify individuals who threaten public safety through biometric technologies, reduce operational errors of security units, and provide large-scale warning mechanisms capable of disseminating alerts during potential natural disasters. Central to smart security is the capacity to anticipate potential security problems before they occur, enabling authorities to take pre-emptive measures based on proactive assessments. When incidents do occur, smart systems should ensure rapid information flows, enabling timely interventions. Equally important is enhancing the responsiveness of emergency-management systems and shortening reaction times through optimization techniques [21, p. 117]. Beyond crime prevention, smart security also entails the establishment of early-warning systems rooted in environmental monitoring, the protection of residents from crime and accidents, and the preservation of food and product safety, all of which contribute to healthier living conditions [4, p. 60].

Within smart cities, the creation of integrated governance models which supported by camera networks and digital urban security systems – aims to ensure efficient management of resources, risk, and operational processes under the supervision of law-enforcement bodies. Smart systems are expected to identify incidents, protect the security of collected data, archive high-volume audiovisual materials, and maintain an open architecture capable of future upgrades. Smart-security technologies include burglary-prevention mechanisms, alarm and access-control systems, advanced surveillance devices, fire-monitoring and response systems, disaster-tracking and warning technologies, suspicious-individual detection, under-vehicle scanning tools, dynamic video-search systems, crowd-density analysis, license-plate recognition, and biometric-based suspect identification, among other integrated applications [22, pp. 4-5].

The widespread adoption of such systems in smart cities aims to reduce crime rates by ensuring robust monitoring and identification capabilities. Biometric identification through smart-camera networks and license-plate recognition systems facilitates the prevention of criminal incidents. Placing biometric identification cameras at city entrances, major squares, and strategic intersections supports timely apprehension and transfer of offenders to judicial authorities [23]. Advanced urban-monitoring systems, real-time data-processing infrastructures, and persistent environmental sensors constitute essential elements for maintaining the livability of cities and ensuring the continued functioning of other smart-city technologies. Smart security technologies in this context may include: 1) Urban security systems capable of integrating environmental monitoring, road-safety functions, and product-safety mechanisms; 2) An integrated platform combining cloud-based large-scale data storage, retrieval architectures, intelligent video analytics, biometric systems, and advanced data-processing tools; 3) Enhanced bandwidth capacity to support diverse security applications and ensure seamless operation of smart systems, providing security personnel with reliable, science-

based decision-support mechanisms that minimize operational errors and guarantee effective functioning of the overall security architecture [1, pp. 17-18].

A secure smart-city environment depends on strong coordination among all urban stakeholders. The mere installation of digital and communication infrastructures does not suffice; without the integration of human, technological, and institutional components, the smart-security model remains incomplete. Therefore, residents, public institutions, civil-society organizations, businesses, and private security providers must cooperate within a shared governance mechanism. Smart-security mechanisms should be supported through highly sensitive systems, including mobile devices and complementary communication tools that enable continuous connectivity with central command units. Ensuring uninterrupted access to these centers in all conditions fosters residents' confidence in the system and strengthens public trust. As cities evolve into smart urban environments, smart-security technologies assume a critical role in safeguarding environmental sustainability, supporting disaster resilience, preventing human-induced disruptions, and reinforcing economic viability for future generations [19, pp. 102-103].

In summary, the categorization of smart cities highlights the multidimensional nature of urban digital transformation. Functional focus determines sector-specific objectives and investment priorities, technological maturity reflects system integration and automation capacity, and strategic alignment ensures that legal and institutional frameworks support secure, efficient, and citizen-centric urban development. Recognizing these dimensions is essential for developing robust legal and cybersecurity frameworks that accommodate the evolving complexity of smart city ecosystems.

III. Assessment of smart cities in the context of the cybersecurity concept.

The integration of advanced technologies into urban ecosystems has elevated cybersecurity to a core pillar of contemporary urban safety. Within this framework, the smart security paradigm necessarily incorporates cybersecurity, as the uninterrupted delivery of urban services and the protection of personal data depend on resilient and secure digital infrastructures. In smart cities, virtually all data flows, operational processes, and administrative functions are mediated through cyber-systems. Consequently, as cities increasingly adopt smart technologies, concerns related to security vulnerabilities have intensified [8, p. 492].

Cybersecurity constitutes a critical challenge due to the growing potential for cyber-attacks targeting essential sectors of smart cities. Importantly, cybersecurity encompasses not only deliberate threats such as industrial espionage and cyberterrorism, but also unintended disruptions resulting from user errors, equipment malfunctions, and natural disasters. Even a single vulnerability may enable an attacker to infiltrate a network, gain access to control software, or alter system configurations in ways that destabilize critical infrastructures [24].

Ensuring the protection of personal data in smart cities cannot be achieved solely through stringent preventive measures. Although technical safeguards are indispensable, long-term system security ultimately depends on continuous testing and proactive vulnerability assessment. Cybersecurity specialists must therefore approach the system from the viewpoint of a potential adversary, systematically evaluating weak points in order to anticipate and prevent cybersecurity breaches. Intelligent firewalls and security software capable of detecting digital footprints constitute essential components of this infrastructure. While professional expertise is necessary for establishing initial

cybersecurity systems, municipalities must also cultivate in-house information security specialists to ensure sustainable protection [17].

The growing demand for digital services has prompted city administrations to provide free public Wi-Fi access; however, unsecured public networks pose significant threats to data privacy. Evaluating smart-city cybersecurity exclusively through the lens of internet access would be incomplete, as smart technologies permeate diverse aspects of daily life. Nevertheless, free and uncontrolled Wi-Fi remains a major vulnerability: lack of authentication impedes the identification of perpetrators in cyber-related incidents. Introducing minimal fees or requiring identity verification and password authentication may mitigate risks and enhance traceability. Such mechanisms could also offset some of the financial burden of providing public connectivity [20].

To safeguard smart cities against emerging threats, cybersecurity systems must be developed within a structured and comprehensive framework. Key considerations in the planning phase include the following:

A. Privacy, secure and resilient network connectivity:

If citizens perceive that smart technologies do not adequately protect their personal information, they are likely to avoid using them. Therefore, integrating privacy protections in accordance with user consent is fundamental. Otherwise, public trust and acceptance of smart-city technologies will erode. Smart-city infrastructures rely on interconnected systems that enable real-time data exchange. Establishing networks with robust intrusion detection and resistance to unauthorized access is essential for system continuity.

B. System complexity and security services:

Smart cities represent a “system of systems,” featuring highly interconnected and interdependent components. As a result, the number of security vulnerabilities may exceed the number of subsystems. To mitigate these risks, sophisticated cryptographic and multi-layered security models are required. Simpler system architectures are inherently easier to compromise. Ensuring cybersecurity requires cost-effective, high-performance security services staffed by qualified experts. From initial installation to ongoing maintenance, smart-city infrastructures must be supported by skilled personnel.

C. Smart data management and system usability and operational continuity:

As personal data are collected through smart meters, smartphones, electric hybrid vehicles, and sensor networks, privacy concerns become increasingly prominent. A central challenge lies in establishing identity and privacy management mechanisms that span the entire system. Smart security systems depend on the coordinated functionality of numerous components. A single attack, for example, unauthorized reconfiguration of a device or impersonation of another system element may disrupt service availability. Therefore, maintaining continuous usability is vital [8, p. 493]. Emergency response planning and key management (Robust Encryption):

Even though the objective is to eliminate vulnerabilities entirely, security breaches remain inevitable. Comprehensive emergency response plans are therefore indispensable, as rapid reaction capability is crucial during crisis events. Strong encryption requires highly scalable key-management systems. Because smart cities involve millions of interconnected devices spanning multiple institutions, authentication, authorization, interoperability, and performance must be upheld at exceptionally high standards [2].

In light of these principles, the effective implementation of cybersecurity in smart cities requires adherence to foundational governance norms: privacy-by-design, accurate threat identification, strong stakeholder participation, transparency, risk minimization, attack-

surface reduction, defense-in-depth, restricted access privileges, least-privilege enforcement, strategic ambiguity where necessary, and robust backup and recovery systems. Ultimately, cybersecurity frameworks must remain adaptive, future-oriented, and capable of integrating emerging technologies to ensure long-term resilience and societal awareness.

IV. EU legal and regulatory framework for smart city cybersecurity.

The European Union has developed a robust legal and regulatory framework designed to ensure the cybersecurity and data protection of smart city ecosystems. At the core of this framework is the General Data Protection Regulation (GDPR, 2016/679), which sets stringent requirements for the collection, processing, and storage of personal data, including that obtained from urban IoT devices, sensors, and digital public services (European Commission, 2016). GDPR enforces principles such as lawfulness, fairness, transparency, data minimization, and purpose limitation. Moreover, it grants citizens fundamental rights to access, rectify, or delete their data, obliging public authorities and private operators to adopt privacy-by-design and privacy-by-default approaches in smart city applications. This regulation forms the cornerstone of personal data protection, ensuring that citizens' privacy is preserved in increasingly digitized urban environments [27].

Complementing GDPR, the NIS2 Directive (2022/2555) establishes a comprehensive set of obligations for network and information system security across essential and digital services sectors. The directive covers critical infrastructures that are central to smart city functionality, such as energy distribution, water supply, transportation networks, healthcare, and public administration systems. It mandates that operators implement risk management measures, report incidents promptly to national authorities, conduct security audits, and establish contingency and continuity plans. NIS2 thus addresses the operational resilience of smart cities, emphasizing proactive cybersecurity governance and inter-organizational coordination.

The EU Cybersecurity Act (Regulation 2019/881) further reinforces this framework by introducing a voluntary EU-wide cybersecurity certification scheme for ICT products, services, and processes (European Parliament, 2019). This mechanism provides standardized criteria to evaluate the security level of technologies used in urban environments, enabling public administrations and private operators to select solutions with verified security assurances. Certification also encourages transparency and accountability, while building trust between citizens, service providers, and municipal authorities.

In addition to formal legal instruments, the European Union Agency for Cybersecurity (ENISA) plays a pivotal role in supporting smart city cybersecurity (ENISA, 2020) [9]. ENISA provides practical guidelines, threat analyses, risk assessment frameworks, and sector-specific recommendations. Its guidance emphasizes a risk-based and context-sensitive approach to cybersecurity, advocating the integration of security measures into urban planning, the continuous monitoring of digital infrastructures, and collaboration among municipalities, private operators, and research institutions. ENISA also highlights emerging threats such as ransomware attacks, IoT vulnerabilities, and systemic risks arising from interdependent infrastructures, thereby enabling EU member states to implement preemptive measures.

Furthermore, EU cybersecurity policies promote harmonization across member states to avoid regulatory fragmentation, which is particularly relevant in the context of cross-border smart city projects and shared digital infrastructures. Initiatives such as the EU Cybersecurity Strategy for the Digital Decade outline long-term objectives for secure and

resilient digital transformation, including investment in cybersecurity research, capacity building, and public-private partnerships. By aligning legal obligations, technical standards, and strategic planning, the EU framework provides a multidimensional approach to safeguard smart cities against both technical and socio-legal risks [5].

Overall, the EU legal and regulatory framework demonstrates a systematic integration of personal data protection, infrastructure resilience, and cybersecurity governance. By combining binding regulations, voluntary certification schemes, and expert guidance, it ensures that smart cities can operate efficiently, protect citizens' rights, and withstand cyber threats. The EU approach serves as a model for implementing coordinated, enforceable, and adaptive legal frameworks that underpin the sustainable and secure development of urban digital ecosystems.

V. Cybersecurity governance and regulatory framework for smart cities development in the Republic of Azerbaijan

Cybersecurity considerations have become a structural and indispensable component of smart-city development in Azerbaijan, where digital transformation is increasingly embedded into public governance, infrastructure management, and urban planning. The country's political commitment to this transformation was formally articulated through the Presidential Decree of 19 April 2021 on the preparation of the Smart City and Smart Village concepts. This decree functions not merely as a planning document but as a strategic mandate that requires public authorities to adopt technology-based governance models relying on pervasive data collection, interconnected sensor infrastructures, and algorithmic decision-support mechanisms. As a consequence, cybersecurity and data-protection obligations are no longer auxiliary elements but rather intrinsic components of national urban-development policy.

Azerbaijan's foundational information-law framework, primarily the 1998 Law "On Information, Informatization and Protection of Information", predates contemporary cyber-physical architectures but nonetheless provides the conceptual backbone for information governance, delineating responsibilities for protecting information systems, regulating access to data, and defining liability for breaches. However, the evolution of smart-city systems, which operate through high-density IoT devices, cloud-based platforms, open APIs, and machine-learning-driven analytics, places pressure on this earlier legislative framework. Its general principles remain relevant, but technological realities now require substantial modernization to reflect distributed architectures, encrypted data flows, sensor-based environmental monitoring, and autonomous system interactions.

Complementing the general information-law framework is the Law "On Personal Data," which constitutes the core of Azerbaijan's data-protection regime. Smart-city ecosystems inevitably produce extensive personal data, including biometric identifiers (e.g., facial-recognition data), real-time geolocation metrics, behavioural patterns derived from transit-card or sensor usage, and high-resolution video streams captured by intelligent surveillance systems. While the Law "On Personal Data" establishes fundamental obligations such as purpose limitation, data-processing controls, and requirements for consent, it was drafted in a period preceding the mass deployment of municipal IoT networks. As a result, the law's existing rules are increasingly strained by the scale, granularity, and continuous nature of data processing inherent in smart-city infrastructures. Anticipated amendments to the law therefore represent an opportunity

for alignment with international standards and for embedding stronger accountability mechanisms into municipal digital governance.

A major regulatory turning point occurred with the Cabinet of Ministers Decision No. 229 of 17 July 2023, approving the Rules for Ensuring the Security of Critical Information Infrastructure (CII). This decision brings Azerbaijan closer to global cybersecurity governance practices by defining critical information infrastructures broadly and establishing binding obligations for operators across essential sectors, including energy, finance, telecommunications, transportation, water management, and e-government platforms. Smart-city infrastructures, particularly intelligent transport systems, unified municipal platforms, emergency-response networks, and public-utilities monitoring, either constitute or interact directly with these critical infrastructures [25]. Consequently, this Rules have a substantial regulatory effect on smart-city development: operators are required to conduct continuous risk assessments, establish technical and organizational defence mechanisms, report cybersecurity incidents in accordance with national protocols, undergo mandatory audits, and maintain internal rapid-reaction units structurally analogous to sectoral CERTs. As smart-city infrastructures grow in scale and complexity, a larger proportion of their subsystems will fall under the jurisdiction of CII regulation, intensifying the need for standardized technical governance.

Despite these normative advances, Azerbaijan's current cybersecurity ecosystem reflects a structural imbalance between strategic ambition and institutional capacity. The National Information Security and Cybersecurity Strategy for 2023–2027 emphasizes resilience, coordinated cyber-defence, international cooperation, and talent development, signalling an advanced conceptual grasp of national priorities. Yet municipal authorities and local service operators, key actors in smart-city implementation, often lack adequate cybersecurity expertise, standardized operational procedures, and financial resources necessary for maintaining secure digital infrastructures. This discrepancy is particularly concerning because smart-city ecosystems operate as interconnected networks: a single point of weakness in local infrastructure can generate cascading disruptions affecting transport-flow optimization, emergency communications, utility distribution, environmental monitoring, and numerous citizen-facing digital services. In this sense, cybersecurity shortcomings at the municipal level represent systemic vulnerabilities, not isolated administrative challenges.

The rapid expansion of smart-city infrastructures also broadens the national attack surface. The increasing number of IoT endpoints introduces vulnerabilities in device management, firmware updates, authentication procedures, and encryption protocols. Inadequate network segmentation can allow attackers to pivot laterally across municipal systems, potentially compromising multiple layers of urban infrastructure. Moreover, smart-city platforms depend heavily on data centralization, which, while beneficial for efficiency, magnifies the consequences of any data breach. The large-scale processing of biometric, geolocation, and behavioural data also presents significant privacy risks, including unauthorized profiling, re-identification, and potential misuse by unauthorized third parties. As algorithmic and AI-enhanced services expand, these concerns become more pressing, requiring transparent governance, algorithmic accountability, and explicit safeguards preventing discriminatory or opaque decision-making.

Nevertheless, Azerbaijan has unique opportunities to shape a secure and internationally competitive model of smart-city governance. The existence of a regulatory regime for critical infrastructure provides a solid foundation for imposing robust

cybersecurity requirements on all major urban-service providers. The national prioritization of smart cities enables the state to systematically promote “security by design” principles across public procurement, infrastructure planning, and digital-service architecture. The strengthening of national CERT structures and the emergence of sector-specific cybersecurity groups signal the development of institutional capacity necessary for coordinated incident response. At the level of data governance, the forthcoming modernization of personal-data regulation could introduce explicit safeguards for automated decision-making, biometric-data governance, and AI-based municipal systems, enhancing public trust and improving compliance with international norms.

To fully materialize these opportunities, several systemic measures are essential. First, Azerbaijan’s information-law framework must be technologically updated to incorporate explicit cybersecurity standards for IoT devices, municipal cloud platforms, authentication mechanisms, encryption protocols, and data-retention cycles. Second, cybersecurity competencies at the municipal level must be significantly strengthened through dedicated funding, technical training, and the establishment of localized incident-response teams. Third, all smart-city procurement processes should embed mandatory cybersecurity-impact assessments, risk analyses, and periodic independent audits. Fourth, personal-data governance should be enhanced through clearer purpose-limitation rules, stricter oversight of biometric and video-analytics systems, expanded rights for data subjects, and transparent communication about data usage. Finally, public participation and awareness should be integrated into smart-city planning, ensuring that citizens understand how their data are collected, processed, and protected.

Taken together, these developments position Azerbaijan at a critical juncture. The state has established a sophisticated regulatory and strategic foundation for secure smart-city development, but the effectiveness of these instruments will depend on coherent implementation, inter-institutional coordination, and the modernization of legacy laws. If legal reforms, capacity-building initiatives, and robust governance mechanisms evolve in parallel with ongoing infrastructure deployment, Azerbaijan has the potential to emerge as a regional leader in secure, rights-respecting, and resilient smart-city governance.

VI. Conclusion and Recommendations.

The rapid global transition toward smart-city ecosystems signifies a fundamental reconfiguration of how states conceptualize urban governance, public-service delivery, and infrastructure management. Smart-city projects built upon the integration of IoT networks, sensor-based monitoring, cloud computing, real-time analytics and automated control systems transform cities into continuously functioning digital organisms. While such systems promise efficiency, sustainability and improved quality of life, their reliance on interconnected platforms and expanded data flows exposes them to unprecedented cybersecurity and privacy risks. These risks are not confined to isolated systems; vulnerabilities in even a single component may cascade across entire urban infrastructures, affecting essential public services, critical information infrastructure, and citizen trust. Therefore, the evolution of smart-city initiatives necessarily requires a parallel evolution of legal, institutional and technical mechanisms for cybersecurity regulation.

From a regulatory perspective, the smart-city paradigm blurs traditional boundaries between municipal service provision, national cybersecurity governance, and data-protection law. As cities become cyber-physical environments, legal frameworks must adapt to govern integrated networks where security, privacy, interoperability and

accountability are deeply intertwined. The experience emerging across jurisdictions including the developing framework in Azerbaijan demonstrates that successful smart-city deployment depends not merely on technological adoption but on the robustness of cybersecurity law, risk-management procedures, cross-sector coordination and enforceable data-governance norms. Without such structures, efficiency-oriented digitalisation can inadvertently create large-scale systemic vulnerabilities.

Azerbaijan has already signalled strategic intent, notably through the Presidential Decree launching Smart City/Smart Village concepts and the recent national Strategy on Information Security and Cybersecurity, and has introduced CII rules that bring many urban systems under formal security obligations. These steps provide a strong foundation; however, translating policy into resilient, rights-respecting smart-city practice requires a package of targeted, feasible interventions at legal, institutional, technical and social levels.

Summarizing the above, this article puts forward the following proposals for the legal regulation of cybersecurity, especially in the smart cities project in the Republic of Azerbaijan:

1. To minimise systemic vulnerabilities, smart-city projects would benefit from embedding security-by-design principles throughout their lifecycle. This includes integrating clear security and data-protection criteria into public procurement documentation, encouraging the use of independently validated security controls, and ensuring that vendors provide long-term support, secure update mechanisms, and transparent documentation. Such an approach aligns with global best practices that prioritise early-stage risk identification rather than post-deployment remediation.

2. Given the interdependence of municipal IoT systems, transportation platforms, energy grids and public-service data flows, Azerbaijan may consider forming a coordinated governance mechanism that maintains an updated inventory of smart-city assets, their criticality, and cross-sector dependencies. A dynamic mapping of digital infrastructure, complemented by sector-specific resilience plans and secure information-exchange protocols, would strengthen oversight and reduce regulatory blind spots.

3. Smart-city operations are heavily localized, and timely incident response is essential for preventing cascading failures. Creating municipal-level CERT or incident-response units that operate in close coordination with the national CERT/SOC would enhance rapid detection, containment and recovery capabilities. Periodic joint exercises, standardized escalation procedures and capacity-building programmes would ensure consistent competence across regions, including in newly developed smart-village areas.

4. As smart-city environments rely extensively on biometric systems, continuous location data and AI-enabled analytics, the regulatory framework may be enhanced through clearer rules on data sensitivity, retention, system interoperability and algorithmic accountability. Introducing mandatory cybersecurity-impact and privacy-impact assessments before deployment, alongside transparent oversight of automated decision-making, would help maintain public trust and ensure compliance with fundamental rights. Harmonising these rules with Azerbaijan's long-term digitalisation strategies would support both innovation and responsible governance.

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CONCEPT AND LEGAL NATURE OF NON-CASH SETTLEMENTS IN THE LEGAL DOCTRINE AND CIVIL LEGISLATION OF THE AZERBAIJAN

Uzeyir Gasimli*

Abstract

The article is devoted to the study of the concept of obligations on non-cash settlements as one of the key elements of the civil law institute of non-cash settlements in a market economy. The author examines various interpretations and definitions of the concept of non-cash settlements existing in the legal doctrine. The author notes both advantages and shortcomings of the definition of non-cash settlements in the doctrine of law, given by various researchers and specialists. The review of legal doctrine, as well as legislation gives the author the basis to conclude that the legal doctrine to date lacks a comprehensive and complete definition of non-cash settlements. The author proceeds from the fact that in the legal sphere all definitions and concepts should have the character of formal certainty and be precise and clear. Indeed, the key importance of legal definitions is to legally formalize and regulate the public will. When considering the legal nature of non-cash settlements, the author notes that non-cash settlements are also characteristic to other branches of the national law system. Therefore, depending on this circumstance, the legal definition of this concept may also change. The author restricts the scope of his research to the formulation of civil law definition of non-cash settlements. He notes that in order to define a scientific definition of non-cash settlements in civil law, first of all it is necessary to determine its main features and characteristics. The author attributes such features. These are the existence of a special subject composition (banks and other credit organizations); the possibility of non-cash settlements with or without opening bank accounts; realization of non-cash settlements in accordance with the requirements of the legislation. The author offers his system of the main features of non-cash settlements. Based on the carried out analysis the author gives his own scientific definition of non-cash settlements in the civil legal system of Azerbaijan.

Keywords: *civil law, doctrine, legislation, settlement relations, banks, non-cash settlements, features of non-cash settlements, definition of non-cash settlements.*

I. Introduction

Legal regulation of non-cash settlements, which is one of the forms of settlement operations, is an important element of the mechanism of legal regulation of property relations in general. The peculiarity of the use of various non-cash forms of settlements is that they provide such significant advantages over cash settlements as convenience of use and the ability to carry out settlements between subjects of legal relations at a distance and in a quick order. Non-cash settlements also ensure the transparency of these types of transactions. These circumstances in general make the problem of studying the legal nature of non-cash settlements very actual. It should be noted that in the legal doctrine of Azerbaijan there are practically no researches devoted to the issues of defining the definition of non-cash settlements. The main purpose of this article is, to a certain extent, to fill this gap. These circumstances determine the relevance of this article.

II. Ratio of cash and non-cash settlements

According to estimates by major analytical companies, non-cash settlements dominate over cash in many countries [21]. Thus, according to some sources, in the

* PhD Candidate in Law, Department of Civil Law, Baku State University, email: uzeirqasimli2001@gmail.com

modern world in the total volume of monetary turnover of states the main place is occupied by non-cash turnover, which accounts for about 90% of the total turnover of monetary funds. Most of the non-cash payments are made in developed countries. Thus, in 2017, the economies of North America, the EU and developed Asia-Pacific countries accounted for 79.5% of global non-cash transfers [22]. At present, for example, in Sweden the share of non-cash payments is 98%, in Norway 95%, in Denmark 94%, in the USA - 80%, in Germany 76%. [15] In Azerbaijan, the volume of non-cash turnover is also steadily growing. Thus, if in 2017 non-cash payments in Azerbaijan amounted to 8% of the total turnover, this figure exceeded 30% by 2020, and by 2025, it is planned to bring the volume of non-cash settlements in the country to 50%. After 2025, the goal is to increase this indicator to 80% [18]. In particular, in February 2025, the volume of non-cash payments increased by 30% compared to the same period last year and reached the figure of 7 billion 133 million manats.

III. The law "On non-cash settlements" and its influence on the development of settlement relations

It should be noted that the volume of non-cash settlements has significantly increased with the adoption of the law "On non-cash settlements" of December 16, 2016 (with subsequent amendments). This law imposed a number of restrictions on cash settlement transactions.

Thus, Article 3.3 of the law (taking into account the provisions of Article 3.5 of the law) defines a special procedure for making settlements for VAT registered taxpayers and for taxpayers engaged in trade and (or) public catering. It all depends on different criteria. Thus, if they have the volume of taxable transactions in any month (months) of consecutive twelve-month period exceeds two hundred thousand manat) or if they have the volume of the total amount of taxable transactions for goods, works and services rendered in the previous calendar month exceeds 2 percent of turnover (including VAT), they must make settlements in non-cash order. Other taxpayers, if their total amount of taxable transactions exceeds fifteen thousand manat during a calendar month, make settlements only in non-cash order.

