

ЗЕМЕЛЬНОЕ, ПРИРОДОРЕСУРСНОЕ, ЭКОЛОГИЧЕСКОЕ, АГРАРНОЕ ПРАВО РОССИИ И ЗАРУБЕЖНЫХ СТРАН

JURIDICAL FRAMEWORK OF IMPLEMENTATION OF UN CONVENTIONS ON BIOLOGICAL DIVERSITY (CBD) IN AZERBAIJAN REPUBLIC

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The article deals with the study of the issues over the implementation of the provisions of the Convention on Biological Diversity, 1992 in the Azerbaijan Republic. National regulations and legal acts, aimed at realization of the mentioned Convention hereupon, are analyzed. The gaps existed in the legislation of the republic are identified. The intended measures on the provision of biological diversity to be fulfilled within the National strategy plans asserted by the Decree of the President of the Azerbaijan Republic are analyzed as well. Biodiversity conservation is not to be limited to the territory of individual states. It is necessary to proceed from the protected area, which sometimes may cover the territory of several states. These elements should be taken into account when forming the national legal framework and the implementation of the provisions of international agreements in the field of biodiversity conservation. The importance of active participation of each State in the preservation of biodiversity and, thus, protection of the environment as a whole. Naturally invaluable role here, and the public, and each one of us. All this requires improved national legal framework and institutional arrangements in this area. The fight for the preservation of biodiversity is achieved not only by the struggle with the consequences, by the application of administrative and criminal sanctions, but preventive actions to prevent them. An important role will be played by the National Plan, providing for comprehensive measures for the conservation of biodiversity.

Keywords: biological diversity, ecology, environmental law, Azerbaijan Republic, Cartagena Protocol, environmental safety.

ПРАВОВЫЕ ОСНОВЫ ИМПЛЕМЕНТАЦИИ КОНВЕНЦИИ ООН О БИОЛОГИЧЕСКОМ РАЗНООБРАЗИИ В АЗЕРБАЙДЖАНСКОЙ РЕСПУБЛИКЕ

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Статья посвящена исследованию вопросов имплементации положений Конвенции о биологическом разнообразии 1992 г. в Азербайджанской Республике. Подвергаются анализу национальные нормативные правовые акты, направленные на осуществление указанной Конвенции. Выявляются некоторые пробелы, имеющиеся в законодательстве Республики. Анализируются намечаемые мероприятия по обеспечению биологического разнообразия, которые будут осуществляться в рамках Национальной стратегии и планов, утвержденных указами Президента Азербайджанской Республики. Учитывая, что сохранение биоразнообразия не ограничивается территорией отдельных государств, отмечается необходимость определения охраняемой зоны, которая иногда может охватывать территории нескольких государств. Эти же элементы должны быть приняты во внимание при формировании национальной нормативно-правовой базы и реализации положений международных соглашений в области сохранения биоразнообразия. Отмечается важность активного участия каждого государства в сохранении биоразнообразия и, таким образом, в защите окружающей среды в целом. В этом деле неопределима роль общественности и каждого из граждан. Все это требует улучшения национальной правовой базы и институциональных механизмов в рассматриваемой области. Борьба за сохранение биоразнообразия заключается не только в устранении последствий путем применения административных и уголовных санкций, но и в принятии превентивных мер по предотвращению негативных последствий. Отмечается важность принятых национальных планов, предусматривающих комплексные меры по сохранению биоразнообразия.

Ключевые слова: биологическое разнообразие, экология, экологическое право, Азербайджанская Республика, Картахенский протокол, экологическая безопасность.

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Introduction. As was noted in paragraph 59 of the UN Secretary General's report "In Larger Freedom" (2005)¹, one of the most serious problems on the agenda is the loss of biological diversity. The tendency underlined is by its own, concerned and imposes negative impact on the state of health, the standard of living, production of foodstuff and access to clean water, and increases vulnerability of the population in respect of spontaneous disasters and climate change. To reverse these trends, the all governments have to take measures in connection with the realization of the Convention on Biological Diversity individually and collectively, and obligation assumed in Johannesburg to achieve essential decrease in rates of loss of biological diversity by 2010.

