INTERNATIONAL LAW AND INTEGRATION PROBLEMS
(Scientific-Analytical Journal)
№ 1 (62) 2021

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FEATURES OF THE LEGISLATION OF A NUMBER OF FOREIGN COUNTRIES IN THE FIELD OF COPYRIGHT PROTECTION ON THE INTERNET

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Abstract
The article analyzes the legislation of foreign countries on the protection of copyright on the Internet. The features of the system of open licenses are highlighted. Particular attention is paid to the position of legislators in matters of Internet piracy. The relevance of this article lies in the fact that the modern legislation of many countries lags behind the level of technical development, and therefore there are many problems. The conclusions are illustrated by specific examples borrowed from the practice of international law.
Keywords: *copyright, the Internet, copyright protection principles, global character, digital space, license, piracy, intellectual property*

Since the copyright in its basic provisions was formed long before the creation of the Internet, difficulties arise in the legalization of a number of actions aimed at the implementation of copyright: reproduction, exchange, publication of works, copying and pasting of text, images and others, etc. The legislation of most countries requires the permission of the author to carry out these actions. There is a need to strike a balance between the reality of online communication and copyright law.

The solution is the development of a legal system of free, public, standardized licenses supported by modern technologies by the non-profit organization Creative Commons (CC). In 2002, the non-profit organization Creative Commons released a free public license package was the first to allow authors and copyright holders (individuals and legal entities) to distribute their works more freely, under the terms defined by them, and content consumers (also individuals and legal entities) to use these works in a simpler way. The innovation of CC licenses was that they added data to automatically process copyright information. Buda itself made it easier for non-law-educated citizens to use the work and understand the terms and conditions of the license.

CC licenses are based on copyright rules, but at the same time allow the author to independently define the conditions under which his work can be used by unlimited people, thus striking a balance between copyright and the benefits brought by modern technologies. The logical sequence of CC licenses allows citizens and organizations to grant different amounts of rights to third parties to use copyright and related rights objects. CC licenses are also intended to allow authors to publish, popularize, and reach a wide audience of their works created on a non-commercial basis [1].

Creative Commons licenses consist of a combination of four terms:

1. Attribution: This condition means that anyone can take your work, but they must give credit. If you look at some of the articles, you will see that under the images we sometimes refer to the author. Most of these images are released under a Creative Commons Attribution license.

2. No Drivative Works. This condition means that other people can only use your work in the form in which you published it. For example, they can't take your photo, change the colors, and then republish it. They also cannot use your work in a larger project.

3. Non-Commercial: this condition means that the work can only be used for non-commercial purposes. There is a gray area regarding what is considered non-commercial, but things like printing your photo on a T-shirt and selling it are not allowed.

4. Share-Alike: this condition means that anyone can take your work and do whatever they want with it, but any derivative works must be released under the same license. For example, you cannot use your photo in a larger project that will then be copyrighted.

With that in mind, there are several different licenses that are made up of combinations of these terms. There are seven types of Creative Commons licenses that you can find on the Internet. Each of them has a code that summarizes the terms of the license:

1. Public Domain (CC0): means that the work is freely distributed and anyone can do whatever they want with it. He does not need to ask permission from the original creator, he can use the product for commercial purposes and can create derivative works.

2. Attribution (CC BY): the CC BY license requires the original copyright owner to be credited as the author, but the work is otherwise available to anyone who uses it. Anyone can use it for commercial purposes or modify it.

3. Attribution and Share-Alike (CC BY-SA): the CC BY-SA license requires that the original copyright owner be credited as the author and that any derivative works are also released under the CC BY-SA license, but anyone can modify or use the work for commercial purposes.

4. Attribution and Non-Commercial (CC BY-NC): the CC BY-NC license requires that the original copyright owner be credited as the author and that the work be used for non-commercial purposes only. The work can be changed as you like.

5. Attribution and No Derivatives (CC BY-ND): the CC BY-ND license requires that the original copyright owner be credited as the author and that the work has not been modified. It allows you to use the product for commercial purposes if it is used completely, without modification.

6. Attribution, Non-Commercial и Share-Alike (CC BY-NC-SA): the CC BY-NC-SA license requires that the original copyright owner be credited as the author and that the work not be used for commercial purposes. Although it is subject to change, any derivative works must also be released under CC BY-NC-SA

7. Attribution, Non-Commercial и No Derivatives (CC BY-NC-ND): The CC BY-NC-ND license requires that the original copyright owner be credited so that the work is not used commercially or modified. If the work is used, it must be used as is. The license is particularly appropriate for books and other products where significant revenue is needed from derivative rights sales (for example, translation rights), in order to keep author charges low.

According to the US Constitution, copyright is not an independent human right and is considered in its application aspect. Article 1, Section 8 of the U.S. Constitution empowers Congress to make laws "to promote the advancement of science and the useful arts, by granting to authors and inventors the exclusive right to their writings and inventions for a fixed term." For courts interpreting the US Constitution, the term "science" was equivalent to the term "knowledge," and they considered copyright a necessary tool for creativity that did not interfere with freedom of expression. The provision that gave Congress the power to grant patents and protect copyrights was based on the idea that rewarding individual efforts with opportunities for private profit was the best way to put the talents of authors and inventors at the service of the common good.