However, it is possible that taxpayers registered under VAT and taxpayers carrying out activities in the sphere of trade and (or) public catering, 2 percent of turnover (including VAT) on goods, works and services rendered in the previous calendar month is less than thirty thousand manat. In this case, payments are made only in non-cash order.

Also, payments on settlements totaling more than thirty thousand manats during a calendar month are made only in non-cash order. But it is also possible that 2 percent of the turnover (including VAT) on goods, works and services rendered in the previous calendar month is more than fifty thousand manats. In this case, payments on settlements for the total amount exceeding fifty thousand manats during a calendar month are also made only in non-cash order.

Except that, Article 3.4 of this law provides for a number of cases when settlements must be made only a non-cash manner. These include:

- debts on leasing operations and granting loans;
- payments established by the Laws of the Republic of Azerbaijan "On Insurance Activities", "On Compulsory Insurance" and "On Enforcement Proceedings";

- payments for services and other payments made to state bodies, legal entities owned by the state and in which the controlling interest (shares) belongs to the state, budget organizations and public legal entities, as well as municipalities;
- settlements on debts on leasing deals and granting credits;
- payment for fixed telephone services and public utilities;
- payment for fixed telephone services and public utilities;
- payment and return of interest-free money (except for cases of transfer of money by persons who are not taxpayers), other withholdings;
- use (expenditure) of funds received under the state procurement contract;
- payment of tuition fees;
- payments to travel agencies;
- specialized payments for sale of cars through commission and trade organizations;
- payments for sale of goods (except for cars and goods specified in the law) offered for retail sale in the amount of more than four thousand manat within one transaction (one cashier's check);
- payment and return of interest-free funds;
- spending of funds received under the agreement on public procurement;
- payments to tourist agents; specialized payments on sale of cars through commission and trade organizations;
- specialized payments on sale of cars through commission and trade organizations;
- payments for sale of goods (with certain exceptions) offered for retail sale in the amount of more than 4 thousand AZN within one transaction;
- payments for medical services rendered by medical institutions and persons engaged in private medical practice in the amount of more than 500 AZN within one transaction (on one cashier's check);
- money payments (money bets) related to participation in games and winnings (prizes) totaling more than AZN 3,000 determined in relations regulated by the Laws of the Republic of Azerbaijan "On Lotteries" and "On Physical Culture and Sports";
- payments made when buying and selling immovable property, when making a contribution to the share of a member of a housing and construction cooperative and when purchasing residential and non-residential premises from persons engaged in construction and installation activities;
- payments for the sale of precious stones, precious metals, including articles made of precious stones and precious metals, as well as cultural values;
- payments for purchase and sale of movable property registered in official registers (except for the sale of cars) for a total amount exceeding 15,000 AZN must be made in a non-cash manner.

As can be seen, these restrictions also relate to a number of non-cash settlements, which have a civil law nature. With the adoption of these kinds of measures, the turnover of cash settlements has decreased significantly. A similar tendency has been observed worldwide. The main reason for the global decline in cash payments is the desire of most countries to reduce the volume of shadow cash transactions. In addition, reducing cash payments creates obstacles to dirty money laundering and terrorist financing. Reducing cash payments also helps in the fight against corruption. The process of restricting cash settlements has become so severe that the expression "war on cash" has even been used [19].

IV. Legal acts regulating relations in the sphere of non-cash settlements

In our country, there is a certain complex of legal norms regulating relations in the sphere of non-cash settlements. Thus, the Civil Code (CC) devotes a separate chapter - Chapter 53 - to the legal regulation of settlements, including non-cash settlements. Article 971 of the Civil Code stipulates that settlements with participation of individuals, not related to their entrepreneurial activities, may be made in cash without limitation of the amount or in a non-cash order [9]. Meanwhile, as mentioned above, a number of settlement transactions should be made only in non-cash form. As it is seen, there are certain inconsistencies between the Civil Code and the Law of the Azerbaijan Republic "On non-cash settlements", which require their settlement.

V. Legal definition of non-cash settlements

Researching the institute of non-cash settlements in civil law, first of all it is necessary to dwell on its legal definition. Indeed, one of the basic elements of the study of any problem is the definition of its concept. In relation to non-cash settlements, this basic element is the existence of a legal definition of non-cash settlements. It should be noted that for a long time neither in the domestic legal doctrine of Azerbaijan nor in the civil legislation a clear definition of the concept of non-cash settlements was not formulated. Thus, neither in the textbook on civil law by S. Allakhverdiev [3, p. 783-787], nor in the textbook by R.A. Geyushev [12, p. 350-369], in which the legal aspects of cash and non-cash settlements are considered, it is not given the definition of non-cash settlements in civil law. And also the civil legislation of Azerbaijan, in particular, Chapter 53 of the Civil Code, devoted to regulation of settlement relations, does not contain a legal definition of non-cash settlements.

As L.F. Apt notes, the legislator has a need to formulate meaningful legal definitions in several cases. First, this is the case when the definition is introduced into the system of legislation for the first time and its meaning is unknown. Second, when an accurate understanding of the definition is necessary to understand correctly the meaning of the law. Thirdly, when there is not its clear definition in legal or other science [4, p. 59].

This gap in the legislation was eliminated, in a certain degree, only with the adoption of the law "On non-cash settlements". Thus, Article 3.1 of this law contains a number of elements of such definition. This article defines non-cash settlements as: settlements by transferring funds from the bank account of one person to the bank account of another person, including settlements using payment instruments (payment cards, payment orders, etc.) and payment devices (cell phones, computers and other equipment); settlements using payment terminals; settlements by transferring funds directly to the bank account of the seller.

Thus, we can distinguish the following features of non-cash settlements:

- the existence of a special subject composition (banks and other credit organizations);
- the possibility of non-cash settlements with or without opening bank accounts (e.g., transferring funds directly to the seller's bank account);
- implementation of non-cash settlements in accordance with the demands of Azerbaijani legislation.

In our opinion, this definition of non-cash settlements is not complete and requires further elaboration and clarification, as it does not fully disclose their essence and features.

In the legal literature various points of view have been expressed on the issue of the concept of non-cash settlements and its content. Thus, the term “non-cash settlements” is usually used in two meanings, in a broad and in a narrow sense. In a broad sense, non-cash settlement is the process of payment (termination) of monetary obligations without the use of cash, through the so-called transfer of “non-cash funds” [5, p. 309; 8, p. 6; 20, p. 307].

However, such interpretation of non-cash settlements seems incorrect, because these are not different meanings of the same legal category, but different legal phenomena. Indeed, settlements in the broad sense of the word mean the actions of the debtor to fulfill a monetary obligation (either by cash or non-cash payments). There are different variations of funds transfer with direct involvement of cash. Thus, banks are entitled to debit funds from the bank accounts of payers with the following: crediting of funds to the bank accounts of recipients of funds; issuance of cash to individuals; increase in the balance of electronic funds of recipients of these funds.

In the legal literature in a narrow sense non-cash settlements are considered as legal relations, the prerequisite for the emergence of which is the right of the account holder's claim to the servicing bank about the transfer from the specified bank account of a certain amount of money on the specified details in a certain period of time and for a fee, as well as the corresponding to this right obligation of the bank [6, p. 279-280]. In that case, it concerns a special type of obligations - settlement legal relations. Their object is money in the payer's bank account and used as a means of payment. In this case, the obligatory participant in such relations, in addition to the payer is also the bank, with which the payer has concluded a bank account agreement [10, p. 484]. In addition, it should be taken into account that in this case, the participation of a bank or other credit organization is not decisive in making settlements by participants in civil legal relations. Thus, in cases when banks provide services to individuals who do not have their own bank account, for example, for transferring funds or accepting various payments (for example, in favor of public utilities), despite the direct participation of the bank in such relations, no special settlement legal relations arise either.

Therefore, the determining feature in distinguishing settlement legal relations as a special type of civil-law relations is not the participation of the bank in these relations, but the nature of its obligation [10, p. 484]. Taking into account the above-mentioned different approaches to this problem, in the legal literature authors offer different definitions of non-cash settlements in civil law.

Thus, M.S. Churakov understands under non-cash settlements a system of complex obligatory legal relations. This system is based approximately the account holder to the servicing bank on the transfer of funds to the account of the recipient and assuming in the end the transformation of the monetary obligation of the payer into the obligation of the bank serving the recipient of funds [7, p. 16]. As can be seen, he proposes to expand the list of features of non-cash settlements with the following: the absence of cash in non-cash settlements; recognition of “settlements” as a process of counting monetary obligations.

At the same time, it seems that the basis for the emergence of settlement legal relations is the customer's order to transfer funds, and in the case of collection - the order to write off funds from the account of the bank customer. This feature (availability of the bank customer's order to debit funds) is one of the key features in the definition of non-cash settlements, since unjustified debiting of funds by the bank unilaterally, without the consent of the customer (payer or recipient of funds) is not permitted.

A somewhat different position is held by K.B. Razdorozhny. He interprets the institution of non-cash settlements as a complex of financial-legal norms that regulate

relations arising between a special subject (e.g., a credit organization), on the one hand, and its client on the movement of non-cash funds, carried out with the use of the banking payment system according to the rules of settlements established by the Central Bank of the country, in compliance with the imperatively established requirements of the legislation governing this type of activity [16, p. 112-113]. But in this case, it's hard to agree with that view. Because the author considers settlement relations from the point of view of financial law, ignoring the civil law aspect of settlement transactions.

The definition of non-cash settlements proposed by N.M. Aliyeva is also interesting. The definition of non-cash settlements proposed by N.M. Aliyeva is also interesting. Thus, in her opinion: "*Non-cash settlements are cash settlements in which funds are debited from the payer's account and credited to the beneficiary's account on the basis of settlement documents submitted to the bank*" [2, p. 135]. Such settlement documents include payment orders, letters of credit, settlements on collection, checks, payment cards, settlements in electronic form, etc. having a strictly defined form [17, p. 409]. In fact, V.V. Vityransky takes a similar position. In his opinion, under settlement legal relations should be understood obligatory relations arising between the account holder - payer and the bank in which his bank account is opened, as well as other banks involved in the implementation of the relevant banking operation. Except it, in connection with the execution of the account holder's order to transfer (receive) funds in the bank account, in the order of non-cash settlements [10, p. 485].

These definitions do not give rise to any remarks concerning its inconsistency with the legally established beginnings and principles of non-cash settlements. However, such definition requires some clarification and addition in terms of taking into account the key elements and features of the institution of non-cash settlements. Thus, debiting and crediting of funds is not the only action within the framework of non-cash settlements. In addition, the shortcoming of the above definition is the lack of an indication of the special subject composition. It is, on the one hand, a special subject (for example, a credit organization) and, on the other hand, its clients (individuals, legal entities, individual entrepreneurs, state bodies, etc.).

The analysis of legal doctrine and legislation has shown the absence of a comprehensive and complete definition of the concept of non-cash settlements.

Certainly, different interpretations and conceptions in legal science and doctrine of scientists are important for studying and clarifying the content of cashless settlements as an institute of civil law. However, they are able to form a scientific understanding of non-cash settlements. Along with this, as V.V. Agafonov notes, in the legal field, all definitions should have the character of formal definiteness, be clear and definite, as their key meaning is reduced to one thing - the legal formalization and regulation of the public will [1, p. 88]. In this regard, the development of a legal definition and its enshrinement at the legislative level seems to be a very important and actual task.

Determination or definition is a legal prescription reflecting the key features of a phenomenon, subject. This interpretation is widely spread in legal doctrine [1, p. 88; 7, p. 16; 11, p. 12; 14, p. 182].

VI. Legal nature of non-cash settlements

The question of the legal definition of non-cash settlements is directly connected to the determination of their legal nature. The position of the institute of settlement relations, including non-cash settlements in the structure of the Civil Code in the section

of the law of obligations is not accidental. It emphasizes the obligatory nature of non-cash settlements and is verified by the existence of a number of circumstances.

First, under the bank account agreement, the bank shall be obliged to accept and credit funds received on the account opened to the account holder, execute the account holder's instructions on transfer and disbursement of respective amounts from the account and conduct other operations on the account (paragraph 1 of Art. 954 of the Civil Code).

In that case there is no actual transfer of money. The term "funds in the account" does not indicate the in rem nature of the relationship.

In practice, the fact of acceptance of funds by the bank from the client within the framework of bank account relations is certified by a record on the client's account. At the moment of transfer of funds, the client acquires the right to demand the bank to pay the respective amount of money.

Non-cash funds may be held in customer accounts opened both on the basis of a bank deposit agreement (Chapter 51 of the Civil Code) and a bank account agreement (Chapter 52 of the Civil Code).

Secondly, it is necessary to take into account the absolute nature of the legal relations of ownership. But the client's rights to his funds in bank accounts can be realized by appealing to the credit organization (bank). Such credit organization is an obliged party under a bank account or bank deposit agreement. This circumstance is the main criterion for distinguishing obligatory legal relations. Thus, it is impossible to identify non-cash funds with things. The realization of the subjective right of demand for cash disbursement is possible only with the help of involvement of third parties, specifically banks, in the legal relations of non-cash settlements. Banks serve the debtor and creditor of a monetary obligation, i.e. they perform certain actions. However, third parties are not obliged to perform any act to exercise the law of property. On the contrary, the owner is entitled to demand that third parties do not violate his absolute rights.

Thirdly, an essential feature of the bank's obligation under the bank account agreement is its abstract nature. The bank's monetary obligations under the bank account agreement are abstracts. Indeed, the amount of the client's debt claim to the bank is expressed only in the form of a certain amount of money. At the same time, the grounds for its occurrence are not specified. The use of funds on accounts for settlement requires that the new acquirer of rights of claim to the bank be free from the objections that the bank had to the original client. Therefore, the transferred claim to the money must be abstract in nature.

Fourthly, the obligatory nature of relations between the bank and the client is also expressed in the protection of the rights of clients of credit organizations. They can only file claims for protection of the violated right against the credit organization as a debtor. In contrast, in rem rights are protected by filing a claim against any third parties as infringers of the right. In addition, in relation to funds it is impossible to apply such method of protection of proprietary rights as a vindication suit.

Fifthly, the procedure of recording the bank's property excludes the possibility of recognizing the in rem nature of performance of obligations on non-cash transfer of funds. The account of a credit organization reflects only the balance of temporarily free funds, and non-cash funds acting as assets of a credit organization are anonymized. Besides this, they acquire the form of either the right of demands of the credit organization to other persons or a part of the assets of the credit organization itself.

Sixth, by opening a bank account, the owner of the account transfers his funds, as well as the funds that will be transferred into his account, to the full disposal of the bank. Clearly, the right of the bank to use the funds in the client's account for its own purposes (clause 2 of Article 954 of the Civil Code) excludes the possibility of returning the same banknotes to him.

This circumstance can only be explained from the standpoint of the law of obligations. In return, the account holder receives the rights of claim against the bank regarding the execution of various banking operations by the bank in the interests of the customer and on his/her instructions. This also includes bank transfers of funds. The amount of the noted rights of claim of the account holder to the bank shall be determined by the amount of funds balances on his account.

Seventh, the rights of claim to the bank arising from the bank account agreement (or bank deposit agreement), as well as any other rights of claim, may be sold, transferred or ceded on a reimbursable basis in accordance with the norms of civil legislation.

The concept of the obligatory-legal nature of the settlement relations of the bank and the client allows to solve the problem of differentiation and classification of monetary funds. They can be divided into cash in the correspondent account in the bank, the credit organization's own funds and funds belonging to the bank's clients.

This problem is particularly acute in case of arrest of funds on the correspondent account or foreclosure on them. It should be noted that, despite the close convergence of rights in rem and rights of obligation, there is a significant difference between them. Thus, the subject of property legal relations are real things, including the exclusive right to produce them. But the subject of obligatory-legal relations are the actions of persons. These actions can also be performed in relation to property in the form of valuables. However, this does not change the legal nature of obligatory-legal relations. The essential differences between the varieties of objects of civil rights are manifested in the existence of separate types of civil law contracts.

All the above arguments support the concept that funds in bank accounts are considered as an object of obligatory rights. In essence, they are rights of demand or in the form of transfer or disbursement of these funds. In non-cash payments, property is used as a means of payment in the form of an abstract, unconditional and not time-limited right of demand to the bank to issue (pay) on first demand money. By its legal nature, "non-cash money" is a right of claim, in particular the right of claim of clients (holders of bank deposits and accounts) against the banks servicing them. In non-cash payments, the means of payment are not money, but claim rights to the bank. In civil law deals, a creditor under a monetary obligation in exchange for goods transferred to the debtor, work performed for him or services rendered to him in non-cash settlements receives from the debtor not money, but property rights of claim to the bank servicing the debtor. These property demands are converted into the rights of demands to the bank servicing the creditor. As a result of non-cash settlements, funds on the client's account decrease with a simultaneous increase in the creditor's demand rights to the servicing bank. In other words, in non-cash settlements, the creditor's assets are increased not by money received from the debtor, but by such type of assets as property rights of claim.

VII. Conclusion

Based on the analysis of the above-mentioned interpretations of the concept of non-cash settlements in the field of civil law, it is possible to identify the key features of non-

cash settlements, which should be taken into account when forming its definition. Such features may include:

- a) the presence of a special subject composition (banks and other credit organizations);
- b) the possibility of non-cash settlements with or without opening bank accounts;
- c) non-cash settlements in accordance with the requirements of the legislation;
- d) the presence of an order of the bank customer (payer or recipient of funds);
- e) debiting of funds;
- f) compliance of settlement documents submitted to the bank with the selected form of settlements.

Speaking about the current stage of development of the system of non-cash settlements, it is necessary to note the fact that non-cash settlements have moved to a new stage of development and are often made by means of “electronic payments” [13, p. 29-30].

Thus, there appear new types of non-cash settlements, significantly different from the previously existing ones. Such electronic payment systems as Apple Pay (allowing the use of Apple devices such as iPhone, Apple Watch, iPad and Mac instead of physical bank cards) make it possible to make non-cash payments using the Internet. However, at the same time, the use of such electronic payments does not change the content and essence of non-cash payments.

To my mind, it is possible to clarify the definition of non-cash settlements in civil law and formulate it as follows. “Non-cash settlements are settlements made by transferring funds by special entities (banks or other credit organizations) from the bank account of one person to the bank account of another person on the basis of legal facts (transaction, etc.), and at the client's order, including settlements by means of payment instruments (payment cards, payment orders, etc.) and devices (payment terminals, cell phones, computers, tablets, watches, etc.)”.

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THE IMPORTANCE OF CONSTITUTIONAL CONTROL IN THE PROTECTION OF HUMAN RIGHTS AND PERSONAL DATA

Ilgar Mammadli*

Abstract

Interpreting the 21st century, in which we live, from the perspective of world civilization, scientific literature describes it as a period of transition from one socio-cultural paradigm to another. Against this backdrop, personal data and its protection are becoming an important issue. An analysis of international acts shows that at present the main act regulating issues of personal data protection is the General Data Protection Regulation. It is no secret that today's increasingly widespread use of technology in many areas of everyday life and various professional activities creates the basis for the easy collection of personal data and expands the possibilities for its use in ways that undermine individual rights. For this reason, the protection of personal data has become an important element of human rights and freedoms and constitutional control of countries. Thus, the article examines the importance of constitutional supervision in the protection of both human rights and personal data.

Keywords: *constitutional review, personal data, constitutional review of countries, international law, constitutional justice, judicial constitutional review, protection of personal data, human rights and freedoms, primary judicial constitutional review.*

I. Introduction

The legal status of an individual plays a key role in modern society, as it determines the rights, responsibilities, and guarantees that a person has before the law and the state. The importance of this status is evident in all areas of human life, from the right to life to freedom of conscience. The status of an individual is formed on the basis of the constitution, laws and other normative acts that ensure legal protection and the prevention of arbitrariness on the part of authorities or other entities. Respect for human dignity and fundamental rights is the source of this status, which determines the interaction of the individual with legal institutions and his position in society. An effective justice system that facilitates the prompt and fair resolution of disputes plays a key role in ensuring the constitutional rights of citizens.

Thus, the constitutional and legal status of an individual helps to ensure fair and equal conditions for the development of the individual, and also contributes to the strengthening of democratic and legal principles in society. The development of the constitutional and legal status of an individual is an important process in modern society. Over time, taking into account changing social relations and values, it is necessary to constantly improve the legal framework for individuals and their rights. In this context, there is a need to consider the prospects for the development of the constitutional and legal status of the individual.

The prospects for the development of the legal status of an individual are inextricably linked with the dynamics of social life and the changing needs of society. In the modern world, we are witnessing the rapid development of technology and

* PhD Candidate in Law, Constitutional and Municipal Law, National Aviation Academy / Member of the Azerbaijani Bar Association / Senior Legal Counsel at the Central Branch for Litigation Affairs of the State Social Protection Fund under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan, email: memmedliilqar52@gmail.com

information technology, which entails the need to improve legislation in terms of protecting individual rights and freedoms. Given the changing reality, one area of promising development could be strengthening guarantees of personal data confidentiality to ensure citizens' privacy [9, p. 82].

The Belarusian scientist notes that, for a long time, the right to the protection of personal data was considered exclusively as part of the right to protection from unlawful interference in private life and was not distinguished as an independent right, which was due to different approaches to the relationship between the concepts of "personal data" and "private life" [4, p. 22].

The first approach is based on the fact that "privacy information" and "personal data" are related as general and particular. However, according to some experts, privacy information should be considered as a broader concept than personal data, since the latter is only information that allows one to identify an individual.

Proponents of the second approach believe that "personal data" is a broader concept. This is confirmed by the fact that they also include information about a person's professional and social activities in personal data, while information about private life is limited to personal and family communications.

In general, personal data is heterogeneous. In their structure, it is necessary to highlight not only identifying information, but also that which characterizes moral and business qualities.

The third group of researchers believes that the categories under consideration are not identical and are not related to each other in any way; they are independent and only in some cases do their contents intersect. In their view, information about a person's private life identifies the individual, reflecting their private activities and thus constitutes personal data. However, there is a large volume of personal data that does not constitute information about a person's private life, thus creating an independent institution requiring appropriate legal protection.

Thus, there is currently a tendency to identify an independent human right – the right to the protection of personal data.

II. The right to the protection of personal data and the reasons that make this right necessary

Protection of personal data is a fundamental human right. According to Turkish scientists, the right to the protection of personal data is closely related to the right to privacy and protection of private life [10, p. 23]. In most countries, the right to privacy is defined in relation to personal data, and the connection between these two rights is presented as the protection of personal data being a type of right to privacy that contains its own unique characteristics.

Confidentiality of private life is an important tool in protecting human personality. The protection of personal data is one of the rights that real persons have, which is closely tied to their personality and is solely due to being human. The right to private life, including personal data, includes the confidentiality of information and data related to oneself, one's family and one's profession that one does not want to be learned by others; it can be asserted against anyone by the persons who own these data [1, p. 634-635].

The right to protection of personal data is aimed at protecting not the "data" itself, but the "persons" to whom these data are related, regardless of the persons to whom they are related. In this regard, the starting point of the protection of personal data is the desire to protect individuals.

“Privacy” is a fairly broad concept. The development of social relations has led to a semantic change in this concept. In the generally accepted understanding, privacy includes the right to control information, the absence of legal regulation of personal life, a ban on the use of information obtained illegally, and a ban on the collection and storage of information. “Privacy” includes personal data:

1) Firstly, personal data must be recorded on a tangible medium, but information containing details of private life is not required to be so.

2) Secondly, when personal information is anonymized, the data will become meaningless, and personal data can be anonymized by direct instruction of the law. This approach is based on the unity of personal data and information about the individual [11, p. 126].

Personal data is an element that falls within the concept of information about private life. Proponents of the second approach view personal data and information containing private information as categories that are interrelated in content but dissimilar in scope.

In our view, privacy and information about privacy are broader concepts than personal data. At the same time, information about private life is essentially an “extended version” of personal data. Thus, personal data are the object of constitutional and legal protection, despite the impossibility of drawing a clear line between information about the private life of an individual, which is personal data.

The importance of protecting personal data has increased with the developments in information systems and the increase in data flow in electronic environment. Today, with the development of technological possibilities, surveillance on individuals is much greater than before. It is seen that personal data has become a commercial commodity today.

The feeling of keeping one's personal information private, which has existed almost throughout human history, has given rise to the right to demand that personal information be kept confidential, as awareness of fundamental rights and freedoms has increased over the years. The ease of obtaining personal data with developing technology has pushed countries to become more aware of this issue and take precautions.

With the increasing need for data protection, the European Union General Data Protection Regulation regarding the protection of personal data came into force in the European Union in May 2018 [7, p. 6].

Technological developments are among the primary factors that trigger the need for the protection of personal data. One of the greatest opportunities that computer and internet technology has provided to humankind is the ability to access as much data as possible in the shortest possible time and in the fastest way. Especially thanks to the internet, information can be made available to all internet users in a very short time. Once information about a person is available on the internet, billions of people can access it. This situation has revealed the need to protect personal data against dangers and threats occurring in the internet age. Due to all these abuses, risks, dangers and the possible negative consequences and concerns that may arise from them, legal regulations have been made to protect personal data [10, p. 20-21].

Let us note again that, with the advent of the era of widespread digitalization and the rapid growth of internet technologies, protecting individual rights and preventing the unauthorized collection of personal data have become challenges of the utmost importance. There is an urgent need for effective mechanisms to respond to abuses related to the processing and use of personal information. Expanding access to personal data has transformed the protection of personal information into one of the most pressing issues in modern legal regulation.

The right to privacy in correspondence, telephone conversations and other communications is directly related to the protection of personal data, since communications typically contain a large amount of personal information. In addition to the content of messages, correspondence generates metadata – information about the sender and recipient, namely: time of communication via calls/messages, IP addresses, geographic location, etc. An email address can also be considered personal data. This metadata is in itself personal data and allows one to identify a person, track their movements, and establish their social circle. Guaranteeing the confidentiality of communications implies the protection of relevant data and ensures the inviolability of privacy [5, p. 271].