The interaction of people with other live organisms on the globe was the subject of discussion and debates throughout all history. The preservation of biological diversity, put forward by the Convention on Biological Diversity of 1992, is one of the important challenges facing mankind today. Biodiversity of live organisms is threatened by exploitation, habitat destruction, pollution and other actions that adversely affect the environment. Industrialization, urbanization, desertification, deforestation and human overpopulation resulted in die out of many species of plants and animals, or their being on the verge of extinction. 128 species of birds and 95 species of mammals have disappeared for less than two centuries. More than half of local fauna and flora kinds become extinct in several regions since 1950. 9% extinction norm was fixed out of the 1000 species for 1 000 000 years². Over-exploitation was the first problem that was subjected to legal regulation. Along with direct impact, consequences of indirect human influence, negatively affect the environment. So, even the agricultural industry makes the contribution to the depletion of genetic heritage. Cultivation, most often separate types over large areas replaces genetic wealth of the prairie. Moreover, the person creates a set of more productive types of plants and pets to the detriment of types whose performance is lower and nevertheless closer to the wild nature. At the same time, it is important to note the value of wildlife for mankind, from which it scoops enough wealth (for example, the raw material from plants for the production of drugs) to survive. The impoverishment of global genetic heritage can have dangerous long-lasting consequences. However, recovery of the heritage becomes impossible or requires huge amounts of money and time.

Use and protection of animals have traditionally been considered as a part of state sovereignty over natural resources and the laws within the states are often limited

to the setting of restrictions, or limits of hunting or fishing. Generally, plants are regarded as limitless for usage. Later, protected areas and species subject to preservation, started to be defined. Impossibility of ensuring the protection of various kinds of animals in the process of fixed migration, created need for joint efforts from the state. Migratory versions required joint efforts on the whole territory of their habitats for the preservation of stocks. Along with that, it was decided that, not migration versions, habitat area of which covers the territory of more than one state, requires joint efforts. The first multilateral agreements were aimed at protecting fauna kinds not used by human. Thus, the Treaty of Paris of 19 March, 1902 determined the list of birds, "useful for agricultural industry" and lists bird kinds — "wreckers", which could be destroyed, in the appendix to it. Similar concept began to change after World War II with the development of global ecological consciousness. Despite the fact that, new attitudes changed towards the environment protection, they still remained separate. Protective measures had conditional character at times, remaining on paper in general (e. g.: the International Convention for the Regulation of Whaling (ICRW), 1946; the International Plant Protection Convention (IPPC), 1951, etc.). Selected methods of the protection were mainly limited to the prohibition of the use of certain kinds of fauna and flora, whereas it was necessary to guarantee them conditions of natural habitats as an essential condition of survival. This approach changed over time, and agreements expanded the scope of the impacts, regarding as of paramount importance the preservation of ecosystem in the light of the new threats (e. g., pollution by waste oil, pesticides and other hazardous substances of wildlife habitats), i. e. not saving simply separate kinds of fauna and flora, but ecosystem in general, become important. Due to the Resolution 37/5 of September 30, 1980, the UN General Assembly declared that the benefits to be derived from nature, depend on the preservation of the natural processes, on the diversity of life forms and that those benefits are at risk as a result of overexploitation and destruction of natural habitats. In its Resolution 36/6 dated October 27, 1981 the UN General Assembly reiterated that, it recognizes importance assumed by the international community to the promotion and development of cooperation directed to the defense and protection of balance and quality of nature. A fundamental change on the wild nature is clearly reflected in the fourth principle of the World Charter for Nature of 1982. According to the Charter, ecosystems and organisms used by the person, as well as resources of the land, the sea and atmosphere must be controlled in such a way that provision and keeping of their optimum and constant performance could be possible, but without prejudice to the integrity of that ecosystems, or species with which they coexist³. According to Paragraph 14 of the

¹ URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement>.