Thus, constitutional guarantees for the protection of personal data in the digital environment still exist and are implemented through a set of interrelated rights. However, these guarantees require constant attention and improvement.

III. The importance of constitutional oversight in the protection of personal data

As we mentioned above, with the development of information technologies, the concept of “data” has gained great importance, especially in terms of providing goods and services. The need for data and the processing of personal data by various individuals, institutions and organizations have become a part of daily life. Due to these developments, the importance of personal data and the right to privacy has begun to be felt more closely, and as a result, the need to process personal data, especially within the framework of privacy, has arisen. In other words, it would be possible to say that protecting our privacy is equivalent to protecting our personality. At this point, it should be noted that although the concept of privacy constitutes our identity, privacy is a phenomenon whose value is understood only when it is lost. People truly realize its importance when their privacy is violated.

We consider it appropriate to consider in more detail that the protection of personal data belonging to each person is a constitutionally defined right:

1) The most natural consequence of a right being recognized by the Constitution is that that right is included in the constitutionality block. First of all, let us note that what should be understood from the constitutionality block is the group of standard norms that includes the general principles of law and international agreements, along with the constitutional text. In this context, in accordance with the hierarchy of norms, laws and other regulatory acts cannot contradict the Constitution. If the action that constitutes a violation of a constitutional right is a law, it can be annulled by the Constitutional Court, and any other action of the administration can be annulled by the Council of State and other administrative judicial authorities.

2) It is not possible to invalidate by law a right recognized by the Constitution. A constitutional right can only be abolished by an amendment to the Constitution. Amending the constitution requires a much more difficult and complex procedure. Therefore, the recognition of a right by the Constitution provides an important guarantee for those who are entitled to this right. However, the recognition of a right by the Constitution does not mean that the legislator cannot make any regulations on that subject.

3) The Constitution of the Republic of Azerbaijan, as well as the member states of the Organization of Turkic-Speaking States, has acquired significant importance in terms of the creation of new institutions specialized for the comprehensive protection of human rights [3]. As we know, legislation in the field of personal data consists of the Constitution of the Republic of Azerbaijan, international treaties to which our country is a party, the

Law of the Republic of Azerbaijan on Personal Data, as well as other regulatory legal acts. Thus, according to the legislation of the Republic of Azerbaijan, the right to demand the protection of personal data granted to citizens by the Constitution is guaranteed precisely by the Constitution:

a) The limitation must be made by law: It is not possible to limit the right to the protection of personal data recognized in the Constitution by a statute, regulation or any other administrative act.

b) The limitation must be made based on the special limitation reasons provided in the Constitution: Experts cite as specific reasons for the restriction the reasons included in the articles of the Constitution, which regulate fundamental rights and freedoms and specify each right and freedom separately according to its essence.

Every fundamental right and freedom is subject to objective limitations arising from the nature of that right. This also applies to the right to demand the protection of personal data [12, p. 31].

c) The limitation must comply with the principle of proportionality: When limiting the right to protection of personal data, the principle of proportionality must be observed. In order to accept that the restrictions on fundamental rights and freedoms are in compliance with the principle of proportionality, the restrictions must meet certain conditions: First of all, the means used must be suitable for achieving the purpose of the restriction; moreover, the means used must be necessary or even mandatory for the purpose of the restriction; finally, there must be a proportionate ratio between the means used and the intended purpose.

The adequacy of the interpretation of personal data in the current system of legal regulation can be assessed by referring also to judicial practice. When discussing the judicial practice of modern world states regarding the protection of personal data, it should be noted that their Constitutional Courts mainly refer to the existing practice reflected in the decisions of the European Court of Human Rights [6, p. 281].

In modern world countries, Constitutional courts are now also taking control of the issue of data protection of legal entities. It is noted in scientific literature that the constitution states that everyone has the right to protection of their personal data. From this point of view, no distinction should be made between individuals and legal entities in terms of personal data protection. This decision shows that the right to request the protection of personal data is not limited to natural persons, but can also be applied to legal entities when appropriate conditions are met [2, p. 365].

In most states, this control is exercised by the Constitutional Court through both normative control and individual appeals. According to information provided by constitutional courts, the development of information technology creates the basis for the collection, analysis, and transmission of large volumes of personal data of individuals and legal entities. This makes personal data valuable for commercial enterprises. Naturally, the need to protect personal data at the highest level against the risk of this data gaining value being seized by terrorist and criminal organizations arises [8, p. 80].

The need to protect some personal data more carefully has led to the inclusion of data such as a person's racial origin, health data or political views, which are specifically regulated and protected, under the category of sensitive personal data. The reason why some data are considered sensitive data due to their special characteristics is that, if disseminated, these data may cause more harm to personal rights than other personal data.

When the Constitutional Court mentions sensitive personal data in its decisions, it emphasizes that the right to demand the protection of these data should not be limited and that the right should not be interfered with. Indeed, in its relevant decision, the Court emphasized that the right to demand the protection of personal data should not, as a rule, be restricted or interfered with in cases where sensitive personal data is involved, and stated that the safeguards should be stricter regarding sensitive personal data.

Thus, the principle of legality in the protection of personal data belonging to both natural and legal persons is one of the constitutional guarantees that ensures the proper implementation of this right. The Constitution, by highlighting the principle of legality, has made it mandatory for regulations in this area to be made by law.

According to this principle, personal data can only be processed in cases stipulated by law or with the express consent of the person. At the same time, the principles and procedures regarding the protection of personal data are also regulated by law. In this regard, it is not possible for the administration to take any action or regulation *ex officio* regarding the processing of personal data and the protection of these data.

IV. Conclusion

In conclusion, it is possible to determine the relationship between the totality of rights, freedoms and obligations of a person and citizen, which form an integral system, with internal isolated subsystems. The constitutional and legal status of the individual is a fundamental element of a democratic society, creating conditions for the free development of the individual and full participation in public relations. Ultimately, prospects for the development of the legal status of individuals include the improvement of legislation on the protection of personal data, the expansion of the range of subjects of rights and obligations, the strengthening of the fundamental rights and freedoms of citizens, and the development of regulatory acts in the field of digital security. These areas need to be constantly taken into account and improved in the context of a changing social and technological environment.

Personal data protection is a key element in the digitalization of various processes, the downside of which has been the emergence of new fraudulent schemes. Determining the legal nature of personal data allows us to determine the importance of their protection. The increase in cyberattacks has led to the need to protect users' personal information. In addition to proper legal regulation, the problem should be covered more frequently in the media in order to warn citizens and shape their worldview accordingly.

In conclusion, it should be noted that ensuring reliable protection of personal data in the digital environment is a key factor in preserving democratic values, protecting the rights and freedoms of citizens, and developing trust in digital technologies. Only a comprehensive and systematic approach, based on the continuous improvement of legislation, technological development, and the enhancement of legal culture, will ensure the effective protection of personal data in the context of the continuous digital transformation of society.

So, our research shows that, from the point of view of personal data protection, despite the constitutional guarantees inherent in modern world states and the achievement of strong constitutional guarantees in this area, some problems are encountered in their implementation. This is a complex issue covering legal, technological and social aspects:

1) First, it's worth considering that internet users often voluntarily publish large amounts of information about themselves on social media, which blurs the boundaries of privacy and creates difficulties in determining what information should be protected. The data obtained, in turn, can be used for targeted advertising and other purposes that do not meet user expectations.

2) Secondly, the application of existing data protection regulations in the digital environment may be challenging due to the complexity of technologies and the cross-border nature of the digital environment. Control and supervisory bodies do not always have sufficient resources and powers to effectively monitor compliance with legislation in this area. However, judicial practice in cases of violation of this right is not yet sufficiently developed.

3) Third, many companies and organizations do not take sufficient measures to protect personal data from unauthorized access, use, disclosure, modification and destruction. Modern data collection and processing technologies (e.g., Big Data, artificial intelligence) make it possible to collect and analyze vast amounts of information, identify hidden patterns, and make predictions about user behavior, creating risks to the protection of personal data.

In conclusion, it is possible to determine the relationship between the totality of rights, freedoms and obligations of a person and citizen, which form an integral system, with internal isolated subsystems. The constitutional and legal status of the individual is a fundamental element of a democratic society, creating conditions for the free development of the individual and full participation in public relations. Ultimately, prospects for the development of the legal status of individuals include the improvement of legislation on the protection of personal data, the expansion of the range of subjects of rights and obligations, the strengthening of the fundamental rights and freedoms of citizens, and the development of regulatory acts in the field of digital security. These areas need to be constantly taken into account and improved in the context of a changing social and technological environment.

So, based on the results of our research, we can say that the increasing importance of data in the era of high-speed information flow brings with it increasing risks along with digital transformation. Today, government and private organizations collect, store, process and transmit significant amounts of data about individuals every day. Developing technology enables personal data to be shared across numerous platforms and to spread rapidly and unlimitedly around the world. This situation increases the risk of individuals losing control over their personal data and being unable to prevent these data from becoming a threat to them. In light of these realities, it is becoming increasingly important for the state and judicial mechanisms to take action to protect fundamental rights and freedoms and to establish the necessary legal and institutional framework.

Constitutional Court decisions show that personal data needs to be protected at the highest level. In line with this need, the right to protection of personal data, which is regulated by an independent law, must be addressed with its evolving and diversifying dimensions.

In the light of national and international legal regulations and the reviewed Constitutional Court decisions, it should be stated that the protection of personal data is, in one sense, the protection of human dignity. In order to protect human dignity, the right to privacy and the protection of privacy in relation to this right are of great importance. The state must pay careful attention to the protection and development of the material and spiritual integrity of the individual, within the scope of both its positive and negative obligations. The Constitutional Court should continue to serve both the protection of

fundamental rights and to guide legislation with its decisions based on international law and human rights in order to develop fundamental rights and freedoms.

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SIMILAR AND DIFFERENT ASPECTS OF THE MEDICAL LEGISLATION OF THE REPUBLIC OF AZERBAIJAN AND THE MEDICAL LEGISLATION OF DEVELOPED STATES

Milana Naghiyeva*

Abstract

This study examines the similar and different aspects of the medical legislation of the Republic of Azerbaijan and the medical legislation of developed states. The research focuses on key legal areas such as patients' rights, healthcare professionals' responsibilities, medical ethics, licensing and accreditation of medical institutions, health insurance systems, and state regulation of healthcare services. The analysis shows that Azerbaijan's medical legislation is largely aligned with international legal principles, including the protection of human dignity, the right to health, informed consent, and confidentiality of medical information. Similarities are also observed in the regulation of medical practice standards and public health protection. At the same time, significant differences exist in the scope of legal implementation, enforcement mechanisms, financing models, and the level of integration of digital health technologies. Developed states tend to have more comprehensive regulatory frameworks, stronger institutional control, and wider application of evidence-based medical law. In contrast, Azerbaijan's medical legislation is still evolving, with ongoing reforms aimed at harmonization with international standards. The study highlights the importance of legal modernization, institutional capacity building, and comparative legal analysis for improving the national healthcare system and ensuring effective protection of patients' rights. Medical law is the basis for protecting patients' rights and providing effective health services. This article compares the medical law system of the Republic of Azerbaijan with the models of the United States, Great Britain and Germany. Similarities stem from international bioethics standards (UNESCO Declaration) and emphasize patient autonomy, while differences arise from system models (state-centered vs. market/social insurance). The innovations of 2025 – changes to residency rules and penalties for illegal abortions in Azerbaijan, budget cuts in the United States, a 10-year plan in Great Britain, hospital reform in Germany – make the comparison relevant. The analysis is based on legislative documents and international reports, and provides recommendations for Azerbaijan.

Keywords: *Medical law, bioethics, patient rights, comparative legislation, health system, international, technology, global, human rights, healthcare.*

1. Introduction

Medical law is a field of law of particular importance for the protection of human health, the organization of health services, and the regulation of the rights and obligations of patients and medical workers. This field is based on both legal and ethical norms and is an important component of the state's social policy. In modern times, the rapid development of healthcare, the widespread application of biomedical technologies, patient satisfaction, and the protection of human rights further increase the importance of medical law. As a result of globalization and international cooperation, convergence of medical law standards is observed in many countries. The principles adopted by the World Health Organization (WHO) determine the main directions of the health policy of

* Master's student, UNESCO department of Human Rights and Information Law, Faculty of Law, Baku State University, email: milanasadixli2020@icloud.com

states. Developed countries – for example, Germany, France, Switzerland, Sweden and the USA – have formed systematic and effective mechanisms in the field of medical law. The Republic of Azerbaijan has also taken important steps in this direction, bringing its medical law system into line with international standards. However, there are still some differences compared to the legal and institutional mechanisms formed in developed countries. This article compares the medical law legislation of the Republic of Azerbaijan with the medical law systems of developed countries, identifies similarities and differences, and indicates development directions [1].

II. Main body

The medical legal legislation of the Republic of Azerbaijan is based on Article 41 of the Constitution and the Law “On Protection of the Health of the Population” (1997, as amended) to ensure the protection of the health of the population and the effective provision of medical care. This system is formed in accordance with the state-centered model and is aligned with international standards - the UNESCO Declaration on Bioethics and Human Rights, the Declaration of Helsinki and the Oviedo Convention - covering the principles of bioethics, patient rights, preventive measures, as well as medical responsibility. Innovations such as the expansion of the compulsory health insurance (CHI) system by 2025, new plans for the Clean Medicine Agency (TABIB), and the introduction of international medical law textbooks in legal education reinforce the application of these principles. The state, by committing to providing free basic medical services, prioritizes the right to physical and mental health of every citizen, while also regulating the professional standards and responsibilities of health workers [1].

The basic principles of medical law are defined in Article 1 of the Law and cover three fundamental areas: full protection of human and civil rights, prioritization of preventive measures, and access to medical and social assistance for all. The principle of ensuring human rights is based on the principles of autonomy, beneficence (benefit), non-maleficence (doing no harm), and justice, which are the foundations of bioethics, where the state undertakes to protect rights in the field of medical assistance, and legal entities and individuals bear responsibility in this process. The principle of prevention, on the other hand, is aimed at improving public health through state programs, emphasizing disease prevention, scientific and medical research, and sanitary and hygienic measures; for example, the categories of pensions for illness approved by the Cabinet of Ministers within the framework of the TABIB plans in 2025 strengthen this principle and expand social support for persons who have lost their full working capacity. The principle of accessibility to medical care requires ensuring equal access to each person - especially those living in rural areas and marginalized groups - on the basis of political, economic and legal equality, where the ITS system, implemented since 2021, supports this principle in practice by expanding it to foreign prisoners and other categories with a budget of 2.94 billion manat in 2025 [2].

Patients' rights are at the heart of medical law and are regulated in detail in Articles 24-28 of the Law, which highlight key elements such as informed consent, medical confidentiality and the right to refuse. The principle of informed consent (Article 25) provides the patient with the opportunity to receive effective information about the results of the examination, diagnosis, prognosis, treatment methods and potential risks; this information is provided to the patient, parents or legal representatives in writing or

orally, and in cases of negative prognosis, a precautionary approach is applied, as well as the right to familiarize themselves with medical documents and request a copy. Medical confidentiality (medical confidentiality, Article 53) protects the fact of a patient's referral, diagnosis, health status and treatment data, stipulating that disclosure is only possible with the patient's consent (for scientific research or teaching purposes) or in legal cases (infectious diseases, judicial inquiry, to parents); violations are punishable under criminal law and the GDPR alignment process in 2025 will further strengthen this principle. The right to consent and refusal (Articles 26-27) requires that medical intervention be carried out with the patient's consent, in urgent cases a council decision is sufficient, and the patient may refuse treatment, but the possible consequences are explained; compulsory assistance is only applied in cases of public danger (Article 28). Bioethics principles are monitored by ethical commissions – for example, the Local Ethics Committee of the Azerbaijan Medical University – where standards such as independence, competence, sincerity and pluralism are applied, in particular, the textbook “International Medical Law. Special Part”, developed with the support of BP and the renewal of the AMU curriculum in 2025, is aimed at enriching this field and teaching the intersection of healthcare and human rights [3].

Medical liability and enforcement mechanisms are defined in Articles 57-59 of the Law, which provide for compensation for medical errors and violations of the law, disciplinary and criminal liability. Medical workers are obliged to act in accordance with professional standards, and errors are punished under the relevant articles of the Criminal Code (for example, cases of negligence). In 2025, the principles of medical insurance under the ITS (Article 15-1) were expanded to include equality, mandatory participation and state control, as a result of which the budget of the Compulsory Medical Insurance Fund increased to 2.94 billion manat, improving the quality of services. Complaints are resolved by appealing to higher authorities – TABIB or the court (Article 60), and innovations in the rules for assessing disability (2025 regulations) strengthen social protection by facilitating referrals. These mechanisms, integrated with changes to the Labor Code, bring higher and secondary education in medical specialties into line with regulatory acts [4].

The basic principles of medical law in Azerbaijan support the development of the health system, emphasizing a patient-centered approach and state provision, but digital transformation, strengthening ethical oversight, and deeper integration of international experience are needed in implementation. The innovations of 2025 – new management methods of TABIB, increasing resources in legal education, and expanding the insurance system – accelerate this process, facilitate post-pandemic adaptation, and highlight areas for future research such as digital standardization and CIS cooperation [5].

Medical law regulates the responsibility of medical professionals, protecting the rights of patients. In the Republic of Azerbaijan, this area is based on Article 41 of the Constitution and the Law “On Protection of Population Health” (1997, as amended). The system follows a state-centered model, with compulsory medical insurance (CMI) being introduced in 2021, and new regulations on residency rules in 2025, including increased penalties for illegal abortions (up to 1 year in prison), and expansion of insurance coverage for foreign prisoners. Within the framework of international cooperation, a public health agreement with the CIS countries (September 2025) and a Roadmap for 2024-2025 were signed with Belarus [6].

Medical law is more developed in developed countries: the Affordable Care Act (ACA) and the tort system in the USA, the NHS Constitution in the UK, the Sozialgesetzbuch V (SGB V) in Germany. The innovations of 2025: the Federal Budget Reconciliation Law in the USA with Medicaid and the ACA with more than \$1 trillion in cuts (10 million people left uninsured), the UK with "Fit for the Future: 10 Year Health Plan" with digitalization and preventive services, the Hospital Care Improvement Act (January 2025) in Germany with 65 service groups and the expansion of digital patient records (ePA) are changing these models. The comparison reveals similarities and differences based on international standards (Declaration of Helsinki, Oviedo Convention) and provides inspiration for the development of Azerbaijan [7].

In developed countries, medical legal systems cover the protection of patient rights, the regulation of medical practice, and the effective provision of health services. These systems are formed in accordance with international bioethical standards (UNESCO Declaration, Helsinki Declaration), but differ in economic models: a market-based pie system in the United States, a state-centered NHS framework in the United Kingdom, a social insurance model in Germany. The innovations of 2025 – budget cuts in the United States, a restructuring of medical device regulation in the United Kingdom, hospital reform in Germany – make the systems even more relevant. The systems of the main countries are analyzed below [8].

In the United States, medical law is regulated at the federal and state levels, largely based on a malpractice system and the Affordable Care Act (ACA, 2010). Patient rights are protected by HIPAA (privacy), EMTALA (emergency care), and informed consent case law (e.g., *Canterbury v. Spence*). Insurance is market-based, but the 2025 Federal Budget Reconciliation Act would reduce federal spending by more than \$1 trillion, leaving 10 million people uninsured, and restrict access. This law would streamline government spending by amending Medicaid and the ACA, and would also limit preventive services in Medicare. Medical malpractice cases are settled in civil courts, with high compensation (average \$300,000+), but state laws (e.g., cost caps) are strengthening markets in 2025. Telehealth is expanding in digital health, but prescription prices are aligned with the "most-favored-nation" principle by Executive Order (May 2025). The system prioritizes patient autonomy, but inequality (uninsured rate ~8%) is a problem.

In the UK, medical law is based on a state-centred model under the NHS Constitution (2009) and the Medicines and Healthcare products Regulatory Agency (MHRA). Patient rights are guaranteed by free care, informed consent (*Montgomery judgment*, 2015) and confidentiality (Data Protection Act, GDPR). In 2025, the first major overhaul of medical device regulation came into force (16 June 2025), strengthening the MHRA's oversight and facilitating market entry. The Medical Devices Regulations 2002 are being updated to maintain EU directives but consider alternative market routes. The Medicines for Human Use (Clinical Trials) Amendment Regulations (April 2025, effective April 2026) simplify processes and reduce the burden on healthcare professionals. Medical errors are handled through the NHS Litigation Authority (96% negotiated settlement), with limited compensation. The MHRA's plans for 2025 prioritise patient safety, increasing market access. The system emphasises equity and the public interest, but waiting times (elective care) are a problem.

In Germany, medical law is based on the Sozialgesetzbuch V (SGB V) and the social insurance model, with 90% of the population covered by compulsory insurance. Patient

rights are protected by §280 BGB (informed consent), GDPR (privacy) and bioethics commissions. The Hospital Reform (January 2025) will optimize finances, reduce bureaucracy and improve quality by organizing 65 service groups. The Medical Research Act (2024, implementation 2025) will facilitate clinical research and regulate confidential drug prices. With the Digital Health Law, digital medical devices (DiGA) are exempted from case-by-case review, and electronic health records (ePA) are made mandatory. Medical errors are resolved through insurance subrogation, penalties are low (no punitive). The new coalition (CDU/SPD, April 2025) is accelerating digitalization and reforming GP payments (Act March 2025). The system ensures accessibility and quality, but the aging population is putting pressure [9].

Patient rights are the foundation of the medical legal system. According to Azerbaijani legislation, every citizen has the right to receive medical care, to protect their health, to have their personal information kept confidential, and to give informed consent to the treatment process. Accordingly, the principle of informed consent – the patient's voluntary consent to a medical procedure or operation after receiving full information – is considered a fundamental principle in both national legislation and international medical law. In developed countries, these rights are protected by more extensive and practical mechanisms. For example, in Germany, patients directly participate in medical decisions, have the freedom to choose the method of treatment, and this right is guaranteed by law. In countries such as Switzerland and the USA, specialized legal institutions for patient rights operate, and patients can appeal to the court or special independent commissions in case of violation. In Azerbaijan, although the legal framework exists, practical mechanisms for patients to effectively exercise these rights have not yet been fully formed. In particular, complaint and legal protection procedures can be complex and lengthy.

Health insurance is an important financial and legal basis for the implementation of medical law. In developed countries, medical services are often provided through mandatory or voluntary health insurance systems. For example [10]:

- In Germany, health insurance is mandatory for most citizens and is strictly regulated by the state.
- In Switzerland, health insurance is managed by private companies, but is mandatory for everyone.
- In the United States, there is a hybrid model: both private and public insurance programs operate in parallel.

In Azerbaijan, compulsory health insurance is being implemented in stages by the Medical Territorial Units Management Union. Although this system has made significant progress in recent years, some services remain outside the scope of insurance, its coverage is incomplete, and its infrastructure is not fully established. This creates certain limitations in the practical application of legal norms. The concept of bioethics occupies one of the main places in modern medical law. Ethical committees evaluate the ethical and legal compliance of medical research, clinical trials, and specific medical interventions. In developed countries, these committees operate completely independently, and their decisions are decisive. For example, in countries such as France and Sweden, no clinical research can be carried out without the permission of ethical committees. This ensures the protection of patients and the protection of ethical norms.

Although ethics committees operate in certain clinical trials in Azerbaijan, this system is not yet extensive and systematic. There is a need for more precise regulation of ethical control by legislation. In developed countries, medical law is flexible, and laws related to the application of new technologies (genetic engineering, artificial intelligence, remote diagnostics, etc.) are regularly updated. For example, in the USA and Germany, separate regulatory acts have been adopted for the legal regulation of telemedicine and artificial intelligence technologies. This not only improves the quality of medical services, but also provides legal clarity and patient protection. In Azerbaijan, the regulatory framework of medical law in this direction has not yet been fully formed. Existing laws are limited to general provisions, and the legal framework for new technological processes is weak.

Medical errors can occur in all countries, but their legal assessment and liability mechanisms differ. In developed countries, there are special legal procedures and insurance mechanisms for medical errors. Patients can easily receive compensation in case of medical harm, and this process is regulated transparently. For example, in Switzerland and Germany, there are special medical insurance funds to compensate for the harm caused to the patient as a result of the error. In Azerbaijan, although this issue is provided for in legislation, in practice the compensation mechanisms are weak, and patients have to go through long and complicated procedures to restore their rights.

III. Similarities and Differences

The similarities are mainly due to international bioethics principles. Access to healthcare is provided by the state in all: free basic services in Azerbaijan (Article 4 of the Law), insurance through the ACA in the USA, fully free NHS in the UK, social insurance in Germany (90% of the population). Patient rights and informed consent are mandatory: written consent in Azerbaijan (Articles 24-27), *Canterbury v. Spence* in the USA, Montgomery principle in the UK, §280 BGB in Germany. Medical confidentiality protection is general: Article 24 of the Law in Azerbaijan, HIPAA in the USA (telehealth extension in 2025), Data Protection Act in the UK, GDPR in Germany. Medical research ethics are overseen by ethical committees: Bioethics Commission in Azerbaijan, IRB in the USA, REC in the UK, Ethikkommission in Germany.

The differences stem from the system models. In Azerbaijan, ITS is newly developed and will be extended to foreign prisoners in 2025, but implementation is weak; in the US, the market-based system will affect 11.8 million people by 2025, in the UK the NHS is completely free and local services are a priority with a 10-year plan, in Germany social insurance optimizes finances with a 2025 hospital reform. Medical liability differs from criminal liability in Azerbaijan (abortion penalties increased in 2025), in the US the civil tort (high compensation), in the UK the NHS Litigation Authority (96% negotiated settlement), in Germany insurance subrogation. In end-of-life decisions, euthanasia is prohibited in Azerbaijan (religious reasons), in the US it varies by state, it is prohibited in the UK, passively permitted in Germany (from 2020). Standardization in digital development is weak in Azerbaijan, but in Germany, the Digital Health Law and the mandatory ePA, in the UK, the 10-year digitalization plan, and the telehealth cliff (October 2025) in the US are having an impact.

Table 1.

Aspect	Similarities	Differences (Azerbaijan vs. Developed Countries: USA/UK/DE)
Access to Healthcare	In all, basic services are provided free of charge by the state (AZ Constitution Art. 41; USA ACA; UK NHS; DE SGB V). Equality in accordance with international standards (UNESCO) is prioritized.	AZ: MTS (from 2021, 2025 budget expansion), state free services priority, but access limited in rural areas. USA: Market-based, 2025 cuts (10M uninsured). UK: Fully free NHS (10 Year Plan 2025). DE: Social insurance (90%, 2025 hospital reform).
Patient Rights and Informed Consent	Informed consent is mandatory (AZ Law Arts. 24-27; USA Canterbury v. Spence; UK Montgomery; DE §280 BGB). Bioethics principles (autonomy) are common.	AZ: Written consent not fully standardized, implementation weak (private/public differences). Developed: Detailed standards and court precedents (USA key info; DE risk disclosure); AZ prioritizes parental consent for minors.
Medical Confidentiality	Confidentiality protection is universal (AZ Law Art. 24; USA HIPAA; UK Data Protection Act; DE GDPR). Disclosure with consent or in legal cases.	AZ: Exists in law, but implementation weak (private sector). Developed: Strict penalties and monitoring (USA million-dollar fines; DE GDPR 2025 expansion); AZ integrated with criminal law.
Medical Errors and Liability	Liability based on negligence (AZ Criminal Code Art. 314; USA tort; UK negligence; DE §823 BGB). Insurance mandatory.	AZ: Primarily criminal liability (2025 amendments with 5-7 years imprisonment), few court cases. Developed: Civil system (USA high compensation/jury; UK NHSLA 96% settlements; DE insurance subrogation, low penalties).
End-of-Life Decisions (Euthanasia)	Passive euthanasia limited, requires consent.	AZ: Active/passive prohibited (2012 Patient Rights Law, religious reasons). Developed: USA varies by state; UK prohibited; DE passive permitted (from 2020).
Bioethics and Medical Research	Ethics committees and UNESCO standards (AZ Bioethics Committee; USA IRB; UK REC; DE Ethikkommission). Consent and oversight common.	AZ: Newly developing, law incomplete (ethics committees forming). Developed: Established institutions (USA Helsinki implementation; DE 2025 Medical Research Act); AZ scientific integration weak.
Digital Development	Digital data protection and telehealth trends.	AZ: Standardization weak, new committees. Developed: DE mandatory ePA (2025); USA telehealth cliff (October 2025); UK 10 Year Plan digitalization.

IV. Conclusions and Recommendations

Azerbaijani medical law legislation complies with international standards, but lags behind advanced models in implementation and details. The 2025 innovations (residency, insurance expansion) are positive, but cultural responsibility mechanisms

(like the UK/DE) and digital standardization (inspired by the German model) are needed. Pandemic experience and CIS cooperation can accelerate this process. Future research should focus on digital transformation. The main issues facing the development of the medical law system of the Republic of Azerbaijan and ways to solve them are noted. Learning from foreign experience and its adaptation to local conditions is emphasized as an unavoidable necessity. The main recommendations include further improvement of the legislative framework, strengthening the protection of patient rights, and keeping ethical standards up to date. At the same time, ensuring the protection of medical data through the integration of information technologies was noted as one of the priority issues. In the modern era, it is important to modernize legal and institutional mechanisms for the application of innovative medical services and technologies. In this direction, progress is also needed in the direction of adaptation to international experience and harmonization of the legal framework. Future research should be mainly focused on deepening the practical application of medical law and mutual cooperation. In general, the application of modern and advanced practices will increase the transparency and accountability of the legal system, serve to protect the health rights and well-being of citizens. Reforms to be implemented in this direction will contribute to strengthening relations not only at the national level, but also at the international level.

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REGULATING THE UNREGULATED-LEGAL REACTIONS TO THE DEVELOPMENT OF ARTIFICIAL INTELLIGENCE

Aydan Abdullayeva*

Abstract

The exponential growth of artificial intelligence (AI) has reshaped world economic, legal, and social structures, posing critical questions on how to control its deployment while protecting human rights. This paper studies legal responses to AI in key jurisdictions, the United States, European Union, China, and Canada, and their divergent regulatory philosophies. The EU employs a horizontal, rights-based approach based on ethics, data protection, and the "Brussels effect" that seeks to export its regime to the world. The United States follows a decentralized, market-centred regime combining federal guidance with various state-level experiments. China embraces a dirigiste approach with a focus on government control and data regulation via the PIPL, DSL, and CSL, with AI incorporated into judicial and administration proceedings. Canada, while circumspect, tests "regulatory sandboxes" and disclosure policies by courts to harmonize innovation with openness. Comparative studies show decentralized world governance and dangers of legal incompatibilities, imbalance in ethics, and digital disenfranchisement. The paper suggests the adoption of international standards on transparency, accountability, and fairness in algorithms; increased public-private partnerships; and capacity-building programs to make AI integration unbiased. Finally, the paper concludes that regulation of AI must transcend national borders, creating a consistent legal framework that harmonizes innovation with inherent rights, forestalls abuse, and fosters sustainable digital development. The paper is convinced that proactive, coordinated effort at a world level is the only way that AI can become a force for human progress instead of a dispenser of inequality and control.

Keywords: *artificial intelligence, regulation, legal frameworks, data protection, digital governance, ethical AI, human rights, accountability, transparency, European Union, United States, China, Canada.*

I. Introduction

Artificial intelligence (AI) is a new milestone in modern technological progress. The number of scientific publications devoted to AI is growing rapidly: from 2019 to 2020, this figure increased by 34.5%, which significantly exceeds the growth from 2018 to 2019 (19.6%) [16]. Active implementation of AI-based technologies provides significant economic and social benefits, and also increases competitiveness in the global arena. Intelligent systems are already widely used in various areas of public life and are becoming an integral part of everyday human activity. At the same time, for most people, interaction with AI remains invisible, although the results of its work can directly affect human activity, and this impact is not always positive. The integration of AI into social processes gives rise to many new legal issues and problems that require the creation of fundamental legal principles and legislation that can protect human rights in the context of digitalization. These principles must be consistent with the constitutional and legal values of the modern state and take into account the challenges posed by the digitalization of public relations. The key task is to ensure that technological development does not occur at the expense of human rights and freedoms. The spread of artificial intelligence technologies has revolutionized industries ranging from healthcare to

* Leading Lawyer, Azer-Turk Bank OJSC, email: Lawyer.aydanabdullayeva@outlook.com

entertainment. However, the rapid development of AI has revealed significant gaps in legal regulation. These gaps have led to unregulated or fragmented legal responses that do not fully address the ethical, social, and economic aspects of AI.

II. The Current Situation in AI Regulation

Before discussing the regulation of artificial intelligence (AI), it is necessary to define the subject of regulation. However, defining artificial intelligence precisely is not an easy task. In recent years, as the topic has received widespread attention, many definitions have been proposed. Among the most relevant is the definition presented in the Communication of the European Commission of 25 April 2018 [6]. According to this document, artificial intelligence is defined as systems that exhibit intelligent behaviour by analysing the environment and taking actions with a certain degree of autonomy to achieve specific goals.

Article 3 of the draft European Regulation on Artificial Intelligence provides a descriptive definition of AI. According to this definition, an artificial intelligence system is software developed using one or more of the technologies and approaches listed in Annex I and capable, within the framework of human-defined objectives, of generating results such as content, predictions, recommendations or decisions that have an impact on the environment in which it interacts [7].

In any case, regardless of the definition used, it is important to consider the risk of anthropomorphizing artificial intelligence, which may arise, in particular, from its very definition. The term “intelligence” has a certain effect, forcing us to perceive AI as a kind of intelligent being. In this case, a metaphor is used: an AI application behaves as if it had intelligence. However, it is necessary to be clear about both the advantages and limitations of using metaphors, lest they begin to replace reality with their meaning. If this is not taken into account, the use of the term “intelligence” may imply the existence of subjectivity on the part of the AI application, thereby covertly influencing any considerations regarding its legal status. Thus, if artificial intelligence is considered “intelligent” on the basis that it achieves results that human intelligence could produce, then the object of regulation becomes extremely broad: any process can be considered intelligent and therefore subject to regulation [10].

III. Geopolitical Context of AI Regulation

As of December 2024, artificial intelligence (AI) regulation is actively evolving across jurisdictions, demonstrating diverse approaches to balancing innovation, ethical standards and social impact.

The USA

The United States is implementing a multi-layered approach to regulating AI, including federal initiatives and individual state laws. In October 2023, President Joe Biden signed Executive Order 14110, entitled “*Safe, Secure, and Responsible Development and Use of Artificial Intelligence*” [1]. The order aims to promote competition in the AI industry, protect civil liberties, and ensure national security. The document requires federal agencies to designate AI champions and develop guidelines for its implementation and it is classified as federal initiatives. As of November 11, 2023, at least six federal cases involved plaintiffs or defendants without counsel citing fictitious cases allegedly generated using AI. Some of them faced the threat of having their cases dismissed and being sanctioned. On April 9, 2024, the Missouri Court of Appeals for the

Eastern District of Missouri in *Cruz v. Karlen* fined an uncounseled plaintiff \$10,000 for filing a document with fictitious AI-generated case law citations [12]. By 2024, several U.S. states, as well as Puerto Rico, the Virgin Islands, and Washington, D.C., have proposed AI-related legislation. These are classified under individual state laws. In the United States, the American Bar Association (ABA) is the professional organization for attorneys that, among other things, develops Model Rules of Professional Conduct. Typically, attorneys licensed to practice in certain jurisdictions are regulated jointly by their state bar associations and the Supreme Courts of their respective states. Most states have adopted the ABA's Model Rules of Professional Conduct to some degree [2, p. 33].

California, Florida, and Michigan regulate artificial intelligence (AI) through their Bar Associations and various committees. On November 16, 2023, the California Bar Association's Committee on Professional Responsibility and Conduct (COPRAC) issued its first recommendations on attorneys' use of AI and the need for further action. COPRAC's recommendations include [2, p. 35]:

- Work with the Legislature and the California Supreme Court to clarify or amend laws and regulations to more clearly define the unauthorized practice of law.

- Work with the Legislature to determine whether generative AI products in the legal profession should be licensed or regulated, and how they should be implemented.

The Florida Bar Association issued an ethics opinion for attorneys on the use of generative AI, and the Michigan Bar Association issued an ethics opinion for judges on maintaining competency in technology, including AI.

Recently, on April 6, 2024, the New York State Bar Association (NYSBA) AI Working Group released a report and recommendations to NYSBA House Delegates.

California, Colorado, Florida, Kansas, Maine, Michigan, New Jersey, Utah, and Vermont are all regulating AI for lawyers or legal services or have explicit policies affecting either. The remaining 47 states appear not to explicitly regulate AI for lawyers or legal services, even though they may have committees or task forces reviewing the issue.

China

In 2023, China took place of 138th out of 142 countries in the category "*Civil justice is free from undue government influence.*" While the United States had one lawyer for every 300 citizens in 2019, China had only one lawyer for every 4,500. To compensate for this deficit, China is making heavy use of technology, including artificial intelligence. Despite China's leadership in integrating AI into the judicial system, its record on fundamental human rights and justice is highly questionable. Thus, while China can be seen as a leader in the use of technology and AI in judicial practice, the implementation of automated judicial decision-making requires careful analysis and caution [14, p. 116].

The Chinese model is a dirigiste system based on state capitalism. China is characterized by active regulation-making. In the field of data protection, it is worth noting the Personal Information Protection Law (PIPL), which came into effect on November 1, 2021, the Data Security Law (DSL), which came into effect on September 1, 2021, and the Cybersecurity Law (CSL), which came into effect on June 1, 2017. From a strategic perspective, the recent establishment of the Shanghai Data Exchange (SDE) aims to establish the so-called "Shanghai Model" of data trading [9, p. 61]. The aim of this model is to overcome the existing problems that hinder the circulation of data and position itself as a global benchmark for addressing the risks associated with legal uncertainty.

The European Union

The approach taken by European legislation to regulate artificial intelligence is a horizontal approach. The main limitation of this approach is that the rules are not intended to address specific problems or fill specific gaps in the legal system. Instead, they are intended to be applicable to all sectors, including health and finance. They are therefore not specific rules created to address a specific problem or legal obstacle, but rather general provisions that form a common framework. This framework serves as a guide for the functioning of artificial intelligence systems both now and in the future.

In a geopolitical context, the European Union's strategy aims to establish itself as a leader in the development of regulations and to ensure the adoption of the European model in other parts of the world, creating the so-called "Brussels effect" [3].

The European Union's goal is not to compete with China and the United States in technological production, but to establish rules and regulatory standards. The Memorandum sets out the task of asserting European "digital sovereignty", which has both an external dimension aimed at interaction with the other two global players and an internal impact on the EU member states. The strategy involves, on the one hand, creating a new model, and on the other, preventing fragmentation. This reaffirms the strategic intent of European legislators, the ultimate goal of which in this case is to create a single European digital market. Its regulatory framework is expressed in four key areas [4]:

- *Data protection*: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (commonly known as GDPR), and the use of data provided for in the Data Act, the Data Governance Act and the proposal for a regulation on the European Health Data Area.

- *Digital services and the digital market*: the Digital Services Act and the Digital Markets Act.

- *Digital identification*: Revision of the eIDAS Regulation 2014 concerning electronic identification means.

- *Artificial intelligence*: Proposal for regulation of AI.

This normative framework aims to protect not only fundamental rights, but also "European values", a term that is repeatedly mentioned in the draft. This emphasizes that the proposed model is not only normative, but also cultural. The aim is to show that it is not only about legal norms, but also about the culture that these norms reflect and promote.

Canada

According to Statistics Canada, nearly one in five Canadian provinces (18%) had experienced at least one serious problem or dispute from 2020 to 2023. However, most Canadians do not seek professional legal help for more than 80% of their legal issues [13].

The Federal Court of Canada requires all parties to litigation, including those acting without a lawyer, to inform the court and other parties if artificial intelligence was used to prepare a document filed with the court. This notice must be included in the first paragraph of the document [8].

The Manitoba Court of King's Bench also requires all parties to litigation to disclose the use of artificial intelligence and explain how it was used in their filings [5]. The Yukon Supreme Court has an identical policy [15].

The Federation of Law Societies of Canada is a coalition of 14 law societies in Canada, each responsible for regulating the practice of law in its province. In May 2024, Toronto lawyers told the International Bar Association (IBA) that, overall, the Canadian

Bar Association and provincial law societies have taken a relatively neutral stance on artificial intelligence (AI), playing a minimal role in regulating and monitoring it. However, some provinces are implementing innovative approaches to improve access to justice. They use “regulatory sandboxes” – special legal regimes that allow legal services to obtain exceptions to the rules of unauthorized legal practice when developing technical solutions. In addition, some provinces provide legal professionals with guides and recommendations on the use of generative AI [11].

Thus, despite the overall restrained approach to AI regulation, individual provinces in Canada are taking steps to integrate innovative technologies into the legal field, while providing appropriate guidance for professionals.

IV. Arguments and Recommendations

The rapid development of artificial intelligence (AI) has revealed significant gaps in existing legal frameworks, creating difficulties in regulating the ethical, legal and social aspects of the use of AI technologies. This argument is supported by a comparative analysis of regulatory approaches in leading jurisdictions: the United States, the European Union, Canada and China. The analysis shows that, despite steps being taken to address individual issues such as transparency, security and accountability, the lack of international consensus leads to fragmented and often contradictory regulatory practices.

Several key risks associated with this situation are highlighted:

- *Legal conflicts between jurisdictions*: Inconsistencies in national laws make it difficult to implement AI globally.

- *Ethical dilemmas*: Different priorities in regions (e.g. innovation in the US, ethics in the EU, government control in China) lead to uneven protection of human rights.

- *Barriers to innovation*: Over-regulation in some regions and under-regulation in others create uncertainty for AI developers and businesses.

To address these issues, the following recommendations are offered:

- *Adopt global standards for AI transparency and accountability*

- Develop internationally accepted guidelines for the creation and use of AI systems, with an emphasis on transparency in the use of data, algorithmic decision-making, and accountability for results.

- Encourage cooperation among international organizations such as the UN, the World Economic Forum, and regional groupings such as the EU and ASEAN in developing such standards.

- *Fostering public-private partnerships for ethical AI development*

- Collaboration between government, the private sector, and academia to balance innovation and ethical considerations.

- Developing shared resources, such as open databases and model evaluation tools, to ensure the robustness, fairness, and non-discriminatory nature of AI systems.

- *Creating regional regulatory sandboxes*

- Enabling countries to experiment with AI regulations in controlled settings, testing their impact before implementing them at scale.

- Sandboxes should protect consumer rights while maintaining flexibility for innovation.

- *Prioritizing education and awareness*

- Investing in public education to raise awareness of the opportunities and risks of AI, thereby facilitating informed public dialogue.

- Training policymakers and lawyers in the field of AI to enhance their competence in developing effective regulations.

- *Mitigating the risks of digital inequality*

- Incorporate digital divide bridging provisions into AI regulations to avoid widening socio-economic inequalities.

- Support disadvantaged regions in accessing and benefiting from AI technologies.

These recommendations aim to create a balanced legal framework that promotes the ethical development of AI, supports international cooperation, and addresses the risks of unregulated AI adoption. By synthesizing lessons from leading jurisdictions and proposing solutions, the author contributes to the growing debate on AI regulation in the 21st century.

V. Conclusion

Artificial intelligence (AI) is having a significant impact on various aspects of social and legal life on a global scale. The examples discussed show that AI regulation remains one of the most pressing issues for legal systems in different countries. Despite progress in some jurisdictions, approaches to AI regulation vary significantly, which creates both new opportunities and significant challenges.

The European Union, seeking to become a leader in legal regulation, has developed a horizontal approach aimed at creating a single framework for AI systems. This approach aims to protect both fundamental rights and European values. Examples such as the GDPR and the Digital Services and Markets Act demonstrate the EU's ambitious plans to create a single digital market. However, the European model faces difficulties in adapting to diverse economic sectors and rapidly changing technologies.

On the other hand, China uses a dirigiste model focused on state capitalism. This system places emphasis on strict data regulation through PIPL, DSL, and CSL laws, as well as the creation of innovative tools such as the Shanghai Data Exchange. However, the use of AI in the Chinese judicial system raises concerns due to the limited rights and freedoms of citizens, making this model a dystopian example for democratic states.

In the United States, the approach to AI regulation is more decentralized, leading to the emergence of many federal and regional initiatives. For example, the Federal Court of Canada and individual state courts require disclosure of information about the use of AI in legal documents. This demonstrates the importance of transparency in the use of new technologies. At the same time, the Canadian Bar Association and provincial law societies take a cautious stance, preferring minimal intervention in AI regulation, although some provinces are implementing sandboxes and providing guidelines for professionals.

Among the main challenges in regulating AI are the problems of anthropomorphization of technologies, the use of fictional data and metaphors that can influence the perception of technologies. For example, cases in Canada and the US where litigants used false data generated by AI highlight the need for clear rules and accountability when using such technologies.

These examples highlight the need for a global approach to AI regulation. This approach should take into account the following key aspects:

- Developing international standards for transparency and accountability.
- Cooperation between governments and the private sector.
- Supporting research to minimize the risks of digital inequality.
- Education and awareness-raising among lawyers and the public.

The development of AI technologies requires not only the adaptation of existing

legal norms, but also the creation of new ones that meet the challenges of the digital age. Regulatory systems must ensure a balance between innovation and the protection of human rights, so that AI becomes a tool for improving lives rather than a tool for control. Europe, China, and North America offer different approaches, each of which can contribute to the formation of a global strategy for AI regulation. The main challenge is to create a legal framework that simultaneously ensures innovation and the protection of fundamental rights.

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LEGAL FRAMEWORK AND COUNTERMEASURES ADDRESSING DEEPFAKE RISKS IN EUROPE

Ismayil Musayev*

Abstract

This article critically examines the existing European legal frameworks addressing the challenges posed by deepfake technology. It highlights the significant risks associated with deepfakes, including misinformation, infringements on personal image rights, privacy violations, and threats to democratic processes. Central to the analysis is the European Union’s Artificial Intelligence Act (AI Act), set to come into force in August 2025, which introduces the first binding legal definition and regulatory obligations for high-risk AI applications, including deepfakes. The article also considers complementary instruments such as the GDPR, the Digital Services Act, and relevant national legislation within Member States like Germany and France. Despite these regulatory advances, structural gaps remain – particularly in enforcement mechanisms and the inclusion of end-users – that hinder comprehensive governance. The article underscores the necessity for a multifaceted, coordinated approach combining harmonized enforcement, technological oversight, public awareness, and evolving legal measures to effectively regulate synthetic media technologies within the European legal order.

Keywords: *artificial intelligence, deepfake, AI Act, image rights, AI governance in Azerbaijan.*

I. Introduction

This article addresses the pivotal question of whether the existing European legal framework adequately regulates the challenges posed by deepfake technology. Deepfake technology, created through advanced artificial intelligence methods, enables the generation or manipulation of highly realistic synthetic audiovisual content. While these innovations offer valuable applications in sectors like education and entertainment, their misuse raises significant risks including misinformation, violation of personal image rights, reputational harm, and threats to democratic processes. In response, the European Union (the EU) has developed a comprehensive legal framework that addresses these challenges at multiple levels. Central to this is the Artificial Intelligence Act (AI Act) – the world’s first binding legal instrument that regulates AI technologies using a structured, risk-based classification system. Scheduled to enter into force in August 2025, the AI Act sets explicit obligations for high-risk AI systems and imposes transparency requirements, particularly regarding deepfake technologies. Importantly, it provides a forward-looking definition of “deepfake”, becoming the first legal instrument in Europe – and globally – to explicitly define and regulate this phenomenon within a binding framework. The Act’s extraterritorial reach and harmonized enforcement mechanisms make it a pioneering global standard for AI governance. Alongside the AI Act, other crucial European regulations contribute to deepfake governance, including the General Data Protection Regulation (GDPR), the Digital Services Act (DSA), and the e-Commerce Directive. At the national level, Member States such as France, Germany have adopted or are developing specific laws to complement EU-wide measures, addressing issues like defamation, image rights, and electoral integrity. This article explores the technical foundations of deepfake technology, the societal and legal risks it poses, the European Union’s regulatory response – focusing particularly on the AI Act – and

* Leading Specialist, Center for Legal Examination and Legislative Initiatives, email: ismayilmusayev05@gmail.com

relevant national legislation within selected Member States. It further analyzes how fundamental rights enshrined in the European Convention on Human Rights interact with these emerging technologies, aiming to provide a comprehensive legal perspective on the governance of deepfakes in Europe.

II. What is deepfake?

In recent years, deepfake technology has emerged as increasingly pressing issue, raising significant legal, ethical, and societal concerns across Europe and beyond. Its rapid development has outpaced existing legal frameworks, challenging regulators to respond effectively.

The emergence of the term “deepfake” traces back to a Reddit user who adopted the same pseudonym, blending “deep learning” with “fake” to describe face-swapping videos [11, p. 2]. Initially, this user’s intent was to share pornographic content featuring the faces of well-known celebrities digitally superimposed onto actors’ bodies without their consent [11, p. 2]. By releasing the source code behind the technology, the user inadvertently sparked a wave of interest across the Reddit platform, accelerating the mass production and distribution of such manipulated content. Initially, prominent public figures became the primary subjects of these early deepfake creations. Even in its early stages, the misuse of deepfakes revealed significant risks to personal dignity, privacy, and public trust, laying the groundwork for today’s more complex legal and ethical debates.

A deepfake refers to any form of content – whether video, audio, or other media – that is either entirely fabricated or has been digitally altered using advanced manipulation techniques [30, p. 1]. This may involve generating synthetic material from scratch or modifying existing recordings to misrepresent reality [30, p. 1]. According to the European Parliamentary Research Service, deepfakes are defined as artificially generated or altered audio-visual content that convincingly imitates real individuals, making them appear to say or do things they never actually said or did [31, p. 4]. These highly realistic synthetic media are created using artificial intelligence technologies, specifically deep learning algorithms and generative adversarial networks (GANs).

Deep learning is a type of machine learning that uses neural networks to analyze data and find patterns by mimicking the human brain’s processes [9, p. 7]. It enables computers to learn more effectively from large datasets, which are essential for training generative models [9, p. 7]. The availability of vastly labelled visual datasets on the internet has accelerated the development of deepfake technology. By learning important features and their relationships from data, deep learning algorithms create realistic and convincing deepfake content.

Generative Adversarial Networks (GANs), introduced by Goodfellow et al. in 2014, enable the production of highly realistic synthetic images by optimizing them to be statistically indistinguishable from genuine images, thereby blurring the line between real and artificially generated content [10, p. 3]. GANs function through the interaction of two models: one that generates synthetic content and another that evaluates its authenticity [9, p. 8]. This process allows the system to refine its outputs over time, resulting in synthetic media that increasingly resembles real data. As a result, GANs have significantly improved the effectiveness and accessibility of deepfake creation by streamlining the learning process and enhancing the realism of generated content.

III. The Threats Posed by Deepfakes

Although deepfake technology brings notable advantages, it raises significant concerns due to its potential to erode public trust, spread misinformation, and challenge the distinction between fact and fiction. The advent of deepfake technology has facilitated various forms of disinformation, manifesting in diverse contexts. The implications of such misuse are profound and multifaceted, spanning the political sphere—through election interference and propaganda dissemination; the financial sector—via fraud schemes and market manipulation; and reputational domains—by facilitating defamation, identity theft, and personal or institutional credibility erosion.

During armed conflicts, deepfake technology has emerged as a powerful tool for manipulating public perception and spreading disinformation. On March 2, 2022, a deepfake video falsely showing Ukrainian President Volodymyr Zelenskyy urging soldiers and citizens to surrender briefly appeared on a national news outlet. Although the video closely imitated his appearance and speaking style, Ukrainian authorities quickly dismissed it as inauthentic. This marked the first high-profile use of deepfake technology during an armed conflict, signalling a shift in the nature of information warfare [4, p. 2].