² Report of the Ad Hoc Group of Experts to the Executive Director on Governing Council Decision 14/26, UNEP/Bio. Div. 1 (Inf. 1). 7 October 1988.

³ International Environmental Law / compiler T. Huseynov. Baku, 2007. P. 22.

Charter, the principles set out in it, should find reflection in the laws and practice of each state. The charter specifically addresses the issue over biodiversity preservation. So, the Charter declaring any life form's being unique and worth respect, regardless of usefulness for human in the preamble, establishes two principles concerning preserving biological diversity. That principles embraces namely, that the genetic basis of life on the earth must not be endangered; the popularization of each form of life, wild and domestic, must be at least, at a level sufficient to ensure its survival; habitats necessary for this purpose to be maintained. These principles of preserving the nature are applied to all parts of the earth surface, land or the sea; special protection should be provided for unique areas, a typical member of all types of ecosystems and habitats of unique or endangered species.

Preservation of Biodiversity: International Law Framework. It is quite possible to claim that, the principles became reflection of demands of the time. Preserving species and their habitats has been united in a broader conceptual framework of the protection of the genetic heritage planet. Clearly, the maintenance of biological diversity is one of the parts of ecosystem protection as a whole. Inherent value of biodiversity, as well as ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic value of biological diversity and its components caused the adoption of the Convention on the Biological Diversity in June 1992.

Further, the Convention was complemented by the Cartagena Protocol on Biosafety, which aims at assisting to ensure adequate level of protection in the field of the safe transfer, treatment and use of varied live organisms. The organisms hereby are result of application of modern biotechnology and are capable to make an adverse effect on the preserving and steady use of biological diversity, taking also into account risks to human health, and focusing on cross-border movements.

International agreements on the preservation of nature and biological diversity are divided into three main groups. First are agreements, main goal of which is to protect the biodiversity. The second group includes agreements which seek to protect broad categories, such as preservation of the habitat, international trade restrictions, etc. Multilateral and bilateral agreements aimed at protecting separate species or higher taxonomic groups, such as whales, bats, migratory birds and others, belong to the third group⁴. Philippe Sands carries out another classification, dividing international law on the preserving biological diversity into three categories: the first includes agreements that ensure the protection of animal and plant species on the planet (the Convention on Biological Diversity in 1992 and the Convention on International Trade in Endangered Species of Wild Fauna

and Flora, 1973); the second — includes a commitments to the preservation of fauna and flora within certain regions; the third — includes treaties and other international agreements directed to protecting separate species of fauna and flora at the regional and universal levels⁵.

In this article we will study process of implementing the provisions of the Convention on Biological Diversity in the Azerbaijan Republic. First, it would be desirable to analyze some of its key provisions. According to Article 2, “biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part. The concept implies that, it includes diversity within species (genetic resources), between species and variety of ecosystems. The first Conference of the Parties considered this definition does not cover human, organs and genetic material.

The Convention fixes in-situ conservation of biological diversity (conservation of components of biological diversity outside their natural habitats) and ex-situ (the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties).

Along with the conservation of biological diversity, one of the important tasks, assigned to the states-parties, is sustainable use of its components and fair and equal basis of benefits connected with the use of genetic resources. They include provision of necessary access to genetic resources and relevant technologies, taking into account all rights over those resources and technologies, and the way of due funding. It means that the use of components of biological diversity in a way and at a rate that does not lead to its long-term decline, thereby maintain its potential to meet the demands and expectations of present and future generations.

Provisions of this Convention concerning the components of biological diversity are applied within national jurisdiction of the state party. As for processes and activities — regardless of the manifestation site of their consequences, they are carried out under its jurisdiction or control, within its national jurisdiction or beyond the limits of national jurisdiction.

Article 10 of the Convention fixes that, each state-party as far as possible and as appropriate: integrate consideration of the conservation and sustainable use of biological resources into national decision-making; adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity; protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable

⁴ Kiss A., Shelton D. International Environmental Law. UN, 2004. P. 194.