One of the primary legal challenges posed by deepfake technology concerns the infringement of individuals' privacy rights through unauthorized use of their identity, image, or voice. While publicized cases involving celebrities' manipulated likenesses have drawn significant attention, most of the harm disproportionately affects private individuals who are often subjected to blackmail, harassment, or retaliation [1, p. 147]. These issues underscore urgent needs for strengthened legal protections and regulatory mechanisms to safeguard personal dignity and reputation in the digital era. The creation of deepfakes frequently results in violations of human rights by unlawfully processing personal data, as an individual's image constitutes inherently identifiable information. Without the explicit and informed consent of the data subject, the use of their likeness in synthetic media production breaches core data protection principles, since reliance on a purported legitimate interest fails to provide adequate legal justification [1, p. 147]. Accordingly, the unauthorized creation and dissemination of manipulated visual content should be subject to clear and enforceable legal prohibitions to safeguard personal privacy and uphold fundamental data protection rights in the digital environment.

AI-generated deepfakes present a profound threat to personal and professional reputations. As numerous public figures have been targeted with fabricated stories and defamatory remarks, the swift and widespread circulation of such material on social media platforms further exacerbates the resulting damage. Beyond mere reputational harm, these synthetic media can fundamentally erode public trust and be weaponized by malicious actors to propagate misinformation and orchestrate sophisticated deception campaigns.

Deepfake technology undermines intellectual property protections by enabling unauthorized replication and manipulation of protected audio-visual content, thereby complicating the enforcement of copyright and trademark laws. This raises critical legal questions concerning ownership, attribution, and the adequacy of traditional frameworks to address AI-generated synthetic media in the digital age. In 2020, Roc Nation, the U.S.-based entertainment company founded by Shawn Carter, professionally known as Jay-Z — an internationally renowned American rapper and music producer — filed copyright takedown notices against AI-generated deepfake videos [2]. These videos, created by an anonymous YouTuber known as Vocal Synthesis, used artificial intelligence to replicate Jay-Z's voice, featuring him performing Billy Joel's "We Didn't

Start the Fire” and the Hamlet soliloquy from Shakespeare [2]. Roc Nation asserted that the content unlawfully used AI to impersonate their client's voice, which led to the removal of the videos from YouTube. This landmark case highlights the urgent need to modernize and reinforce copyright law to effectively counteract the novel threats posed by AI-driven deepfakes, thereby safeguarding the integrity and value of creative works in an increasingly digital landscape.

Deepfake technologies also pose a significant threat to political systems, particularly during election periods, by enabling the creation and dissemination of deceptive content that can manipulate public opinion and undermine the integrity of democratic processes. In the United States, notable recent cases include a deepfake audio of a Chicago mayoral candidate allegedly endorsing police violence, as well as a robocall mimicking President Joe Biden’s voice intended to suppress voter turnout during a primary election [29, p. 5]. These incidents demonstrate the potential of deepfake technology to manipulate public opinion and disrupt electoral participation, thereby raising critical concerns about political disinformation and the integrity of democratic processes.

IV. Europe

The European Union is actively addressing the legal and societal risks associated with deepfake technologies. Recognizing the potential of deepfakes to undermine democratic processes, spread disinformation, and infringe upon fundamental rights such as privacy and personal image, European institutions have started to explore regulatory and policy-based approaches aimed at mitigating these risks and ensuring accountability for the misuse of such technologies.

According to a study conducted by the European Parliamentary Research Service, various categories of risks associated with deepfakes have been systematically identified. The study outlines psychological, financial, and societal harms as key areas of concern. Psychological risks include forms of abuse such as extortion, defamation, intimidation, bullying, and a general erosion of trust [31, p. 4]. In terms of financial harm, the study reveals threats such as extortion, identity theft, fraud (including insurance and payment-related schemes), manipulation of stock prices, brand damage, and broader reputational loss. The societal dimension encompasses risks like the manipulation of news media, threats to economic stability, the integrity of the justice and scientific systems, the deterioration of democratic institutions, election interference, diplomatic tensions, and vulnerabilities in national security. These findings underscore the multifaceted and systemic impact of deepfake technologies across both individual and institutional levels.

Within the European Union, a comprehensive legal framework exists to combat the challenges posed by deepfake technologies, encompassing both hard law and soft law instruments. This dual approach enables European legal experts and policymakers to effectively utilize a variety of regulatory tools in addressing the multifaceted risks associated with deepfakes. Among the key legal instruments employed in this domain are:

- *The Artificial Intelligence Act*, which establishes a risk-based regulatory regime targeting AI systems, encompassing those capable of generating or manipulating synthetic audiovisual content;
- *The European Convention on Human Rights (ECHR)*, which safeguards fundamental rights including privacy (Article 8) and freedom of expression (Article 10), both of which may be engaged in the context of deepfake technology;

- *The General Data Protection Regulation (GDPR)*, which protects individuals' personal data and biometric information, thereby addressing unauthorized usage within deepfake creations;
- *The Digital Services Act (DSA)*, introducing enhanced transparency, accountability, and content moderation obligations for digital platforms to mitigate the spread of harmful or unlawful synthetic media;
- *The European Democracy Action Plan*, focused on fortifying democratic integrity and safeguarding electoral processes from technological manipulation, including the risks posed by deepfake content;
- *The e-Commerce Directive*, setting forth rules on the liability and responsibilities of online intermediaries, including platforms potentially hosting deepfake content;
- *The Audiovisual Media Services Directive (AVMSD)*, ensuring regulatory oversight over audiovisual content dissemination, encompassing manipulated or synthetic media;
- *The Code of Practice on Disinformation*, a soft law voluntary framework fostering cooperation among platforms and stakeholders to combat misinformation and deceptive content online;
- *The EU Action Plan Against Disinformation*, outlining strategic measures aimed at enhancing the resilience of public discourse and democratic processes against coordinated disinformation efforts;
- *European Parliament resolutions*;
- *National laws of Member States*.

The Artificial Intelligence Act (AI Act). The European Commission released its Proposal for the Artificial Intelligence Act on April 12, 2021, marking a significant step in global efforts to regulate AI. The Act entered into force on August 1, 2025, establishing a comprehensive legal framework for the ethical and responsible use of AI across the European Union [14, p. 1]. It seeks to position Europe as a preeminent hub for trustworthy AI by instituting unified rules that govern the development, commercialization, and deployment of AI technologies throughout the EU.

The framework sets out the following objectives: 1. to ensure AI systems placed on the Union market are safe and respect fundamental rights and Union values; 2. to provide legal certainty that fosters investment and innovation; 3. to enhance governance and enforce applicable laws on AI safety and fundamental rights; and 4. to promote a unified market for lawful, safe, and trustworthy AI applications, preventing fragmentation [13, p. 2].

The AI Act provides for an extensive territorial scope with respect to its provisions on AI systems. Its provisions apply where an AI system – whether standalone or integrated into a product governed by EU product safety legislation – is placed on the EU market, put into service, or used by a deployer established or located within the Union [3]. It applies regardless of the provider's place of establishment – broadly interpreted in line with other EU laws – and also covers AI-generated outputs created outside the EU but used within it, thus including non-EU providers and deployers [3].

According to Article 3(60) of the AI Act, a 'deepfake' is defined as "AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful" [17, art. 3(60)]. Article 3(60) of the AI Act provides a context-sensitive definition of deepfakes by restricting the term to synthetic audio-visual content, explicitly excluding AI-generated texts, and clarifying that such content is not necessarily limited to human representations [17, art. 3(60)]. This legally precise and operational definition is likely to

serve as a normative benchmark for legal scholars and regulatory authorities, fostering greater conceptual clarity and contributing to the development of consistent and effective legislative and policy responses to the challenges posed by deepfake technologies.

Annex III of the AI Act lists specific AI systems that are considered high-risk due to their potential impact on safety, fundamental rights, or critical sectors. For instance, AI systems used for biometric identification in public spaces, credit scoring that affects individuals' access to financial services, or AI employed in the recruitment and evaluation of job applicants are all classified as high-risk under Annex III [18]. Additionally, AI applications in critical infrastructure, such as electricity supply or water management, are also included due to their potential societal impact [18]. Article 7 of the AI Act grants the European Commission the authority to update the catalogue of high-risk AI applications, providing a critical tool for ensuring the regulation remains responsive to emerging technologies [17, art. 7]. These systems must comply with stricter regulatory requirements to ensure transparency, reliability, and accountability.

However, the AI Act's limited applicability to end users excludes non-professional creation and dissemination of deepfakes, raising serious legal gaps – particularly in cases involving disinformation or non-consensual content [14, p. 12]. Assuming provider-level safeguards are sufficient is questionable, as technical circumvention is feasible and state or non-state actors are unlikely to be deterred. These deficiencies can undermine the effectiveness of the current framework and necessitate broader regulatory measures.

The European Convention on Human Rights (ECHR). Deepfake technology presents significant challenges to image rights, particularly where a person's likeness is digitally manipulated and disseminated without consent. Such interference with an individual's visual identity may constitute a violation of the right to respect for private life under Article 8 of the European Convention on Human Rights, insofar as it undermines the individual's autonomy and control over the use of their image. Since individuals generally do not hold copyright over their own image, copyright law offers limited resources for protecting one's persona in such cases. In the case of *Reklos and Davourlis v. Greece*, the European Court of Human Rights (ECtHR) affirmed that an individual's image constitutes a fundamental aspect of personal identity, noting that it reflects unique characteristics and serves to distinguish one from others [20, para. 40]. The Court emphasized that the right to control the use of one's image is an essential element of personal development and autonomy under Article 8 of the European Convention on Human Rights. In this light, the creation and dissemination of deepfakes – particularly where a person's likeness is digitally altered and distributed without consent – may constitute a violation of the right to private life.

The legal responses to deepfake technologies vary significantly across jurisdictions, with countries adopting distinct terminologies and imposing both civil and criminal liabilities under different legal frameworks. Only after all domestic remedies have been duly exhausted may individuals bring their claims before ECtHR, in accordance with Article 35 of the ECHR. However, cases involving deepfakes often raise complex questions concerning the infringement of fundamental rights, particularly the right to freedom of expression under Article 10 and the right to respect for private and family life under Article 8 of ECHR.

However, it should be noted that the utilization of deepfake technology presents intricate legal dilemmas, as it may invoke a conflict between the protection of the right to respect for private and family life under Article 8 of ECHR and the safeguarding of

freedom of expression under Article 10, thereby requiring a nuanced and proportionate balancing exercise consistent with the Court's established jurisprudence. Although political deepfakes typically involve the intentional dissemination of false or misleading information, a blanket prohibition based solely on their inaccuracy would raise serious concerns under Article 10 of the European Convention on Human Rights. In one of its judgments ECHR held that Article 10 does not prohibit sharing or discussing information suspected to be false, as doing so would unduly restrict the fundamental right to freedom of expression [25, para. 113]. The resolution of this dilemma requires a careful and context-specific approach that upholds freedom of expression while protecting privacy rights, ensuring that any restrictions on deepfake content are justified, necessary, and proportionate considering the competing interests involved.

Given that the European Court of Human Rights has not yet developed case law or provided interpretation regarding the regulation of deepfakes under Articles 8 and 10 of the Convention, Member States retain discretion to tackle the harmful effects of such content through existing legal frameworks, so long as these measures remain consistent with the safeguards of Article 10. The ECtHR has ruled that interference with the rights to privacy and freedom of expression under Articles 8 and 10 is only in accordance with the law if it is grounded in domestic legislation, accessible to the public, and meets the requirements of foreseeability and the rule of law as defined by the ECtHR [21, para. 151]. The ECtHR has held that a measure is justified in a democratic society only if it addresses a pressing social need, pursues a legitimate aim, and is proportionate [23, para. 76]. The reasons advanced by the state must be relevant and sufficient, and while states enjoy a margin of appreciation, the Court retains ultimate authority to assess the necessity and proportionality of the interference [24, para. 78].

In some instances, rights violations involving the use of deepfake technology may be perpetrated by anonymous users, thereby complicating the identification of those responsible and the pursuit of legal accountability. The European Court of Human Rights examined the tension between online privacy and the need for accountability in a case where a member State of the Council of Europe had failed to require an Internet service provider to reveal the identity of an individual who had posted an inappropriate advertisement involving a minor on a dating platform. The Court acknowledged that while the protection of private communications and the right to freedom of expression are essential, these rights are not without limits. In certain situations - such as preventing crime, safeguarding public order, or protecting the rights of others - these freedoms may be lawfully restricted. Accordingly, States are under a positive obligation to establish a legal framework that carefully balances these competing interests [22, para 49].

The Budapest Convention does not criminalise anonymous communication via computer systems. Its Explanatory Report considers the alteration of traffic data for anonymity or encryption as a lawful exercise of privacy rights. However, Parties may criminalise abuses, such as modifying packet headers to conceal identity in the commission of a crime [5, para. 62]. The Council of Europe's Committee of Ministers, in its Declaration on Freedom of Communication on the Internet, recognised the right to anonymity as a safeguard for freedom of expression and protection against surveillance. Member States are encouraged to respect users' choices to remain unidentified. However, this does not preclude lawful measures to identify individuals involved in criminal conduct, in line with national law, the ECHR, and relevant international instruments.

The provision on the disclosure of subscriber information under the Second Additional Protocol to the Budapest Convention on Cybercrime establishes a crucial legal mechanism for identifying anonymous users involved in illicit online activities, including the dissemination of deepfake content. While this measure does not itself constitute a technical tool for detecting the creators of deepfakes, it empowers competent authorities to request subscriber data directly from service providers across borders, thereby enabling the identification of individuals behind anonymous digital accounts [28, art. 7]. This legal framework is essential for overcoming anonymity in cybercrime investigations and facilitating effective cross-border cooperation. However, technical expertise and additional investigative methods remain necessary to conclusively attribute responsibility in deepfake cases.

The General Data Protection Regulation (GDPR). The creation of deepfakes often involves processing personal data, such as voice samples or images that identify natural persons, thus qualifying as personal data under data protection laws. The processing of an individual's audio-visual data can be considered personal data processing, as defined by the General Data Protection Regulation (GDPR) as "any information relating to an identified or identifiable natural person ('data subject')" [15, art. 4]. The processing of such data is subject to the conditions established by the GDPR, which safeguards individuals' rights to privacy and data protection. Consequently, the GDPR protects the personal data of individuals using deepfake technology-based applications and applies to the development, creation, and dissemination of deepfake software and content.

However, 2 notable legal gaps exist regarding the GDPR's applicability to deepfakes: those concerning deceased individuals and virtual persons. Personal data of deceased people falls outside the regulation's scope, and additionally, the GDPR does not apply to political deepfakes featuring virtual, non-existent individuals, as data protection laws are irrelevant when the generated content does not pertain to any real person [16]. Thus, while the GDPR offers important protections for personal data in the context of deepfake technology, significant gaps remain that limit its effectiveness in addressing different categories of deepfake content.

e-Commerce Directive. Adopted in the early phase of internet commercialization, the EU's e-Commerce Directive serves as a foundational instrument for regulating online content by exempting intermediary service providers from any general obligation to monitor transmitted information or conduct ex ante content verification, with the aim of fostering digital service growth through minimal regulatory burden [31]. Although certain online platforms engage in voluntary detection of deepfake content, there is no legal obligation compelling them to do so. Moreover, service providers are only required to act upon credible indications of unlawfulness, thereby shifting the evidentiary burden onto individuals or authorised flaggers [31]. While the e-Commerce Directive permits the removal of unlawful deepfake content, it lacks a clear definition of "illegal content" and fails to harmonise the criteria for establishing liability, thereby creating legal uncertainty for intermediaries [31]. Overall, the e-Commerce Directive laid important groundwork for regulating online content with a light-touch approach to foster digital growth; however, its lack of clear definitions and harmonised liability criteria creates significant legal uncertainties, particularly regarding the handling of deepfake content.

The Digital Services Act (DSA) introduces additional rules and standards for hosting providers while maintaining the notice-and-action framework. Although it builds upon

the e-Commerce Directive, both legislative acts currently coexist, and the DSA does not fundamentally alter the regulatory approach to deepfake content [30, p. 12].

V. Experience of Selected European Countries

The Republic of Italy. Italy governs deepfakes under established laws protecting personal rights, image, and privacy. The Italian Civil Code forbids unauthorized use of a person's likeness, and in conjunction with the Italian Copyright Law (Articles 96 and 97), these regulations empower individuals to claim compensation when their image is exploited without consent, particularly if it damages their honour or reputation [27, art. 96-97].

Germany. Currently, Germany lacks specific legislation explicitly regulating deepfake technology. Nevertheless, the challenges and harms resulting from the misuse of deepfakes are addressed under existing laws, primarily through provisions in the Strafgesetzbuch (StGB) – the German Criminal Code. Key provisions such as Section 187 StGB on defamation and Section 201a StGB on violations of personal privacy and image rights are applicable to false or manipulated content disseminated via deepfakes [6, art. 187; 201a]. These statutes enable legal action against reputational damage and infringements of personal rights arising from malicious deepfake usage.

In 2024 the German Bundesrat has proposed a new criminal offense (§201b StGB) targeting the creation and distribution of manipulated digital content, including deepfakes used for defamation, non-consensual pornography, or election interference [12]. However, the federal government argues that existing laws (§187 and §201a StGB) sufficiently address these harms and raises concerns about legal uncertainties and reduced protections in the proposal [12].

France. France's SREN Law, adopted on May 21, 2024, amends Article 226-8 of the French Criminal Code and introduces a new provision, Article 226-8-1, to the same Code, explicitly prohibiting the non-consensual creation and sharing of deepfake content, with stricter penalties for pornographic deepfakes [26, art. 15; 21]. The law criminalizes sharing algorithmically generated visual or audio content depicting a person without consent, unless clearly identified as artificial, imposing fines and imprisonment that increase if distributed via public online platforms [26, art. 15; 21]. Despite these advances, the broad definition of "algorithmic processing" and exceptions for obviously generated content create legal uncertainties requiring judicial interpretation [7].

Denmark. Additionally, Denmark has recently introduced a legislation granting individuals copyright over their own likeness to combat the spread of deepfakes and unauthorized digital imitations, emphasizing protection against misinformation and misuse of personal identity [8]. If enacted, this legislation would represent a pioneering legal framework as the first law to explicitly grant individuals copyright protection over their own likeness, specifically targeting the prevention of deepfakes and the unauthorized use of digital representations, thereby addressing emerging challenges in personal identity and misinformation.

Azerbaijan. Although Azerbaijan is geographically located at the crossroads of Eastern Europe and Western Asia, outside the core European Union countries, its membership in the Council of Europe, participation in the European Political Community, adherence to the European Convention on Human Rights, and active cooperation with the EU under the Eastern Partnership programme since 2009 position it as a close partner involved in European legal and political cooperation. While specific legislation on deepfakes remains absent, recent policy initiatives and Azerbaijan's active

engagement with European legal standards demonstrate a growing commitment to addressing the challenges posed by synthetic media technologies.

Existing general legal frameworks in Azerbaijan can provide mechanisms for the legal assessment of cases involving deepfakes. Deepfakes may be employed as tools in the commission of various offenses, potentially triggering criminal liability under the Azerbaijani Criminal Code. For example, under Article 147 (Defamation), disseminating a deepfake that unjustly damages a person's reputation may constitute a punishable offense. Similarly, Article 182 (Extortion) may likewise be invoked in circumstances where manipulated digital content is employed to compel an individual to relinquish property. Furthermore, Azerbaijan is a party to the Budapest Convention on Cybercrime, which provides an international legal framework facilitating cooperation in combating cybercrimes, including offenses that may involve the misuse of technologies such as deepfakes.

Notably, the National Artificial Intelligence Strategy for 2025–2028, adopted by the government, reflects an increasing awareness of such risks at the policy level. While the Strategy is not legally binding, it highlights several critical objectives relevant to the governance of technologies like deepfakes. These include the development of a responsible and ethical regulatory framework for artificial intelligence, the protection of citizens' rights and privacy, the prevention of disinformation and manipulative content, and the safeguarding of national and information security. Specifically, the Strategy acknowledges that technologies such as deepfakes may be used by foreign actors, terrorist organizations, or transnational criminal groups to undermine national interests, spread disinformation, and erode public trust.

This policy-level recognition, although still in an early stage, suggests an emerging institutional readiness to address the legal and ethical challenges posed by deepfake technologies. It also signals the need for Azerbaijan to gradually transition from general legal provisions to more targeted regulatory mechanisms capable of addressing the complexities of synthetic media in the digital age.

VI. Conclusion

Deepfake technology reflects a dual nature: while it offers substantial benefits in areas such as healthcare, accessibility, and entertainment, it simultaneously generates serious legal and ethical challenges. These include disinformation, non-consensual manipulation, reputational harm, and violations of privacy. Addressing such risks requires a regulatory framework that balances the promotion of innovation with the protection of fundamental rights.

The European Union's regulatory response—chiefly through the AI Act—marks a notable milestone. By introducing a legal definition of deepfakes and establishing transparency obligations, the Act lays down a foundational framework. Nevertheless, the regulation suffers from several limitations, particularly its exclusion of end users, weak enforcement mechanisms, and the risk of circumvention. These structural gaps undermine the Act's ability to comprehensively address the evolving threats posed by deepfakes.

While instruments such as GDPR, DSA, and the interpretative guidance of the ECtHR provide complementary layers of protection, the EU's regulatory landscape remains fragmented. The rapid development of generative AI technologies necessitates continuous legal recalibration and stronger coordination among the Member States.

Crucially, the AI Act should not be regarded as a definitive or exhaustive solution. Instead, it must be seen as a transitional regulatory tool requiring iterative refinement.

Member States retain the competence and indeed the responsibility to adopt supplementary national measures. The fact that the Act applies directly should not be understood as preventing the implementation of more ambitious domestic safeguards aimed at strengthening rights protected under Articles 8 and 10 of the ECHR.

To safeguard these rights effectively and ensure that deepfake technologies are not weaponized against the public interest, further steps are needed. These include clearer definitions, enforceable accountability mechanisms, and practical tools for oversight—both at provider and user levels. Ultimately, the effective governance of deepfakes in Europe depends on a multi-faceted strategy: harmonized enforcement, transnational cooperation, technological vigilance, public awareness, and where appropriate, the introduction of new legal instruments specifically targeting synthetic manipulations.

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EVOLUTION OF CIVIL RIGHTS PROTECTION MECHANISMS: A COMPARATIVE STUDY OF AZERBAIJAN AND THE EUROPEAN UNION

Parvin Guliyeva*

Abstract

Effective protection of civil rights constitutes a fundamental element of the rule of law and a core requirement of modern civil justice systems. Contemporary legal orders increasingly recognise that the mere formal proclamation of civil rights is insufficient unless accompanied by accessible, effective, and enforceable judicial remedies. This article examines the evolution of civil rights protection mechanisms through a comparative analysis of Azerbaijan and the European Union. It explores how the concept of effective judicial protection has developed from a procedural guarantee into a substantive principle shaping civil law adjudication. Particular attention is paid to the role of courts in transforming civil rights from abstract norms into practical and effective entitlements, with special reference to the jurisprudence of the European Court of Human Rights. The article further analyses the constitutionalisation of civil remedies and the growing importance of proportionality, judicial reasoning, and enforcement as decisive elements of effective civil justice. It argues that while Azerbaijan has established a comprehensive normative framework for civil rights protection, further alignment with European standards – especially regarding access to justice, quality of judicial reasoning, and enforcement of judgments – would significantly enhance the effectiveness of civil justice. In methodological terms, the study employs comparative and doctrinal legal analysis, examining constitutional provisions, civil legislation, and judicial practice. Special emphasis is placed on the interpretative role of courts in shaping the practical effectiveness of civil rights through reasoned adjudication and enforceable remedies. The findings contribute to ongoing academic debates on the substantive dimension of civil rights protection within contemporary civil justice systems.

Keywords: *civil rights; rule of law; access to justice; effective judicial protection; civil law; Azerbaijan; European Union; comparative law; effective remedies.*

1. Introduction

Protection of civil rights lies at the heart of private law and represents a decisive indicator of the maturity of a legal system. In contemporary legal theory, the effectiveness of civil rights is no longer assessed solely by their legislative recognition but by the availability of mechanisms capable of ensuring their realisation in practice. This shift reflects a broader transformation from formal constitutionalism toward substantive constitutionalism, where rights are evaluated through their practical impact rather than their textual formulation.

Within this context, comparative legal analysis offers valuable insights into the strengths and weaknesses of national civil justice systems. The European Union has progressively constitutionalised the principle of effective judicial protection, while Azerbaijan has undertaken significant reforms aimed at strengthening access to justice and civil remedies. This article seeks to compare these developments and to identify lessons that may contribute to the enhancement of civil rights protection in Azerbaijan.

Civil rights traditionally encompass proprietary rights, contractual freedoms, and personal non-property rights. Classical civil law theory viewed their protection primarily as a procedural mechanism activated after a violation had occurred. Remedies were

* Teacher, Department of Civil Law, Baku State University, email: pguliyeva12@gmail.com

largely compensatory in nature and focused on restoring the pre-existing legal balance between private parties.

Modern doctrine increasingly emphasises the substantive dimension of civil rights protection. Effective protection requires not only access to courts but also procedures capable of producing timely and enforceable outcomes. The distinction between formal protection and effective protection has become central to contemporary civil law scholarship and judicial practice.

From a doctrinal perspective, civil rights protection has undergone a significant transformation in modern legal systems. Classical civil law doctrine traditionally conceived protection mechanisms as reactive instruments, activated only after a violation had occurred. However, contemporary doctrine increasingly recognises the preventive and structural dimensions of civil rights protection.

Modern scholars emphasise that effective protection must encompass not only judicial remedies but also procedural guarantees ensuring access to justice, equality of arms, and legal certainty. Civil rights protection is therefore no longer viewed merely as an adjunct to substantive civil law norms but as an integral component of their practical operation.

This doctrinal shift is closely linked to the broader development of the rule of law. Civil rights form the economic and social foundation of private autonomy, and without effective protection mechanisms, these rights risk becoming symbolic declarations rather than enforceable legal positions.