⁵ Sands P. Principles of International Environmental Law. Cambridge, 2003. P. 502.

use requirements; support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources⁶. As you can see, following the objectives of the Convention, this Regulation does not oblige, and recommends state-parties to undertake measures in the sphere of sustainable development in the framework of opportunities they possess. In general, legal burden of the Convention provisions has advisory nature.

It is quite clear that, implementation of a number of provisions of the Convention requires sufficient financial investments. Thus, in accordance with Article 20 of the Convention, Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programs. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfill the obligations of this Convention and to benefit from its provisions.

Control over the implementation of Provisions of the Convention by the states is implemented by the Conference of the Parties. The form of control is submission of a report on accomplishment of the Convention Provisions by the states. According to the decision of the first meeting (November—December, 1994) of the Conference of the Parties, the Permanent Secretariat of the Convention will be in UNEP.

Measures taken by Republic of Azerbaijan on Implementation International Legal Norms on Preservation of Biodiversity. Given that, the achievement of objectives of the Convention depends on concrete actions by each State Party, it would be desirable to conduct a brief analysis of the regulatory framework aimed at implementing the Provisions of the Convention in the Azerbaijan Republic. Due to the law No. 829-II dated 14 March, 2000 AR approved the Convention on Biological Diversity and by the Law No. 841-III on March 4, 2005 has joined the Cartagena Protocol on Biosafety to the Convention on Biological Diversity⁷.

There have been issued a number of decrees and orders by the President of the Azerbaijan Republic for the purpose of the adoption of specific actions. So, State Commission on the Genetic Resources of biological diversity was established in accordance with the Degree of the President of the Azerbaijan Republic of December 21, 2001⁸. By the Order of the President of the Azerbaijan Republic “on the enforcement of the Cartagena Protocol

on Biosafety, to the Convention on Biological Diversity”, dated 23 March 2005, the Ministry of Ecology and Natural Resources of Azerbaijan Republic was appointed as the national coordinator from Azerbaijan Republic and at the same time as the

competent national authority. Referring the Provisions of Article 6 of the Convention on Biological Diversity, national strategy and plan for the conservation and sustainable use of biological diversity were developed on the basis of the Decree of the President of the Azerbaijan Republic “On approval of the National Strategy and Action Plan on the Preservation and Sustainable Use of Biological Diversity Activity in Azerbaijan Republic” dated March 24, 2006⁹. Decree of the President of Azerbaijan Republic dated October 3, 2016 asserted the National Strategy for the Conservation and Sustainable Use of Biological Diversity in the Azerbaijan Republic in 2017—2020 years, main goal of which is the rational use of genetic fund, preservation of biological diversity and transmission to future generations, ensuring ecological balance, the transition to a “green economy”, encouraging environmental education, restoration of endemic flora and local fauna, etc.

First, it should be noted that, Azerbaijan Republic is a part of the Caucasus, which is included into 200 priority eco-regions of the world and 25 eco-regions that have the highest level of biodiversity on our planet. There were found more than 6300 species of higher plants, more than 152 mammals, about 400 species of birds, 76 species of reptiles and 15 — amphibians. The level of endemism¹⁰ in separate groups reached 20% — that is the highest figure for the whole Eurasia.

Importance of environmental protection problem was cited by the President of the Azerbaijan Republic during the Government’s meeting devoted to environmental issues: “Protection of ecology — is the protection of human health, the national gene pool”¹¹.

A number of activities were carried out in order to implement the Convention on Biological Diversity for the conservation of all important ecosystems, species of fauna and flora threatened with extinction as stated in the Decree of the President of the of Azerbaijan Republic dated 30 March, 2006. So, six national parks, two state reserves and two state nature reserves were set up in the country for last two years and the area of five state reserves was expanded. Today, specially-protected natural territories cover 604 500 hectares that constitutes 7% of the state territory. In addition, special programs are elaborated in the country for the conservation of biological diversity, jointly with the United Nations Development Programme (UNDP), the German Development Bank (KfW) and other international organizations and realized¹².