Academic discourse on civil rights protection demonstrates a gradual shift from a purely formal understanding of legal remedies toward a functional and effectiveness-oriented approach. Early civil law scholarship largely conceptualised remedies as technical instruments designed to restore disrupted private-law relations. Contemporary authors, however, increasingly assess civil justice systems based on their capacity to deliver enforceable outcomes within a reasonable time.

European legal scholarship has been particularly influential in developing the concept of effective judicial protection. Scholars argue that civil justice must be evaluated not only by the existence of procedural mechanisms but by their practical impact. Comparative studies further suggest that judicial effectiveness is closely linked to institutional factors such as judicial independence, quality of reasoning, and enforcement capacity.

II. Doctrinal Foundations and Constitutionalisation of Civil Rights Protection

The Constitution of the Republic of Azerbaijan guarantees judicial protection of rights and freedoms and affirms the right of everyone to seek redress before an independent and impartial court [6]. These constitutional guarantees are further elaborated in the Civil Code, which provides a broad catalogue of civil rights and remedies, including restitution, damages, and recognition of rights [5].

Azerbaijani civil law recognises judicial protection as a cornerstone of private law. Courts are empowered to restore violated rights and to ensure compensation for harm. Procedural legislation establishes mechanisms for filing civil claims, appealing judicial decisions, and enforcing judgments.

The jurisprudence of Azerbaijani courts demonstrates a gradual but increasingly visible constitutionalisation of civil remedies, particularly in the sphere of compensation for moral (non-pecuniary) damage. This development reflects a broader transformation

of civil justice from a formally oriented system toward one grounded in constitutional values, such as proportionality, fairness, legal certainty, and effective judicial protection.

The Constitutional Court of the Republic of Azerbaijan has played a decisive role in reinforcing the constitutional dimension of civil remedies. In its interpretative decision concerning moral damage compensation, the Court emphasised that such compensation must not be symbolic or purely formal. Instead, it must adequately reflect the nature, intensity, and duration of the suffering experienced by the claimant, while remaining proportionate to the circumstances of the case. The Court explicitly linked the assessment of moral damage to constitutional principles, thereby elevating civil remedies to the level of constitutional guarantees [7].

This interpretative approach marked an important departure from earlier judicial practices, where moral damage awards were often minimal and lacked substantive justification. By requiring courts to engage in a contextual and reasoned evaluation of non-pecuniary harm, the Constitutional Court underscored that inadequate compensation may undermine the essence of the right to judicial protection. In this sense, the Court affirmed that civil remedies are not merely technical instruments of private law but mechanisms through which constitutional rights are realised in practice.

The constitutionalisation of civil remedies is further illustrated by the decision in *Musaeva v "Memar-3" Cooperative* (2009), which demonstrated judicial willingness to annul lower court decisions where procedural or constitutional guarantees had been insufficiently applied [15]. In this case, the courts of lower instance failed to properly examine the claimant's arguments and did not ensure a fair balance between the harm suffered and the compensation awarded. The annulment of the impugned decisions signalled a growing judicial awareness that procedural deficiencies and inadequate reasoning may amount to violations of the right to effective judicial protection.

Importantly, the reasoning in *Musaeva* went beyond the correction of individual judicial errors. The decision emphasised that civil adjudication must comply with constitutional standards of due process, including the obligation to provide reasoned judgments. The absence of adequate justification in cases involving moral damage was recognised as incompatible with the principles of legal certainty and equality of arms. As a result, the case contributed to the gradual development of a more rights-oriented and constitutionally informed approach to civil remedies in Azerbaijani jurisprudence.

A significant step toward doctrinal consolidation was taken with the Supreme Court's ruling of 29 August 2025 on the unification of judicial practice concerning moral damage compensation [17]. This ruling represents a systemic effort to enhance predictability and consistency in civil adjudication, addressing long-standing concerns regarding divergent judicial approaches to non-pecuniary damage. By issuing interpretative guidance, the Supreme Court sought to harmonise judicial reasoning and to establish common criteria for the assessment of moral damage.

The Supreme Court stressed that compensation for moral damage must be determined on a case-by-case basis, taking into account the specific factual circumstances of each dispute. At the same time, it emphasised the importance of maintaining coherence in judicial practice in order to ensure equal treatment of litigants and public trust in the judiciary. This dual emphasis on judicial discretion and doctrinal consistency reflects an advanced understanding of civil remedies as instruments of effective rights protection rather than mechanical applications of statutory norms.

From a comparative perspective, these developments demonstrate increasing convergence between Azerbaijani judicial practice and European standards articulated by the European Court of Human Rights. The ECtHR has consistently held that remedies must be “practical and effective” and that inadequate compensation for non-pecuniary damage may amount to a violation of the right to a fair trial or an effective remedy [2]. The growing reliance of Azerbaijani courts on proportionality and substantive reasoning indicates a gradual internalisation of these European principles within domestic civil law.

Nevertheless, despite these positive developments, certain challenges remain. Inconsistencies persist at the level of first-instance and appellate courts, where moral damage awards may still vary considerably and judicial reasoning may lack sufficient depth. Addressing these shortcomings requires continued judicial training, clearer methodological guidance, and sustained engagement with constitutional and human rights standards [16, p. 135].

In conclusion, the evolving jurisprudence of the Constitutional Court and the Supreme Court of Azerbaijan reflects a broader transformation of civil remedies from formally defined legal tools into constitutionally grounded mechanisms of effective rights protection. The emphasis on proportionality, reasoned adjudication, and doctrinal coherence enhances the practical value of civil rights and strengthens public confidence in the civil justice system. These developments constitute an essential component of the ongoing alignment of Azerbaijani civil law with European standards of effective judicial protection.

III. Access to Justice, European standards, and effective judicial protection

Access to justice constitutes a central element of civil rights protection in Azerbaijan. Procedural legislation provides individuals with the right to bring civil claims before courts of general jurisdiction and to challenge judicial decisions through appellate and cassation procedures.

Nevertheless, the effectiveness of access to justice must be assessed not only in formal terms but also in practical operation. Duration of proceedings, predictability of judicial outcomes, and effectiveness of enforcement directly influence the ability of individuals to vindicate their civil rights. In civil disputes involving property rights or contractual obligations, delays may substantially undermine the value of the protected right.

The principle of effective judicial protection occupies a central place in EU law. Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and a fair trial [4]. This provision has been interpreted broadly, encompassing access to courts, procedural fairness, and effectiveness of remedies.

The Court of Justice of the European Union has consistently held that effective judicial protection constitutes a general principle of EU law, requiring remedies that are capable of safeguarding rights in practice rather than merely in theory.

Modern civil rights protection is increasingly influenced by the concept of substantive constitutionalism. Unlike formal constitutionalism, which focuses on textual recognition of rights, substantive constitutionalism evaluates legal systems based on the actual effectiveness of rights in practice [10, p. 191].

Within this framework, civil rights are no longer perceived as purely private-law entitlements insulated from constitutional values. Instead, they are interpreted in light of fundamental rights principles such as proportionality, legal certainty, and access to justice. This approach has profoundly influenced civil adjudication within the European legal order.

The jurisprudence of the European Court of Human Rights has played a decisive role in shaping the concept of effective protection. Interpreting Articles 6 and 13 of the European Convention on Human Rights, the Court has repeatedly stressed that remedies must be “practical and effective, not theoretical or illusory” [9].

In *Airey v. Ireland*, the Court emphasised that access to justice must be effective in practice, which may require positive measures by the state [1]. In *Kudla v. Poland*, it clarified that excessive length of proceedings may itself constitute a violation of the right to an effective remedy [13].

In *Burdov v. Russia*, the Court highlighted the importance of enforcing final judicial decisions as an integral part of the right to a fair trial [2]. A civil right recognised by a court loses its practical value if the judgment remains unenforced. Similarly, in *Hornsby v. Greece*, the Court confirmed that enforcement is an essential component of effective judicial protection [11].

This jurisprudence demonstrates that civil rights protection extends beyond courtroom proceedings and encompasses the entire lifecycle of a civil claim, from initiation to enforcement.

Judicial reasoning constitutes a critical element of effective civil rights protection. In EU member states, civil judgments are expected to demonstrate clear engagement with the parties’ arguments and to provide coherent justification for the chosen remedy. This requirement enhances predictability, facilitates appellate review, and reinforces public confidence in the judiciary.

In Azerbaijan, judicial reasoning in civil cases has undergone gradual development. While courts are formally required to justify their decisions, variations in depth and consistency remain. Strengthening judicial reasoning practices would significantly contribute to the effectiveness of civil remedies.

The effectiveness of civil rights protection increasingly entails the recognition of positive obligations on the part of the state [3, p. 187]. The European Court of Human Rights has consistently held that states must organise their judicial systems in a manner that guarantees effective access to justice and enforcement of judgments.

These obligations extend to civil proceedings and influence the interpretation of remedies. Courts must assess whether available remedies provide adequate redress and whether procedural barriers disproportionately restrict access to justice.

Enforcement of civil judgments represents one of the most critical stages of civil rights protection. In the European Union, enforcement mechanisms are supported by principles of mutual recognition and effectiveness. In Azerbaijan, enforcement procedures are regulated by domestic legislation but continue to face practical challenges.

Addressing enforcement deficiencies requires legislative refinement, institutional capacity-building, and judicial oversight. Without effective enforcement, civil rights risk becoming illusory [8, p. 493].

Systemic challenges in enforcement have been identified in both European and national contexts. Delays, lack of coordination, and insufficient oversight may undermine the effectiveness of civil justice. European standards emphasise that enforcement failures constitute structural problems affecting the rule of law.

IV. Conclusion

Civil rights protection should be understood as a structural element of the rule of law rather than a purely technical aspect of civil procedure. Effective remedies,

independent courts, and enforceable judgments collectively contribute to the legitimacy of the legal system.

The gradual harmonisation of Azerbaijani civil law with European standards should be viewed as a dynamic process. Incorporating European principles concerning access to justice, judicial reasoning, and enforcement would enhance the substantive effectiveness of civil justice in Azerbaijan.

The evolution of civil rights protection mechanisms reflects a broader transformation toward substantive effectiveness in modern legal systems. Comparative analysis demonstrates that while Azerbaijan has established a solid normative framework, further alignment with European standards would significantly strengthen civil rights protection.

From a policy perspective, further development of civil rights protection may benefit from gradual measures aimed at enhancing consistency in judicial practice, improving the quality of judicial reasoning, and strengthening the effectiveness of enforcement mechanisms. Continued judicial training, interpretative guidance from higher courts, and constructive engagement with European standards could support the practical implementation of existing normative guarantees. Such an approach may contribute to greater legal certainty, stability of private-law relations, and sustained public confidence in the civil justice system.

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THE ROLE OF THE PRINCIPLE OF LIBERTY IN THE HUMAN RIGHTS SYSTEM

Aygul Jahangirova*

Abstract

The study provides a comprehensive analysis of the place of the principle of liberty within the system of human rights principles, drawing upon historical and theoretical perspectives, doctrinal diversity in legal scholarship, international legal instruments, and judicial practice. In the first part of the study, the relevance of the topic and its main directions are identified, including the key factors that determine the significance of the principle of liberty within the human rights system. It is emphasized that the principle of liberty constitutes one of the fundamental categories forming the theoretical and normative foundation of human rights law. At the same time, it is not merely a specific right, but also a guiding principle that defines the essence of the relationship between the individual and the state, as well as the limits of legal regulation. Moreover, as an integral component of human dignity, liberty is regarded as one of the essential foundations of individual autonomy, self-realization, and recognition as a legal subject. The second part of the research evaluates the principle of liberty within the broader context of the relationship between law and freedom. The third part examines the historical development of the principle of liberty and its recognition and consolidation as a human right. Reference to the views of prominent thinkers in this field, as well as to contemporary scholarship, enables the formulation of well-grounded conclusions. The fourth part identifies the key characteristics of liberty as a foundational basis for the realization of other rights. The fifth part analyzes the constitutional foundations of the principle of liberty. A comparative review of the constitutions of various states across different regions of the world demonstrates that the right to liberty is, in most cases, broadly enshrined, which has contributed to its recognition and development as a constitutional principle. In the concluding section, the findings of the research are summarized and a number of significant propositions are advanced.

Keywords: *human rights, principle of liberty, natural law, general principles of law, international law, constitutional foundations, rights and freedoms, the principle of equality, human dignity, international judicial practice, limitation of rights.*

I. The key factors determining the significance of the principle of Liberty within the human rights system

The analysis of the principle of liberty within the human rights system is of paramount importance. The principle of liberty constitutes one of the fundamental categories forming the theoretical and normative foundation of human rights law. At the same time, it is not merely a specific right; rather, it determines the very essence of the relationship between the individual and the state, as well as the limits of legal regulation. Moreover, as an integral component of human dignity, liberty serves as one of the essential foundations of individual autonomy, self-realization, and recognition as a legal subject. A number of its key features may be explained as follows:

- Rooted in natural law theory, the principle of liberty has, over time, received normative recognition in national constitutions and in international law.
- Through its reflection in international legal norms, liberty has acquired a broader meaning, encompassing not only freedom from state interference but also the positive obligations of the state to ensure the effective realization of individual rights.

* PhD Candidate in Law, UNESCO Chair in Human Rights and Information Law, Faculty of Law, Baku State University, email: aygul.jahan@gmail.com

- By including both the prohibition of interference and the establishment of effective guarantee mechanisms, the principle of liberty has gained a wider scope of application and a dynamic character.

- The principle of liberty has been recognized at the universal level as an international obligation, incorporated into the substance of numerous fundamental human rights, and has attained the character of customary international law. Although the customary dimension of the right to liberty—like other human rights - was significantly shaped by the 1948 Universal Declaration of Human Rights, it has subsequently been further strengthened through international judicial practice. On the one hand, the principle of liberty has defined the content of individual freedoms; on the other, it has formed the necessary normative environment for the realization of civil, political, economic, social, and cultural rights, thereby constituting the foundation of a number of fundamental human rights.

- Within the human rights system, the principle of liberty performs a coordinating and systematizing function among individual rights. Although the right to liberty is not absolute in character, the principle of liberty occupies both the conceptual core of human rights law and the central position in the practical mechanisms for its implementation.

- It is more coherent to approach the principle of liberty from historical, theoretical, and legal perspectives in an integrated manner. Overall, the principle of liberty should be examined in the human rights system from several essential directions. In legal scholarship, human rights principles are often classified into theoretical and practical principles, and the principle of liberty is distinguished as a historically developed theoretical principle [2, p. 55–57].

- The principle of liberty must be interpreted in close interaction with other principles of human rights. For example, the principle of dignity is regarded both as the source of freedoms and as the primary criterion for their interpretation. Likewise, only in conjunction with the principle of equality can liberty acquire real and effective substance. Legal scholarship rightly emphasizes that, as a principle of human rights protection, liberty encompasses the following objectives: freedom from discrimination; freedom from poverty; the freedom of development and realization of one's human potential; freedom from fear—namely threats to personal security, torture, arbitrary detention, and violence; freedom from injustice and violations of legality; participation in opinion-forming and decision-making processes; and the freedom to work with dignity [2, p. 57].

- The principle of liberty is directly linked to the fundamental principles of law. The fundamental principles of law embody values that have been genetically formed within society; through their mutual interaction, these principles constitute the foundation of the general legal regulation of social relations. The principle of liberty forms one of the essential pillars of the rule-of-law state. Furthermore, the principle of the rule of law represents one of the primary legal guarantee mechanisms of liberty. In the absence of the rule of law, liberty is deprived of legal protection and fails to acquire real substance. In legal analysis, the principle of the rule of law is often equated with the concept of the Rechtsstaat (constitutional state governed by law) [5, p. 60]. Where any of these principles is absent, the effective realization of liberty becomes impossible, thereby undermining not only the right to liberty itself but also the integrity and genuine substance of other rights and freedoms. In this regard, the principle of liberty encompasses the individual's social self-expression, including the fulfillment of obligations in the sphere of social

protection, inclusiveness, and the unobstructed realization of rights. In this sense, the principle of liberty extends across the entire sphere of rights.

- Among the issues under discussion are the extent to which the state may limit citizens' rights, the conditions under which individuals may legitimately resist state commands, and whether a free society depends more on constitutional structure or on shared cultural values and moral principles. Although some in the twenty-first century argue that liberty has achieved a definitive victory, others adopt a more cautious position. They contend that within Western culture liberty is sometimes conflated with arbitrariness or mere permissiveness, and that the choices offered are often superficial in nature. According to this perspective, in the context of global free trade, transnational corporations operate in an almost uncontrolled manner, and today the most serious threat to liberty stems not from the state, but from such entities.

II. Evaluation of the principle of Liberty in the context of law and freedom

Human rights, as a concept, encompass not only rights but also freedoms. It is emphasized that every individual possesses a certain degree of liberty. Liberty represents the individual's conscious and volitional capacity to choose and direct his or her conduct. It presupposes a certain degree of independence from external circumstances. The complex nature of liberty becomes particularly evident in the analysis of its structure [35].

If law is understood as a system of legal norms established by the state, liberty denotes the possibility of acting without external coercion and the condition in which an individual is free to make personal choices. Legal scholarship notes that a right constitutes a lawful claim of a person to obtain certain material and moral benefits. Liberty, by contrast, signifies the possibility for an individual to act in accordance with his or her own will without interference or coercion by authority structures. The concept of "liberty" is aimed at emphasizing broader possibilities for individual choice regardless of the outcome [2, p. 107-108].

The interrelationship between rights and freedoms should be directed toward the realization of human rights and freedoms, should imply complementarity, and must serve a common objective. Both liberty and rights express and actualize the subjective capacity of individuals to engage in actions not prohibited by the state. In this sense, human rights broadly encompass freedoms and mutually complement one another [46]. Their interconnection justifies considering them within a unified framework [66]. It is further concluded that although law determines the normative framework of liberty, liberty itself contributes to revealing the real substance of law; this reciprocal relationship is dynamic in character and ultimately serves human dignity [70].

Accordingly, liberty must be regarded as a principle. This connects it closely with other rights and elevates it to one of the fundamental starting propositions of the human rights system. In this regard, Article 1 of the Universal Declaration of Human Rights is of particular importance. It provides that all human beings are born free and equal in dignity and rights. The expression of liberty in unity with dignity within the Declaration is entirely justified, since the principle of liberty directly derives from human dignity.

In addition, other provisions of the Declaration may be highlighted. For example, Article 3 establishes that everyone has the right to life, liberty, and security of person, while Article 4 stipulates that no one shall be held in slavery or servitude. In general, provisions concerning liberty constitute a central thread throughout the Declaration, and in this respect Articles 9, 12, and 13 should also be specifically noted. Article 2 of the

International Covenant on Civil and Political Rights establishes obligations in this sphere, and Article 9 reflects essential elements of personal liberty. In particular, Article 9(1) provides that everyone has the right to liberty and security of person.

In its General Comment No. 35 on Article 9 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee states that liberty and personal security are values in themselves and also serve as guarantees for other rights. History demonstrates that deprivation of liberty is one of the principal means of preventing individuals from exercising their other rights [24].

The fact that liberty is not absolute in character and may be subject to limitations should not be regarded as an obstacle to its recognition as a principle. In general, limitations of rights and freedoms are permissible only if they are prescribed by international instruments and domestic legislation, pursue a legitimate aim arising from the nature of the specific right, and comply with the principles of necessity and proportionality.

A substantial body of jurisprudence has been developed in the practice of the European Court of Human Rights in this area. In a broad sense, the right to liberty is recognized as a fundamental right ensuring protection of the individual against arbitrary interference by the state or other actors, safeguarding physical and moral integrity, and enabling the person to determine his or her conduct freely. The Criminal Procedure Code of the Republic of Azerbaijan regulates, in procedural terms, the mechanisms for the protection and safeguarding of this right in greater detail.

Article 5 of the European Convention on Human Rights protects physical liberty and underscores its connection with the principles of legal certainty and the rule of law. The guarantees provided under Article 5 include independent judicial control, ensuring accountability of public authorities, and minimizing the risks of arbitrary and unlawful deprivation of liberty [19, p. 268]. In this context, three essential elements are identified: the timing of the information (promptly), the content of the information (the reasons for arrest), and the form in which the information is communicated (in a language the person understands and in a clear manner). In the cases of *Fox, Campbell and Hartley v. the United Kingdom* (1990) and *Murray v. the United Kingdom* (1994), the European Court of Human Rights established that the reasons for arrest may be clarified not only at the moment of arrest but also during the subsequent initial questioning stage, provided that no undue delay occurs. However, such delay must not contradict the functional meaning of the requirement of promptness. The individual must be informed of the specific acts underlying the detention, enabling him or her to effectively organize a defense. Further, in cases such as *Oral and Atabay v. Turkey* (2009), *McKay v. the United Kingdom* (2006), and *Năstase-Silivestru v. Romania* (2007), the Court held that if bringing a person before a judge within the period prescribed by law cannot be justified, this constitutes excessive delay and a violation of rights. The Court therefore prefers to apply the concept of a “reasonable time.”

Finally, particular care must be exercised in the selection of detention as a preventive measure. According to the legal positions formed in cases such as *Buzadji v. the Republic of Moldova* (2016), *Tiron v. Romania* (2009), and *Smirnova v. Russia* (2003), detention may be justified only in the presence of certain risks. These include the risk of absconding, obstructing the administration of justice, committing new offences, or disturbing public order.

The examination of such matters by an independent and impartial court ensures the fair and humane character of judicial proceedings. Similar principles are reflected in the practice of the UN Human Rights Committee, which requires that deprivation of liberty

comply with criteria of legality, necessity, proportionality, and independent judicial review. Courts must also mandatorily consider the possibility of applying alternative preventive measures. In *Georgiy Arkhangelskiy, Bakhtiyar Albani, Ruslan Dzhumanbayev, Zhan Kenzhegulov, Zhanar Sekerbayeva v. Kazakhstan* (Communications Nos. 2538/2015 et al., Human Rights Committee, 10 March 2023), the applicants participated in a peaceful march protesting the sudden devaluation of Kazakhstan's national currency in 2014. The event was deemed unauthorized under legislation requiring prior permission; they were detained by police and subjected to administrative fines. The Human Rights Committee concluded that Kazakhstan had violated Articles 19 (freedom of expression) and 21 (freedom of peaceful assembly) of the International Covenant on Civil and Political Rights [18]. Similarly, in *Vasilevich, Lebedko, Katsora, Repnin v. Belarus* (Human Rights Committee, 14 March 2023), the complainants alleged criminal measures taken in relation to peaceful demonstrations and freedom of expression in Belarus. The applicable norms provided for fines and administrative detention for organizing public events without authorization and for demonstrations not using technical means. The Committee determined that these restrictions had been applied in a manner inconsistent with Articles 19 and 21 of the Covenant [71].

Thus, both the jurisprudence of the European Court of Human Rights and that of the UN Human Rights Committee establish that decisions concerning deprivation of liberty must comply with the requirements of legality and substantiation, must be adopted by an independent authority, and must be accompanied by effective avenues of appeal before higher judicial instances. The right to liberty must be protected not merely through formal procedural compliance but through real and effective guarantees.

In its decision of 16 September 2014, the Plenum of the Constitutional Court of the Republic of Azerbaijan held that the right to liberty may be restricted only in exceptional cases and solely on grounds prescribed by law. The only legitimate form of interference with this right is a decision adopted under judicial supervision within procedures established by law [14]. Likewise, in its Plenum decision of 3 November 2009, the Supreme Court of the Republic of Azerbaijan stated that detention as a preventive measure, being the most severe procedural coercive measure, may be applied only where concrete indicators concerning the personality of the accused and public danger exist and where alternative preventive measures are insufficient. Detention may be imposed only on an accused person, and both substantive and procedural grounds must exist and be duly substantiated [15].

III. The historical development of the principle of Liberty

Liberty has been recognized as one of the fundamental human rights. It primarily belongs to the first generation of rights. Its classification within the first generation may be explained by the fact that, throughout history, this right has played a decisive role in enabling the realization of other rights and freedoms.

In slave-owning societies, where the rule of force predominated, peoples and states considered powerful for their time pursued expansionist wars, regarded other peoples and states as their natural enemies, subjected them to their authority, defeated them, enslaved them, or destroyed them. In such circumstances, the idea of liberty was not a matter of reflection or concern [3, p. 25–26]. Nevertheless, in the history of the ancient world, each new stage of social development introduced new elements into the understanding of human rights and extended them to a broader circle of subjects. These developments occurred in the context of the struggles of classes and social strata for

freedom and rights. According to historical sources, the term “liberty” first appeared in the twenty-fourth century BCE. At that time, a ruler of the Sumerian state proclaimed liberty for his subjects by imposing sanctions on tax collectors, protecting widows and orphans from unjust actions by officials, and preventing arbitrariness by high priests during temple services. In Ancient Greece, the idea was first articulated that the comprehensive existence of the individual and the development of society as a whole are impossible under conditions of violence and arbitrariness, and that human liberty must be protected as an absolute metaphysical essence. Liberty was evaluated primarily not as a socio-political concept but as a moral one. Thus, within the framework of natural law and the law of nature, the principle of the general equality and general liberty of human beings began to be proclaimed. Epicurus interpreted human liberty as the rational (wise and deliberate) choice of one’s way of life and the individual’s responsibility for that choice [2, p. 72]. Ideas relating to human rights can also be found in the philosophical thought of Socrates and Plato, regarded as leading figures of Ancient Greek philosophy. Socrates, advocating just laws and compliance with them, maintained that only through adherence to just laws could liberty – considered a noble and supreme good for both the individual and the state – be attained. In Plato’s concept of the ideal state, equality between men and women was recognized; at the same time, the model was characterized by the rejection of the institution of private property and the division of society into free persons and slaves. According to Aristotle, the human being is the highest entity in nature. At the same time, however, he justified slavery, asserting that some individuals are born free while others are born as slaves. Aristotle further observed that law possesses both a natural and a conventional character [28, p. 73–74].

In 1215, the Magna Carta (Great Charter of Liberties) reflected provisions aimed at eliminating the arbitrariness of royal officials. In addition to proclaiming the inviolability of property, the document enshrined fundamental freedoms such as the principle that punishment may be imposed exclusively on the basis of a lawful judgment, as well as the right to leave the country and to return without hindrance. Several provisions of the Charter are particularly noteworthy: no tax or levy may be imposed within the kingdom without the consent of the Common Council of the Realm; a free man who commits a minor offence shall be punished only in proportion to the degree of that offence, and likewise for a grave offence, but without being deprived of his status; no free man shall be arrested, imprisoned, dispossessed, outlawed, exiled, or in any way deprived of his standing in society except by the lawful judgment of his equals or by the law of the land; nor shall force be used against him or others be compelled to use force against him; and to no one shall justice or right be sold, denied, or delayed [2, p. 79]. The views of Hugo Grotius, one of the prominent representatives of natural law theory, regarding the contractual conception of the state are also of particular interest. According to Grotius, “The state is a perfect union of free persons, formed for the observance of law and the pursuit of the common good” [28, p. 73–74].

During the formation of the bourgeois order in England, the Habeas Corpus Act of 1679 established procedural safeguards for the release of detainees on bail, guaranteed the inviolability of the person, affirmed the presumption of innocence, and introduced other protections for human rights.

An important step in the normative consolidation of human rights was the Bill of Rights of 1689, which enshrined freedom of speech, freedom of parliamentary elections,

and the right of citizens to petition the King. It prohibited cruel punishments and defined rules concerning the participation of jurors in court proceedings [2, p. 81–82].

Progressive ideas concerning the protection of human rights were advanced in the work *On Crimes and Punishments* by the renowned Italian criminologist Cesare Beccaria. In this work, humanistic and liberal values such as honor, liberty, and dignity were widely promoted. Beccaria argued that these values should be secured not through repression, but through just laws, personal discipline, general education, the elimination of poverty, and the gradual equalization of citizens in moral and material benefits [23, p. 38].

The United States Declaration of Independence of 4 July 1776, the United States Constitution, and the first ten amendments to the Constitution adopted in 1791 (formally known as the United States Bill of Rights) constituted the first steps in the constitutional entrenchment of human rights and freedoms. A distinctive feature of the development of human rights in America was the articulation, for the first time, of the right of every person to pursue happiness. Thus, the constitutional acts adopted in North America not only enshrined classical human rights and freedoms, as well as procedural guarantees, but were also grounded in the theoretical achievements of the natural law school. These documents emphasized inalienable rights, the separation of powers, limited government, and the principle of popular sovereignty, and also highlighted mechanisms for securing liberty through economic independence [2, p. 83–84].

Immanuel Kant regarded morality, moral action, and liberty as necessary elements (preconditions) for the recognition of the individual's legal status. According to his philosophical doctrine, the unity of moral freedom, fundamental human rights, and republican principles constitutes the only path toward the realization of this ideal [2, p. 84–85].

One of the principal advocates of the idea of human liberty, Georg Wilhelm Friedrich Hegel, maintained that the idea of liberty became formally embodied through the constitution and finds its full realization in modern states. Demonstrating the internal unity of law and liberty, he argued that law is the existence of free will as such; thus, as an idea, law is identical with liberty. Distinguishing civil society from the political state, Hegel characterized civil society essentially as "bourgeois society." In his philosophical approach, civil society is understood as the sphere in which individual liberty and rights are realized, and as a specific social domain in which private interests and personal aims are manifested [23, p. 41–42].

According to John Locke, the rights to life, liberty, and property are natural rights inherent in every individual, and it is the duty of the state to protect them; liberty itself is subject to the law of nature [27, p. 82]. In this sense, the content of the right to liberty has consistently been the subject of thorough examination by political and legal thinkers.

In *The Social Contract*, Jean-Jacques Rousseau interprets the limitation and restoration of individual liberty through the prism of legal legitimacy. He emphasizes that if an individual regains lost liberty on the basis of the same legal principles by which it was taken, this either confirms the legality of its restoration or demonstrates the lack of legal grounds for its initial deprivation. Human beings are born free, and liberty belongs to them inherently; no one has the right to take it away [41, p. 4–8]. According to Rousseau, in a system governed by the principle of the absolute primacy of rights and freedoms, all activities remain in harmony with these supreme values, thereby excluding contradictory or undesirable outcomes [41, p. 91].

In *The Spirit of the Laws*, Charles-Louis de Montesquieu advances a fundamental thesis: formal legal procedures are indispensable for the protection of liberty. For

Montesquieu, liberty is not merely a theoretical principle but a practical reality secured through complex legal mechanisms and procedural safeguards [9, p. 730].

According to Benjamin Constant, in antiquity liberty meant direct participation in political power, whereas for the modern individual the principal form of liberty lies in personal inviolability [67, p. 2].

While emphasizing the legal and institutional dimensions of liberty, ancient philosophy – particularly in the thought of Plato – approaches its manifestation in political systems from a more critical perspective. Plato argues that in democracy liberty becomes an absolute value and supreme aim, encompassing all social strata, including gender relations and equality between men and women. However, he warns that if governing institutions fail to satisfy excessive demands for unrestricted liberty, this may lead to a crisis of legitimacy, deep social resentment, and disrespect for hierarchical order [37, p. 95, 423].

The founder of the modern liberal paradigm concerning justice, liberty, and constitutional democracy, John Rawls, maintains that the equality of political liberties must be integrated with freedoms of thought, conscience, and association. Only such integration, he argues, can enable the free manifestation of moral powers in accordance with the principles of rationality [39, p. 11].

One of the most prominent twentieth-century political thinkers, Isaiah Berlin, known for his work on liberty and value pluralism, classifies liberty in his seminal essay *Two Concepts of Liberty* into “negative” and “positive” categories. Negative liberty refers to the absence of external interference – particularly by the state – in an individual’s sphere of action. Positive liberty, by contrast, denotes the individual’s capacity to be the author of his or her own life, to realize inner potential, and to exercise self-government [7, p. 131–134].

The seventeenth-century English philosopher and political theorist Thomas Hobbes considered the creation of the state to be a rational response to the boundless and uncontrolled liberty existing in the state of nature. In his view, since such liberty inevitably leads to violence and fear, individuals renounce part of their freedom in exchange for security, thereby establishing sovereign authority. Within the framework of state order, liberty derives from the dispositive character of legislation: individuals are free in all spheres not expressly prohibited by law. This conception was later characterized in modern political theory as “negative liberty.” Hobbes regarded an extensive sphere free from state interference as dangerous and rejected the idea that liberty arises through democracy or self-government, instead defending strong and indivisible authority as the essential condition of liberty [21, p. 129–136].

The influential nineteenth-century British philosopher, sociologist, and political theorist Herbert Spencer argued that every individual has the freedom to do whatever he wills, provided that he does not infringe the equal freedom of any other person [45].

The 1998 Nobel Prize laureate in Economic Sciences, Amartya Sen, renowned for his fundamental research in welfare economics and development theory, emphasizes that the criteria forming the basis of judgments of justice – such as freedoms, capabilities, resources, and welfare – must be critically reassessed. In Sen’s approach, the pursuit of justice is closely linked to the model of deliberative democracy. He argues that a theory of justice must fundamentally encompass differing interpretations of equality and liberty, the nature of human rights claims, and the scope of these principles within the framework of public reasoning. When reflecting on the substance of human life, it is not only what we manage to achieve that matters, but also the real freedoms we possess to choose

among different ways of living. The individual's freedom to choose a life path not only contributes significantly to overall well-being but also has intrinsic value. Liberty must therefore be understood not merely as an instrument for enhancing welfare, but as an independent category of value. The fundamental freedoms and real opportunities available to individuals are valuable in themselves; determining how to use these opportunities is a sovereign right deriving from personal autonomy. A second crucial dimension of liberty, according to Sen, is that it renders us responsible for our actions. Freedom of choice not only allows individuals to shape the trajectory of their lives but also imposes personal responsibility for the consequences of their decisions. In this sense, responsibility constitutes an inseparable component of liberty, since an action can genuinely be attributed to an individual only if it results from conscious and voluntary choice [44, p. 8–19]. In his seminal work *Development as Freedom*, Sen advances the position that development should not be equated with economic growth, but rather with the expansion of people's real freedoms. Development must therefore be understood not simply as an increase in income, but as the enlargement of individuals' substantive opportunities across various spheres of life [43, p. 3–5].

The distinguished twentieth-century political thinker Hannah Arendt, in her foundational work *The Human Condition*, distinguishes three fundamental categories of human activity: labor (the fulfillment of biological necessities), work (the creation of artificial objects), and action (political activity). Criticizing the traditional doctrine of human rights, Arendt introduces the concept of "the right to have rights," understood as the status of belonging to a political community. In her view, the principle of liberty cannot be meaningfully applied to pre-political conditions in which individuals lack the opportunity to participate as equals in collective deliberation. Liberty thus entails freedom both from the dictates of sheer necessity and from the arbitrary will of others, while also requiring that authority be freed from hierarchical domination [4, p. 14, 31–32].

One of the prominent contemporary political philosophers, Martha C. Nussbaum, known for her research in human rights, gender equality, and development theory, is a leading proponent of the capabilities approach. She argues that human rights must be assessed in terms of individuals' real-life capabilities and functionings. In her major work *Women and Human Development*, Nussbaum identifies ten central capabilities that states must secure as a "constitutional minimum," including the right to life and bodily health, bodily integrity, freedom of imagination and thought, emotional integrity, political participation, and protection of dignity, among others. At the same time, she warns that imposing universal norms in a rigid manner may undermine individual autonomy and democratic citizenship. Universal standards should therefore be applied in a way that respects individuals' freedom to choose their own life projects. Individuals are mature agents capable of making decisions about their own well-being; restricting this freedom constitutes a manifestation of paternalism—that is, the justification of interference by the state or other authorities in an individual's choices purportedly for that individual's own good. Universal norms such as religious tolerance and freedom of association are essential for protecting individuals against illiberal forces that seek to suppress free choice. The universal regulation of such fundamental rights safeguards legal pluralism and ensures the sustainability of democratic coexistence [34, p. 51–52]. Moreover, Nussbaum maintains that a child raised in an environment lacking freedom of speech and religion cannot develop the same political and religious capacities as a child raised in a society where these freedoms are protected [32, p. 85].

The founder of liberalism and constitutionalism, John Locke, in his work *Two Treatises of Government*, interprets the dialectical relationship between liberty and law. He argues that although the individual is free in the state of nature, such freedom must not be understood as chaos or arbitrariness, since where there is no law, there can be no real liberty [27]. Similarly, Jean-Jacques Rousseau, in *The Social Contract*, distinguishes liberty from arbitrariness and characterizes it as obedience to a law that one has prescribed to oneself. In doing so, he underscores the inseparable link between liberty and law within the framework of popular sovereignty. Liberty, in his view, is impossible without equality [41].

The early formation of elements of human rights can also be traced to Zoroastrianism, which reflected the concept of human freedom of will. The Mazdakite movement, which emerged at the end of the fifth and beginning of the sixth centuries, advanced the principle of human freedom, emphasizing property equality, social and legal equality, and the consideration of the interests and positions of the people. Later, the principle of universal human equality also became a central feature of the Khurramite movement in the ninth century [2]. The Khurramite movement, active in the late eighth and early ninth centuries, promoted progressive ideas related to human rights. Drawing upon Mazdakite traditions, its ideological doctrine characterized private ownership of land and the existing taxation system as artificial mechanisms serving the exploitation of the people. According to this doctrine, prevailing social injustices were to be eliminated, individual freedoms ensured, and principles of absolute equality established within society [25, p. 102–103].

The distinguished thirteenth-century Azerbaijani scholar Nasiraddin Tusi explained in unity the interaction between society and the individual, and between the individual and society. He maintained that just as the individual plays a crucial role in the development of society, society in turn plays a decisive role in the development of the individual. Emphasizing legal equality among people, he further developed the ideas of liberty and justice. Human rights ideas were also prominently reflected in the works of Imadaddin Nasimi, a leading representative of Hurufism. Elevating and centering the human personality, he demanded respect for human dignity. One of his principal ideas was adherence to women's rights and the granting of freedom to women. He regarded the establishment of social justice as one of the most essential elements for human existence. The fifteenth–sixteenth-century Azerbaijani thinker Muhammad Fuzuli placed particular emphasis in his works on the principles of legal equality and individual liberty. Guided by humanistic values, he advocated for peace and coexistence in society and sharply criticized destructive wars [2].

Nizami Ganjavi associated liberty primarily with the inner world of the individual. In his view, a person unable to overcome greed, passion, and anger remains a slave in essence, even if he is a king. True liberty lies in moral perfection. On the social plane, he equated liberty with justice, asserting that where oppression prevails, neither freedom nor prosperity is possible. According to him, the ruler's duty is not to govern through fear but to create a just environment in which subjects can "breathe freely" [33, p. 110–113, 117–118]. He advocated governance grounded in humanism, benevolence, equality, and liberty – principles consonant with the foundations of a rule-of-law state [2].

Interpreting liberty through the philosophy of Hurufism, Imadaddin Nasimi presented the human being as the highest entity. He proclaimed that since the human being seeks Truth ("Haqq"), no religious or secular framework, nor fear, can confine him. According to Nasimi, the moment a person recognizes his or her essence, he or she attains absolute liberty; no physical punishment can force such a person to renounce that

conviction. His poetry reflects spiritual freedom so profound that it transcends even the fear of death [32, p. 7–8, 308].

Mirza Fatali Akhundov was among the first Azerbaijani thinkers to elevate liberty to the intellectual sphere. He argued that a nation's progress is possible only when there is "freedom of thought," meaning that individuals do not blindly accept dogma but critically examine all matters through reason. He regarded despotism and religious fanaticism as the greatest enemies of human liberty and promoted a mode of free thought inspired by European Enlightenment ideals. In his view, a people not liberated from spiritual bondage cannot meaningfully attain physical liberty [1, p. 43].

Advocating gender equality, Akhundov considered the subordinate status of women a grave social injustice. In analyzing harsh punishments, he viewed them as destructive to human dignity and emphasized the principle of humanism. Placing the individual at the center of his analysis, he highlighted the essential elements of legal status and underscored the state's social function as necessary for personal development. He distinguished between liberty, equality, and justice, and included within the category of liberty freedom of speech, freedom of thought, freedom of action and labor, personal rights, and property rights, thereby articulating a democratic conception of individual legal status. According to him, liberty signifies independence; without moral and physical freedom, equality is impossible. Referring to the doctrine of natural rights, he maintained that human rights and freedoms are inherent from birth and that law must not only declare but also effectively guarantee them [2].

Hasan bey Zardabi, founder of the newspaper *Akinchi*, directly linked the concept of liberty to science and education. He argued that an uneducated person is a helpless object in the hands of natural forces and others, and thus cannot be truly free. For Zardabi, genuine liberty consists in knowing one's rights, understanding the world, and living through one's own labor. He regarded ignorance as the greatest form of bondage and called upon the people to awaken from complacency and take ownership of their destiny – that is, their liberty [72, p. 57–127].

Ali bey Huseynzade attributed profound philosophical value to liberty, describing it as "the divine nourishment of the human spirit." He maintained that freedom is not merely a political slogan but the principal force that activates a nation's intellect, imagination, and creativity. His formula – Turkification, Islamization, and Europeanization – outlined a path for free national development while preserving identity. He emphasized that liberty is not anarchy, but rather a responsible ascent grounded in national consciousness [22, p. 181–191].

Approaching liberty from a realistic and critical perspective, Jalil Mammadguluzadeh observed that when men themselves are enslaved by superstition, imprisoning women within the home renders collective freedom impossible. For him, liberty was not a matter of grand rhetoric but of liberation from fear, hypocrisy, and ignorance; it meant women emerging from seclusion and participating in public life. Through satire, he sought to awaken what he termed a spiritually "dead" society by exposing the bitter truths necessary for freedom [29, p. 382–430, 437–477].

Finally, during the harshest years of the Soviet regime, Khalil Rza Uluturk portrayed liberty not as a remedy to be dispensed occasionally, but as a vital necessity akin to air, water, and sunlight. He stressed that waiting passively for freedom to be granted is mistaken; it must be pursued through persistent struggle. For him, liberty was the highest value, one that admits no compromise [26, p. 4–8].

Among the founders of the Azerbaijan Democratic Republic, the ideas of Mammad Amin Rasulzade are of particular significance in this field. His well-known statements - "Liberty to individuals, independence to nations" and "The flag once raised will never fall" – reflect the deep interconnection between individual freedom and national sovereignty [40, p. 3-4]. With the proclamation of the Azerbaijan Democratic Republic on 28 May 1918, the Declaration of Independence formally announced the establishment of an independent Azerbaijani state and set forth the fundamental principles of state governance. The Declaration affirmed that sovereignty belongs to the people; guaranteed civil and political rights to citizens; ensured the free development and protection of the rights of all individuals and peoples regardless of national, religious, class, estate, or gender affiliation; and provided for the formation of the principle of separation of powers as the structural basis of the state. The government subsequently adopted a number of normative legal acts relating to human rights [2].

Genuine liberty creates conditions for individual self-realization and self-expression. In this respect, liberty is closely connected with moral development and the formation of personality. As a principle, liberty encompasses not only legal norms but also a range of conceptual dimensions. For example, freedom of choice refers to the individual's capacity to select among different objects or values. Liberty, as a fundamental human right, possesses two principal aspects:

- *Negative liberty*, meaning freedom from unwarranted interference by others (this does not imply the complete absence of authority; rather, liberty presupposes guidance by legitimate authority and the preservation of public order);

- *Positive liberty*, meaning the right to live in accordance with one's own will. True liberty thus enables self-realization and self-expression and is intrinsically linked to personal and moral development.

According to Immanuel Kant, liberty is the capacity of the will to give the law to itself. His conception was subject to criticism by later thinkers. Critics argued that Kant constructs liberty primarily within the framework of moral autonomy and practical reason, analytically separating it from social, economic, and political structures. Karl Marx and especially Herbert Marcuse maintained that such an approach insufficiently accounts for the material and institutional conditions of freedom. For Kant, however, liberty consists in obedience to a moral law one has prescribed to oneself, and this conception was not intended to legitimize political subjugation [42].

Liberty may be analyzed across various dimensions: individual liberty; freedom of thought and expression; liberty within the framework of law; economic liberty; property and liberty; and national liberty. Individual liberty encompasses freedom of expression, freedom of speech, freedom of religion, and freedom of movement. Freedom of opinion and expression is one of the pillars of liberal thought; without it, no other freedom can effectively exist. It is closely linked to numerous political and social objectives, such as enabling individuals to pursue richer and more meaningful lives and supporting governmental efforts to stimulate economic growth, reduce crime, and alleviate poverty.

Liberty within the framework of law presupposes the existence of areas of social life not governed solely by personal moral awareness or traditional norms. Therefore, legal regulations that clearly define the limits of permissible conduct and establish sanctions for violations are essential. Economic liberty denotes the right of individuals and enterprises to pursue their economic objectives in competitive conditions without excessive state

regulation or interference in the market. Liberty thus becomes a crucial factor in promoting economic efficiency and rational behavior for the benefit of society as a whole.

Property is an essential component of most theories explaining the meaning of liberty. It is generally understood in two principal senses: first, as self-ownership—that is, ownership of one’s body and abilities; and second, as ownership in the traditional sense of material goods, wealth, and land. National liberty implies the right of every nation to self-governance and requires that a nation be able to govern itself without domination or control by another state. At the same time, the concept of liberty must be articulated in a manner that enables understanding of contemporary anti-oppression struggles, which persist even after the formal abolition of slavery [10, p. 11–18]. In legal literature, liberty is often defined not as “the right to do whatever one wishes,” but as “the will to do what is right,” a formulation that opens broader philosophical reflections on freedom [42].

The Qur’an also contains significant references to freedom. In Surah Al-Baqarah (2:256), it is stated that “there is no compulsion in religion” [38]. Surah Al-Kahf (18:29) proclaims that the truth is from the Lord, and whoever wills may believe, and whoever wills may disbelieve [38]. Furthermore, Surah An-Nisa affirms, “Allah knows best your faith; you are from one another,” emphasizing the unity and equality of all human beings regardless of social status. At the same time, the Qur’an establishes as a fundamental norm that individual freedoms must not violate the rights of others.

IV. Liberty as the foundation for the realization of other rights

Liberty constitutes the foundation for the realization of other rights. For example, within the right to work, freedom of labor occupies a central place, just as freedom of education forms the core element of the right to education. In this sense, liberty represents the essential nucleus and guiding direction of these rights.

The analysis of freedom of labor encompasses the individual’s freedom to choose a profession, the freedom to conclude and terminate an employment contract, the prohibition of forced labor, and the possibility of selecting one’s workplace and working conditions in accordance with free will. If labor activity is not based on free choice, it ceases to be a right and instead assumes the character of coercion, thereby undermining the very essence of labor law. It may therefore be unequivocally stated that social rights acquire genuine legal substance only when they incorporate an element of liberty. Article 23(1) of the Universal Declaration of Human Rights provides that everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. Article 8 of the International Covenant on Civil and Political Rights stipulates that no one shall be required to perform forced or compulsory labor. Article 6(1) of the International Covenant on Economic, Social and Cultural Rights recognizes the right to work, including the right of everyone to gain a living by work freely chosen or accepted, and obliges States Parties to take appropriate steps to safeguard this right.

The ILO Convention No. 105 concerning the Abolition of Forced Labour prohibits the use of labor as a means of punishment, political coercion, or discipline, and directly links freedom of labor to human dignity. Article 4 of the European Convention on Human Rights similarly provides that no one shall be held in slavery or subjected to forced or compulsory labor.

The case-law of the European Court of Human Rights has consistently affirmed that forced labor is incompatible with human dignity and the essence of labor rights. In *Van*

der Mussele v. Belgium, the Court addressed the scope of compulsory professional obligations. In *Siliadin v. France*, it held that where an individual is deprived of a genuine and free choice regarding labor activity, the situation amounts to forced or compulsory labor. Similar reasoning was reflected in *Chowdury and Others v. Greece* and *Stummer v. Austria*. The general conclusion is that the right to work is inseparably linked to free choice, the availability of real alternatives, and respect for human dignity.

Article 35 of the Constitution of the Republic of Azerbaijan enshrines fundamental provisions concerning the right to work. It guarantees that everyone, on the basis of their capacity for work, has the right to freely choose their type of activity, profession, occupation, and place of employment (Article 35(II)). As a constitutional norm, no one may be compelled to work (Article 35(III)), and the principle of freedom of contract in employment relations is established (Article 35(IV)), meaning that no person may be forced to conclude an employment contract. However, certain exceptional cases are permitted, including compulsory labor imposed pursuant to a court decision (under conditions and for periods prescribed by law), the execution of lawful orders during military service, and the performance of necessary work during states of emergency or martial law (Article 35(V)).

Based on an analysis of the relevant recommendations of the International Labour Organization (for example, Nos. 35, 122, 198, etc.) and its official interpretations, it has been unequivocally established that the right to work may be realized exclusively within the framework of free and informed choice. Article 2 of the Labour Code of the Republic of Azerbaijan likewise identifies, as one of its key principles, the guarantee of an individual's free use of intellectual, physical, financial, and other capacities in order to satisfy material, moral, social, economic, and other vital needs. This principle is further elaborated and strengthened in other fundamental provisions of the Labour Code.

The right to education also occupies an important place in this context. At the core of this right lies educational freedom, which includes the free choice to pursue or not pursue education, the freedom to choose among public, private, or other forms of education, and the existence of a free educational environment. Accordingly, the effective realization of the right to education is possible only under conditions of educational freedom. Article 26(2) of the Universal Declaration of Human Rights provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights stipulates that States Parties undertake to respect the liberty of parents and, when applicable, legal guardians to choose for their children schools other than those established by public authorities, provided that such schools conform to minimum educational standards laid down by the State, and to ensure the religious and moral education of their children in conformity with their own convictions. Article 2 of Protocol No. 1 to the European Convention on Human Rights provides that no person shall be denied the right to education, and that the State, in the exercise of its functions in the field of education and teaching, shall respect the right of parents to ensure such education and instruction in conformity with their own religious and philosophical convictions.

The 1960 UNESCO Convention against Discrimination in Education also addresses educational freedom within the framework of combating discrimination. Article 1 defines

discrimination as any distinction, exclusion, limitation, or preference based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition, or birth, which has the purpose or effect of nullifying or impairing equality of treatment in education. This includes: (a) depriving any person or group of access to education of any type or level; (b) limiting education for any person or group to a lower standard; (c) establishing or maintaining separate educational systems or institutions for certain persons or groups, except as permitted under Article 2; and (d) placing any person or group in a situation incompatible with human dignity. Furthermore, Article 5(1) of the same Convention affirms that parents and, where applicable, legal guardians shall have the liberty, within the framework of national legislation, to send their children to educational institutions other than those maintained by public authorities, provided such institutions meet minimum standards established or approved by competent authorities, and to ensure the religious and moral education of their children in conformity with their convictions. No person or group shall be compelled to receive religious instruction inconsistent with their beliefs.

UNESCO conventions and recommendations thus treat the right to education not merely as a social service provided by the state, but as encompassing educational freedom, parental choice, institutional pluralism, and academic freedom. In particular, the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel emphasizes that the objectives of education cannot be achieved without freedom of teaching and research, and that academic freedom must be guaranteed as a fundamental principle. The case-law of the European Court of Human Rights has likewise underscored the substantive protection of educational freedom. In *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, *Campbell and Cosans v. the United Kingdom*, *Leyla Şahin v. Turkey*, *Folgerø and Others v. Norway*, *Hasan and Eylem Zengin v. Turkey*, and *Lautsi and Others v. Italy*, the Court highlighted that education contrary to parents' convictions may infringe educational freedom; that a fair balance must be maintained between educational freedom and other competing freedoms; that educational freedom requires both procedural safeguards and real possibilities of choice; and that discrimination in education constitutes a clear violation of educational freedom.