⁹ Newspaper “Azerbaijan”. March 25, 2006. No. 63.

¹⁰ Short Geographical Encyclopedia / ed. A. A. Grigoryev. Moscow, 1960. V. 4. P. 441.

¹¹ Newspaper “Azerbaijan”. July 5, 2006. No. 146.

¹² Newspaper “Azerbaijan”. March 31, 2006. No. 68.

⁶ Kiss A., Shelton D. Op. cit. P. 352—353.

⁷ Newspaper “Azerbaijan”. March 25, 2005. No. 66.

⁸ Newspaper “Azerbaijan”. December 2001. No. 29222.

Decree of the President of the Azerbaijan Republic “On approval of the National Strategy and Action Plan for the Conservation and Sustainable Use of Biological Diversity in Azerbaijan Republic” dated March 24, 2006 certainly play special role in the preservation and development of biological diversity. Basic directions are: maintenance of genetic stock plants, animals and micro-organisms, their valuable species, varieties, breeds; preparation and implementation of short-term and long-term programs in the sphere of rational use of biodiversity; provision of a benefit to the preservation of unique and endangered species of plants and animals, keeping local traditions and cultural values against the background of the importance of an approach to consideration of continued use of biodiversity in ecosystems; creating the gene pool of biodiversity of the republic at the level of the international standards; wider use of new technologies of due to environmental experience and at the expense of financial resources of regional and international organizations in the country; creating opportunities for active public participation within the assessment of human impact on the environment; for the purpose of ecological education of the population by means of determination of legal, economic and organizational basis; provision of social dissemination of ecological knowledge and consistent and continuous environmental education; equitable sharing of benefits from biodiversity.

A list of specific actions, priorities, authority and terms of implementation aimed at the preservation and further development of biodiversity are determined according to the approved plan. The plan calls for action implementation for 13 main directions: strengthening measures in the sphere of conservation of biodiversity and genetic resources; expansion of specially-protected natural areas; preservation and rational use of forest biological diversity; preservation of biological resources in the border areas; maintenance and recovery of unique and endangered species of plants and animals in their natural environment; development of ecological education; the extension of communications, exchange of information and joint events of the organizations related to the preservation of biological diversity; development of environmental education and education level of the population; protection of cultural values and traditions connected with biodiversity; to achieve application of social and economic incentives to ensure biological diversity; improvement of the legislation on Biological Diversity; funding the events for the recreation, preservation and rational use of biological diversity and the regulation of activities which are negatively influencing biological diversity. As we can see, the plan covered almost all areas, which play an important role in ensuring biological diversity, although the plan could cover also a number of other important areas (e.g. conservation of components of biological diversity outside their natural habitats). The Plan identifies the authorities which are committed to implement it. Implementation terms, which cover the period from 2006 to 2009, are also defined. The Plan once again reaffirms the commitment of the

Azerbaijan Republic with the requirements of Convention on Biological Diversity. The plan was quite capacious and requires sufficient resources. In general, only the expenses of the protection of the environment constituted 1 427 814 AZN (national currency) in the budget of the Azerbaijan Republic for 2007. Besides, the budget provided other expenses related to the ecology (for example, the cost of environmental education — 56 052 AZN, the development of forestry — 6 199 884 AZN, and so on)¹³.

A new strategic plan, put forward by the Decree of the President of the Azerbaijan Republic dated October 3, 2016 will make a contribution to the development of these measures. Priority areas of National Strategy define the provision of wide dissemination of ecological knowledge of the population on biodiversity and ecosystem services; the improvement of the monitoring system of biodiversity; recovery and preservation of biodiversity, ecosystem and genetic diversity; the creation of a rational management system of specially-protected natural areas and the expansion of the existing network; reducing negative impacts on biodiversity and sustainable use of biodiversity; the enhancement of the regulatory framework for the provision of the sustainability of biodiversity; the expansion of public involvement in biodiversity conservation at the national and local levels; development of co-management in the implementation of biodiversity conservation measures; provision of adequate resources for the purpose of conservation and sustainable use of biodiversity and strengthening institutional capacity for planning and management of biodiversity use. Actions within the framework of the National Strategy will be implemented not only by targeted public expenditure, but also with the use of micro-credits and grants from international donors and financial groups.