Article 30 of the Law of the Republic of Azerbaijan "On Education" of 19 June 2009 defines the fundamental principles of state policy in the field of education, expressly incorporating the principle of educational freedom. These principles include: **humanism** – recognition as a priority of national and universal values, the free development of the individual, human rights and freedoms, health and safety, respect and care for the environment and other persons, as well as tolerance and forbearance; **democracy** – education of learners in a spirit of free thought, expansion of powers and freedoms in the organization and governance of education on state-public foundations, and enhancement of the autonomy of educational institutions.

The same conceptual approach may be identified in the context of other rights. For example, the right to entrepreneurship represents economic freedom. This is enshrined in Article 59(1) of the Constitution of the Republic of Azerbaijan ("Right to Free Enterprise"), which provides that everyone may freely use his or her abilities, capabilities, and property to engage, individually or jointly with others, in entrepreneurial activity or other economic activity not prohibited by law.

A similar principle is reflected in the right of association. Article 58(III) of the Constitution ("Right to Association") stipulates that no one may be compelled to join any

association or to remain a member thereof. Article 44(II) ("Right to National Identity") provides that no one may be forced to change his or her national affiliation. Article 45(II) ("Right to Use One's Native Language") establishes that no one may be deprived of the right to use his or her native language. Article 34(II) ("Right to Marriage") declares that marriage is concluded on the basis of voluntary consent and that no one may be forced to marry.

Analogous principles are found in other constitutional provisions. Although international legal instruments may provide for certain exceptions, individual will and freedom of choice constitute the conceptual foundation of these norms. For instance, Article 31(II) of the Constitution ("Right to Live in Safety") prohibits, except in cases established by law, any violent interference with a person's physical and moral integrity, property, or home. Furthermore, Article 32(II) ("Right to Personal Inviolability") provides that, except in cases established by law, no one may be subjected, without his or her knowledge or despite objection, to surveillance, video or photographic recording, audio recording, or other similar actions.

Article 33(II) ("Inviolability of the Home") stipulates that, except in cases provided by law or pursuant to a court decision, no one may enter a dwelling against the will of those residing therein. This provision guarantees the individual's right to freely exercise his or her will within the sphere of personal space. The above-mentioned principles are reflected even more clearly in constitutional provisions expressly dedicated to freedoms. Article 47 ("Freedom of Thought and Speech") provides in paragraph II that no one may be compelled to express his or her opinions or convictions or to renounce them, and in paragraph III prohibits propaganda or agitation inciting hostility or enmity based on racial, national, religious, social, or other criteria. Article 48 ("Freedom of Conscience") establishes in paragraph II that everyone has the right independently to determine his or her attitude toward religion, to profess any religion individually or jointly with others, or to profess no religion, and to express and disseminate convictions related thereto; paragraph III affirms that the performance of religious rituals is free, provided it does not violate public order or public morality; paragraph V prohibits compelling anyone to express religious beliefs, perform religious rites, or participate therein. Article 50 ("Freedom of Information") guarantees the freedom of mass media and prohibits state censorship. Article 51 ("Freedom of Creativity") provides that the State guarantees the free exercise of literary, artistic, scientific, technical, and other forms of creative activity. Taken together, these provisions demonstrate that liberty is not merely an abstract constitutional value but a structural principle underpinning the effective realization of a wide range of individual rights and freedoms.

Thus, liberty, by its very substance, has become embedded within the content of other rights and freedoms, forming the foundation of their genuine meaning. In general, the effective realization of any given right is possible only through the guarantee of the corresponding freedom; without such a guarantee, the right remains merely formal and cannot acquire real substance. Within each respective sphere, liberty constitutes the core element of the right in question and assumes a unifying character at the level of international standards. International norms consistently recognize the element of freedom as an inseparable component of the rights concerned. From this perspective, there is a need for more precise normative articulation of the relevant provisions of the Constitution of the Republic of Azerbaijan. In particular, it would be of considerable importance to explicitly emphasize educational freedom as a constituent element of the "Right to Education" established under Article 42 of the Constitution.

The principles governing the guarantee of the right to citizenship likewise incorporate elements of free choice and inviolability in the legal bond between the individual and the state. In this context, Article 53(I) of the Constitution (“Guarantee of the Right to Citizenship”), which develops the provisions of Article 52 (“Right to Citizenship”), stipulates that a citizen of the Republic of Azerbaijan may not be deprived of Azerbaijani citizenship (except in cases of loss of citizenship established by law). Article 53(II) further provides that a citizen of the Republic of Azerbaijan may in no case be expelled from the Republic of Azerbaijan or extradited to a foreign state. These provisions unequivocally affirm, at the constitutional level, the absolute guarantee of an individual’s freedom to reside in his or her own country and to remain under the protection of the state, safeguarding that status against external interference.

V. The constitutional foundations of the principle of Liberty

As in international instruments, the constitutions of the world also define freedom as a fundamental principle or a specific norm. This right differs from other rights and freedoms by its breadth and comprehensiveness, and it also plays a special role in ensuring other rights.

Article 54 of the Constitution of Egypt states that personal freedom is a natural right and may be interfered with only in the cases specified by law and with the guarantees determined by law [51]. Article 17 of the Constitution of the Democratic Republic of the Congo states that individual freedom is guaranteed. Here, freedom is the principle, while detention (arrest) is the exception. No one may be prosecuted, arrested, or convicted except in the cases established by law. A person charged with a criminal offence shall be presumed innocent until proven guilty by a relevant court decision [12]. Article 22 of the Constitution of the Kingdom of Morocco provides that no one may be deprived of his or her liberty without a judicial decision issued in accordance with the conditions established by law. Furthermore, Article 24 of the same Constitution establishes freedom of conscience and thought; Article 25 establishes freedom of communication; Article 26 establishes freedom of association; Article 27 establishes freedom of assembly; and Article 28 establishes freedom of demonstration [53].

The First Amendment to the Constitution of the United States provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. This means that Congress may not restrict the rights to religion, speech, assembly, and petition [63].

Article 5 of the Constitution of Brazil states that everyone is equal before the law and is free from any form of discrimination. The inviolability of the rights to life, liberty, equality, security, and property is guaranteed to Brazilian citizens and foreigners residing in the country. Furthermore, men and women have equal rights and duties under this Constitution; no one shall be compelled to do or refrain from doing something except by virtue of law; no one shall be subjected to torture or to inhuman or degrading treatment; the expression of thought is free, but anonymity is prohibited [47]. Article 14 of the Constitution of Mexico provides that no one may be deprived of liberty, property, possessions, or rights [11]. The Constitution of Canada contains a number of provisions in this field. Article 2 states that everyone has the following fundamental freedoms: freedom of conscience and religion; freedom of thought, belief, opinion and expression,

including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. Article 7 provides that everyone has the right to life, liberty and security of the person and may be deprived thereof only in accordance with the principles of fundamental justice. Article 9 states that no one shall be arbitrarily detained or imprisoned [8].

Article 37 of the Constitution of the People's Republic of China provides that the personal freedom of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or decision of a people's procuratorate or by decision of a people's court, and the arrest must be executed by public security organs. No citizen may be arrested without observance of lawful procedures; the freedom of the person may not be restricted by other means; and unlawful search of the person is prohibited. In addition to this right, the Constitution also establishes a number of other freedoms [55]. These provisions are reflected in Articles 27–31 of the Constitution of Thailand [54]. The Constitution of Japan establishes a number of freedoms in a broader manner: freedom of thought and conscience (Article 19); freedom of religion (Article 20); freedom of assembly, association, speech, publication and expression (Article 21); and freedom to choose residence, to move, and to choose occupation (Article 22) [50]. The Constitution of the Republic of Korea broadly guarantees freedoms. At the same time, Article 12 states that every citizen shall have personal liberty [58]. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law [49].

Article 2(2) of the Basic Law (Constitution) of the Federal Republic of Germany provides that the freedom of the person is inviolable and may be interfered with only pursuant to a law. Article 104 further states that a person's freedom may be restricted only pursuant to a law and in compliance with the forms prescribed therein. Only a court may decide on the lawfulness and duration of deprivation of liberty [6]. The Constitution of France refers to the 1789 Declaration of the Rights of Man and of the Citizen. It states that men are born and remain free and equal in rights. Article 4 of the Declaration provides that liberty consists in the freedom to do everything which injures no one else. Accordingly, the exercise of the natural rights of each person has no limits other than those which ensure the enjoyment of the same rights by others [65]. Article 13 of the Constitution of Italy provides that personal liberty is inviolable. No one may be detained, searched, or otherwise deprived of liberty except by a reasoned decision of the judiciary and only in cases and in the manner provided by law [52].

Article 17 of the Constitution of Spain provides that every person has the right to liberty and security. No one may be deprived of these rights except in the cases and in the manner provided by law. Furthermore, Article 19 states that public authorities must take measures to ensure that liberty and equality are guaranteed not only in theory but also in a real and effective manner. At the same time, the Constitution broadly enshrines freedoms [69].

Article 26 of the Constitution of the United Arab Emirates provides that personal liberty is guaranteed to all citizens. No one may be arrested, searched, detained, or convicted except in accordance with the provisions of the law. No one shall be subjected to torture or degrading treatment [62]. Article 28 of the Constitution of Iraq states that everyone has the right to life, security, and liberty. Deprivation or restriction of these rights is permissible only in accordance with the law and by a decision of a competent judicial authority. At the same time, Article 37 provides that human freedom and dignity

are protected. No person may be arrested or interrogated without a judicial decision [56]. Similar provisions are reflected, in one form or another, in the Constitution of Qatar [68].

More significant and comprehensive norms are reflected in the Constitution of Estonia. Article 10 of the Constitution states that the rights and freedoms enumerated therein do not preclude other rights, freedoms, and duties, provided that they arise from the spirit of the Constitution and are consistent with the principles of human dignity, social justice, and a democratic state governed by the rule of law. Article 11 provides that rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and must not distort the essence (substance) of the restricted right or freedom. Article 20 states that everyone has the right to liberty and security of person. Analogous provisions are reflected, in one form or another, in the Constitution of the Republic of Latvia [59].

The Constitution of Georgia also contains specific provisions. Article 7 states that the State recognizes and protects universally recognized human rights and freedoms as eternal and supreme human values. Article 12 provides that everyone has the right to free personal development. Article 13, entitled "Human Freedom," enshrines the principle of absolute protection of individual liberty. Deprivation of liberty or any other restriction of liberty may be applied only by a court decision. Freedoms are enshrined in a relatively broad manner in the Constitution of Georgia [48].

Article 13 of the Constitution of Uzbekistan provides that the human being, his or her life, freedom, honor, dignity, and other inviolable rights are the highest value. The supreme objective of the State is to respect, protect, and defend human rights and freedoms, honor, and dignity. Article 25 states that everyone has the right to liberty and personal inviolability. No one may be arrested or deprived of liberty except on the basis of law. Article 27 provides that everyone has the right to defend his or her honor and dignity [60]. These provisions are also broadly reflected in the Constitution of Kazakhstan [57].

Pursuant to Articles 2, 17, and 22 of the Constitution of the Russian Federation, human rights and freedoms are recognized as the highest value, which the State is obliged to protect. In accordance with the generally recognized principles of international law, every person possesses, from birth, the inalienable right to liberty and personal inviolability; deprivation of this right or detention is permissible exclusively by a court decision [61].

Articles 21 and 29 of the Constitution of Ukraine establish that all people are born free and equal in dignity and rights, and that these freedoms are inalienable and inviolable. According to the constitutional guarantee, every individual's right to liberty and personal inviolability is inviolable; arrest or detention may be carried out only on the basis of a legally reasoned court decision [64].

Thus, an analysis of the constitutions of various states across different regions of the world demonstrates that, in most cases, the right to liberty is broadly enshrined, which has led to its recognition and development as a principle.

VI. Conclusion

Thus, liberty, while serving as a precondition for the exercise of other rights, also performs an integrative and regulatory function within the system of human rights as a universal principle. In this sense, it is more logical to approach the principle of liberty from a combined historical, theoretical, legal, and other relevant perspectives. It should be particularly emphasized that the interrelationship between rights and freedoms must

be complementary and oriented toward a unified objective serving the well-being of the individual. Furthermore, the principle of liberty should be considered in close interaction with other principles of human rights and interpreted together with them. This principle constitutes a foundational pillar of the modern rule-of-law state and, at the same time, functions as an inseparable structural element of the social state model. The analysis of constitutional norms across various regions of the world demonstrates that the broad enshrinement of liberty within the legal framework has also created the conditions for its evolution as a conceptual principle. At the level of international law, the principle of liberty has acquired the status of a universal obligation and, by permeating the substance of a number of fundamental rights, has ultimately evolved into a preemptory norm of international customary law.

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INTERNATIONAL NGOS IN HUMAN RIGHTS SYSTEM

Lamiya Ismayilova*

Abstract

Human rights are fundamental rights and freedoms that are inherent to all individuals, regardless of race, sex, nationality, religion or any other status. However, despite their formal recognition in international law, these rights are not always guaranteed in practice. Countless individuals around the world continue to suffer from systemic discrimination, injustice, violence and the denial of fundamental freedoms. In such contexts, Non-Governmental Organizations (NGOs) have emerged as key actors in the promotion and protection of human rights. Operating independently of state institutions, NGOs play a multifaceted role: they raise awareness of human rights violations, provide legal aid and psychosocial support to victims, monitor abuses, and hold governments and other powerful actors accountable. Their efforts often extend beyond advocacy to include outreach, research, education, and policy development. This paper examines the expanding role of NGOs within the international human rights framework, highlighting their diverse functions and their growing influence in shaping both local and global responses to human rights abuses. The discussion also considers the challenges these organizations face, including political resistance, security risks, and financial constraints, as well as ongoing efforts to advance justice, accountability, and dignity for all.

Keywords: *Non-Governmental Organizations (NGOs), Human rights system, Leading International NGOs, Advocacy, Legal Assistance, Challenges, Types of non-governmental organisations, Amnesty International, Human Rights Watch, Legitimacy.*

1. Introduction

The modern international human rights system is complex and evolving architecture consisting of norms, institutions, actors which contribute to the global pursuit of dignity, justice and freedom. Non-governmental organizations (NGOs) are specifically dynamic and multifaced among them. Non-governmental organizations vary in size, focus and scope of operations. Their work involves researching and documenting the violations of human rights, advocacy and lobbying, providing support for victims of human rights abuses, raising awareness and educate people on human rights and freedoms.

The rise of NGOs in the human rights arena must be understood within the context of both historical development and normative evolution. While the significant codification of international human rights began with the Universal Declaration of Human Rights in 1948, the institutionalization of NGOs as key actors in the system did not occur until the second half of the 20th century [14]. Organizations such as Amnesty International, Human Rights Watch, and the International Federation for Human Rights have since helped document violations, mobilize public opinion, lobby international institutions, and provide support to victims of violations. Unlike intergovernmental organizations (IGOs), whose activities are constrained by the political interests of states, NGOs operate with a degree of independence, allowing them to challenge established power structures and draw attention to atrocities that are ignored or silenced [11].

The legitimacy of NGOs within the human rights system stems not from formal legal authority, but from a combination of factors: their access to information on the

* Master's student, UNESCO department of Human Rights and Information Law, Faculty of Law, Baku State University, email: lamiaism2001@gmail.com

ground, their ability to represent marginalized voices, their ability to represent transnational networks, and their moral authority. Through field research, shadow reporting, strategic litigation, and capacity building, NGOs have created a parallel accountability and oversight ecosystem that complements (and sometimes competes with) the efforts of states and international institutions. Their work often fills critical gaps left by weak or politicized enforcement mechanisms within the United Nations and regional human rights institutions [6].

The role of NGOs is undeniable in observing the human rights and combating the crime in the international context. For instance, according to the Resolution adopted in 1994 by the International Association of Criminal Law at the 15th Congress held in Buenos Aires, the maximum protection of individual rights must be provided in the sphere of international criminal-law cooperation, and also priority must be the protection of human rights in the context of obligations relating to mutual cooperation in criminal matters during conflict and obligations relating human rights [1].

However, the role of NGOs in the human rights system is not without controversy. Their effectiveness, impartiality, and accountability are increasingly being scrutinized, particularly in the context of changing geopolitical environments, the rise of authoritarianism, and the growing insecurity of civil society. Critics have raised concerns about the Western-centric orientation of many mainstream NGOs, potential biases in reporting, and the risk of dependency or distortion when NGOs are intertwined with donor agendas or government partnerships. Furthermore, NGOs in many parts of the world face a shrinking civic space as governments enact restrictive laws, persecute activists, and frame international advocacy as a form of external intervention. Nevertheless, NGOs' normative and practical contributions to the human rights system remain significant. They have played an indispensable role in drafting international legal instruments such as the Rome Statute of the International Criminal Court and various United Nations treaties and conventions. International NGOs also serve as a bridge between local struggles and global advocacy, bringing local realities into the international discourse. This dual function of both observer and advocate puts them in a unique position to influence policy, shape public opinion, and accelerate institutional reform.

This article analyzes the evolving role of international NGOs in the human rights system, their contributions, limitations, and future prospects. The article begins by outlining the historical development and theoretical foundations of NGOs in international law and global governance. It then examines the different strategies they employ in advocacy, monitoring, and capacity building, using case studies that illustrate both successes and shortcomings. Finally, it considers critical perspectives such as legitimacy, accountability, and power asymmetry before assessing the future trajectory of NGOs in a world of increasing global inequality, technological change, and political polarization.

By examining both the promise and the perils of international NGOs within the human rights system, this study aims to provide a nuanced understanding of how non-state actors are reshaping the boundaries of global justice and what this means for the future of human rights in the 21st century.

II. Types and main roles of NGOs

Non-governmental organizations (NGOs) take a significant part in civil society and constitute a key factor in promoting and protecting human rights globally. These organizations are characterized as non-profit organizations as they operate

independently from government influence and the main purpose is more than having financial benefit. NGOs play a crucial role in raising awareness about human rights abuses, ensuring support to marginalized groups and holding governments accountable for their action [7]. They observe and document human rights violations by making reports and campaigns. They provide legal support to the victims of human rights abuses and encourage them to seek justice [11].

In today's world NGOs have a great impact on international landscape thanks to the globalisation. As a result, they become more professional in various fields, especially in human rights system. Unlike governmental organizations, NGOs can respond to changes quickly. They NGOs often maintain strong local connections that allow them to effectively identify and respond to the specific needs of local communities – needs that are often overlooked by government institutions due to bureaucratic constraints or centralized decision-making processes.

Although there is no universal definition of the term “non-governmental organization”, the role of NGOs in human rights system is undeniable. They engage in different human rights issues, such as civil and political rights, economic and social rights, gender equality. NGOs play a vital role in fighting against human rights abuses directly or by supporting certain “test cases” through relevant courts [3]; giving legal support to the victims of human rights abuses; promoting awareness, respect for human rights among people.

According to their functions, NGOs are differed into various types, such as advocacy, service-based, research-oriented, charitable organizations.

Advocacy organizations – They are considered significant Human Rights NGOs that focus on promoting and protecting human rights by influencing public policy, raising awareness on human rights abuses, and holding those accountable who took part in human rights violations. Amnesty International and Human Rights Watch are famous advocacy Human Rights NGOs [9].

Service-based organizations – These organizations operate at the grassroots level, providing direct support to communities, especially where government services are lacking. They often act as first responders, coordinating medical assistance during disasters, implementing awareness-raising initiatives for underserved communities, and distributing essential resources during crises. Typically run by volunteers and deeply embedded in local networks, these organizations are agile in addressing immediate needs while also contributing to long-term social and sustainable development goals.

Research-oriented organizations – These organizations act as knowledge centers, focusing on the collection and analysis of data on a variety of social and environmental issues. Their findings often inform the strategies of advocacy and service-oriented NGOs – for example, research on the health impacts of natural disasters can guide relief efforts. Beyond being purely academic, their work supports evidence-based decision-making and promotes collaboration within the NGO sector [13].

Charitable organizations – Charitable human rights NGOs provide aid to vulnerable groups, addressing issues like poverty, healthcare, education, and legal support. Organizations such as Amnesty International and Human Rights Watch combine advocacy with humanitarian assistance, often influencing policy responses to rights violations. Through public campaigns and fundraising, they mobilize support, while their legal autonomy enables swift action and long-term advocacy despite occasional regulatory challenges.

Environmental NGOs – These organizations focus on preserving the planet’s natural resources. They deal with various issues like climate change, pollution, biodiversity loss and etc. Environmental NGOs play a crucial role in raising awareness about climate change and bring everyone together to influence the process. Environmental NGOs play a vital role in conserving biodiversity and promoting long-term sustainability. In short, NGOs represent a diverse group of organizations committed to addressing social, humanitarian, and environmental issues through advocacy, direct services, and systemic action. Each contributes to the well-being of society and the broader realization of the Sustainable Development Goals [8].

NGOs existed in different forms in the history and operated various roles. NGOs had a crucial role in policymaking in cases to provide human rights protection. They also took part in drafting some pivotal international and regional human rights documents, such as Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989) and etc. After World War II and the beginning of the United Nations, NGOs actively participated in improving human rights standards. According to William Korey, “the establishment of international norms by which the conduct of states can be measured or judged – was the primary preoccupation of NGOs” [10, p. 55].

In 1945, Article 71 of the UN Charter officially acknowledged the role of non-governmental organizations (NGOs) in the UN activities and processes, even several NGOs actively contributed to the Charter’s drafting [4, pp. 1056-1062]. However they have become more influential since 1980s. In 1993, at the UN World Conference on Human Rights, also known as the Vienna Conference, more than 800 NGOs from various parts of the world participated considering themselves as working on human rights issues [3].

III. Challenges faced by the NGOs

Although the NGOs have a great impact in social, economic and environmental matters, they frequently face some challenges which impede the efficacy and sustainability of their work. The main challenges they face are related to lack of funds, human resource challenges, lack of awareness, legal challenges and so on. Most of the NGOs depend on external donations, government fundings that are uncertain and focused on specific projects.

One of the main challenges NGOs face is poor communication and poor networking. This often leads to repetitive efforts, conflicting policies at the community level, limited sharing of practical experience, and failure to address the root causes of underdevelopment at the local level. In addition, fierce competition for resources can undermine the credibility and effectiveness of NGOs, leading to distrust, secrecy, and a lack of transparency in the sector. Many NGOs, both large and small, operate in communities without first conducting proper community mapping or taking into account existing local initiatives. As a result, tensions often arise between organizations – some have resources but no community involvement, while others have strong local connections but limited funding [2].

Just as the economic crisis has pushed NGOs to find new funding methods, the COVID-19 pandemic has brought positive changes to social care, such as more digital tools, online training opportunities, and greater respect for social workers (Bódi, 2022). However, NGOs face two main challenges – securing stable funding and managing staff, especially volunteers. These issues are closely linked and essential for the success of any NGO. Staff shortages and heavy workloads often make it difficult to attract funding and

manage the complex demands of international projects (Sawadogo, Lewis, Bryant, & Robertson, 2022) [5, p. 223].

One of the challenges that NGOs face is about human resource management. As NGOs frequently operate under restricted financial resources, that makes it difficult to recruit experienced or skilled professionals. Most of them depend on volunteers or low-paid workers with short-term commitments and it leads to unclear roles, lower motivation and reduce productivity. Training opportunities, regular workshops can raise motivation among staff and develop efficiency.

As Monica Krause indicates in her book "The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason" (2014), humanitarian NGOs often focus on what appears to be "good project", the implementation of donors, and measurable achievements. This leads to the fact that more complex but vital problems are ignored. The main NGOs are divided real needs and donor requirements. NGOs are often compelled to operate primarily in accordance with donor priorities. Whenever donor funding is directed, the work of NGOs is also directed in that direction. This often creates a flow of resources to projects that donors are interested in, rather than to areas where the need is greatest. As a result, inequality and fragmentation arise in the humanitarian aid system. Krause notes that humanitarian NGOs are increasingly becoming management-oriented, technical and bureaucratic institutions. While professionalization suggests certain advantages, this process often weakens the ethical spirit of humanitarian work and distances organizations from the real situation of people. However, donors and the public often demand numbers, indicators and reports. This makes NGOs to focus on measurable outcomes rather than real impact [12, p. 92-125].

The rapid change in global and local conditions also poses serious challenges for NGOs. Factors such as pandemics, climate crises, and shifting donor priorities can quickly render organizations ineffective or unsustainable. To adapt to this situation, NGOs must be open to innovation, use technology and new communication methods, and conduct continuous research to stay abreast of international trends. At the same time, emergency preparedness plans should be established in advance, and projects should be designed in such a way that they can be flexibly updated to changing public needs. This approach increases the resilience of NGOs and makes them more effective in a changing environment.

Over the years, NGOs work so hard for social development and growth. However, for being successful they face various challenges related to management, transparency and funding. To promote and develop the work of NGOs partnerships, accountability and innovation play a crucial role.

IV. Conclusion

In conclusion, international human rights NGOs play a vital role in upholding human dignity, justice, and freedom around the world. Despite differences in focus and approach, from legal advocacy and humanitarian aid to medical care and anti-slavery efforts, each organization makes a significant contribution to the protection and promotion of fundamental rights. By conducting research, engaging in advocacy, providing essential services, and holding violators of the law accountable, these NGOs remain important actors in the global struggle for human rights and social justice.

Through intensive research, strategic advocacy, public education, and direct service delivery, international NGOs have significantly influenced international norms, shaped public discourse, and empowered local communities. They often serve as watchdogs

when state institutions are weak or complicit, acting as a key conduit between victims and international accountability mechanisms. Furthermore, their ability to mobilize transnational networks and exert pressure on governments and corporations has made them indispensable actors in the struggle for global justice.

However, their growing importance also raises critical questions about legitimacy, representation, and accountability. International NGOs must continually navigate complex terrains such as geopolitics, donor influence, and state resistance, while ensuring that their work is grounded in the needs and voices of the people they aim to serve. As the global human rights landscape becomes increasingly polarized and contested, the role of international NGOs will need to adapt, balancing advocacy with pragmatism, independence with collaboration.

In summary, while not without limitations, international human rights NGOs remain crucial actors in the evolving human rights system. Their continued presence and activities are essential to addressing ongoing and emerging challenges to human dignity around the world.

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