Thus, in the budget of Azerbaijan Republic for 2017, expenditures on environmental protection will amount to 14 950 630 AZN, which almost three times higher than similar costs in 2016. Overall, the analysis of state allocations on environmental protection of recent years (4 375 780 AZN — 2016; 4 535 113 AZN — 2015, 4 495 359 AZN — 2014; 4 009 450 AZN — 2013; 3 620 557 AZN — 2012; 3 585 506 AZN — 2011; 3 204 228 AZN — 2010) confirms once more the government’s commitment to protecting the environment.

It is indisputable that, the implementation of these plans will ensure the preservation and further development of biodiversity in the country, and thus the republic will make a feasible contribution to the maintenance of biodiversity in the region.

Plan of complex measures on the improvement of the environmental situation in Azerbaijan Republic for 2006—2010¹⁴, approved due to the Decree of the President dated 28th September, 2006 will contribute to the ensuring and

¹³ Newspaper “Azerbaijan”. December 23, 2006. No. 288.

¹⁴ Newspaper “Azerbaijan”. September 29, 2006. No. 220.

preservation of biological diversity. The plan includes a list of specific actions directed to the enhancement of the environmental situation in Absheron peninsula and in other regions of the country, as well as measures to improve the legislative framework in this area, which will result in ensuring biodiversity. Along with the introduction of appendixes and amendments to the existing regulations, the Plan provides the development of the Environment Code of the Azerbaijan Republic in 2009—2010.

A number of other normative acts (the Law “On Environmental Safety” dated 8 June 1999, the Law “On the Protection of Environment”, dated 8 June 1999; Legislation on environmental education and enlightenment of population, dated 10 December 2002; the Law “on Protection of Plants” dated December 3, 1996, and so on) play an important role in the preservation of biological diversity.

The norms providing responsibility and liability for violation of the rules of environmental protection in general, and biodiversity should be particularly noted. So, this is covered in Chapter 25 of the Code of Administrative Offences and Chapter 28 of the Criminal Code of Azerbaijan Republic.

Conclusion. Summing up the result, it would be necessary to agree with Professor Revol Valeyev, that, only with the help of common efforts it is possible to protect nature and keep environment for mankind for new millennium¹⁵. Hence, each state, each person must

make a possible contribution to the preservation of the ecosystem, otherwise achievement of the desired result is excluded. In opinion of Boris Yerofeyev, “basic conditions of solving this problem are trust and mutual understanding between the states; pursuing common policy by all states in relation to the environment and taking all measures on its protection over its territory and, above all, the development of environmental legislation”¹⁶. This contribution should not be limited only to passive actions concerning the environment, but also active actions on their part. It should be noted that, the provision of everyone right to a healthy environment depends not only on the state which undertakes such liability, but also on each of us. We think that, it will be unlikely to prevent the violation of the ecosystem only by the application of sanctions. Apparently, each state has exclusive ownership of its natural resources, but it should not be understood as desired use of theirs without any restrictions. Environmental disasters became a consequence of overconsumption. In most cases, the events held by the states, bring benefits in terms of protection of the environment by them. We guess that, each state should stimulate measures aimed at protecting the environment (for example, by means of taxation).

Besides, it would be pertinent to note that, along with the destruction of fauna and flora, violation of ecosystem became the reason of the extinction of a number of indigenous people. Finally, it will be a question of disappearance of mankind!

¹⁵ Valeyev R. M. Control in the Modern International Law. Kazan, 2003. P. 206.

¹⁶ Yerofeyev B. V. Ecological Law. Moscow, 2004. P. 308.

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