In the United States, the main regulatory act regulating new relations in the field of copyright, which arose due to the development of the Internet and the entry into civil circulation of works in digital form, which do not require physical media, was the Federal Act of October 28, 1998 "On Copyright Law in the Digital Age". (The Digital Millennium Copyright Act (DMCA)). The US legislator is faced with such a problem that international treaties require equalization of legal protection levels for all works originating from countries participating in

international treaties. The United States Copyright Act of 1976 provides that works from other countries are protected in the United States only if certain conditions are met that entitle them to legal protection. A solution was found: Section 102(b) of the Digital Millennium Copyright Act WIPO amended the Copyright Act to extend its scope to subject matter protected under the provisions of copyright and related rights treaties. A significant expansion of the protection of foreign works is related to the requirements of restoring the protection of works that have not passed into the public domain in the countries of origin of these treaties. In the United States, the right to sue is subject to prior registration of copyrighted objects, but the WIPO treaties contain an express prohibition against making the protection of a recognized right conditional on its registration. Added to eliminate this requirement for all foreign works pursuant to Section 411(a) of the Copyright Act.

A feature of American copyright law on the Internet is that the court may reduce the amount of damages recovered or in cases of accidental infringement, that is, when the infringer is honest about the nature of his actions and has no reason to believe that his actions constitute infringement, having the authority to refuse to restore. However, knowingly abusing the law for commercial advantage or personal enrichment is a crime. US law lacks clear legal criteria and standards for determining the acceptable scope of exceptions and exceptions to copyright in any given case. Case law and general principles of fair use serve as a guide to its organization in the direction of least harm and loss to the right holder. [2]

The French Intellectual Property Code defines the reproduction of information as an essential part of the processes in the global Internet. This definition sounds like this: “Reproduction consists in the material fixation of creation by all means that allow it to be conveyed indirectly to a wide range of people”.

But it is necessary, first of all, to ask the question “and by means of what does this reproduction take place, in what way?” The French legislation is closely interested in the so-called “peer to peer” or “P2P” model. This term refers to a computer network based on the equality of participants. In such a network, there are no dedicated servers, and each node (peer) is both a client and a server. That is, each participant, which is called "peer", can both download data from the server and distribute it at the same time. Unlike the client-server architecture, such an organization allows the network to remain operational with any number and any combination of available nodes. Network members are peers.

The Law of August 1, 2006 (DADVSI), in Russian the name is translated as "Law on Copyright and Related Rights in the Information Society" included this model in its regulation. The purpose of this bill is to reform French copyright law, mainly to implement the European Copyright Directive (EUCD) in 2001.6

In November 2007, Nicolas Sarkozy ordered leading French ISPs and representatives of the music and film industry to sign an agreement under which network piracy in France would be sanctioned by disconnecting from the Internet. As the first and second sanctions, the user caught downloading illegal content will receive a warning from the provider, as the third one, he will be disconnected from the Network for a month. With further violations, the term of his excommunication from the Internet will increase. But until this agreement has the force of law, it must overcome parliamentary hearings.

In France, the majority of users are connected to the Net either via a leased line or ADSL, so it is technically easy to implement such blocking. Considering that all the main providers of the country - France Télécom, Iliad, Neuf Cegetel, Numéricâble and Télécom Italia - have signed the agreement, the “pirate” will not be saved by changing the service provider either.

By agreement between providers and copyright holders for licensed content, providers will send information about the volume and direction of traffic to a “special public organization”, which, based on its analysis, will issue recommendations to providers about blocking suspicious users. In this simple mechanism, the left parties of the French parliament see an attack on the

privacy of citizens. With such control, it may be tempting to constantly monitor Internet users, even if their actions do not appear to violate the law. Among ordinary citizens, this agreement caused a resonance; some argue that these measures are really effective, while others consider it inappropriate that those citizens who can barely make ends meet simply cannot spend 15-20 euros on the purchase of licensed discs.

Currently, the French Republic has a Code of Intellectual Property, which also regulates public legal relations in the field of copyright, adopted in 1992. It consists of books in which the subject of copyright is defined, the rights of authors are established, the main ways of using works are determined. [3]. In addition, international agreements to which France is a party (in particular, the Berne Convention for the Protection of Literary and Artistic Works12) play an important role in regulating copyright relations. The European Union Directives also contain provisions on public relations arising from creative works, such as the provision on the harmonization of the term of protection of copyright and related rights.

According to existing national laws and draft laws, international practice provides for gradual (three-warning rule) and/or alternative ways of bringing online pirates to justice: limiting access to certain Internet resources, reducing connection speed and/or completely refusing to provide Internet services (Ireland, South Korea); high fine (US); criminal liability up to imprisonment (France). In addition, there are systems in place to prevent the downloading of pirated music files from the Internet to mobile phones (Japan); The principle of authorization for publication of works is applied taking into account the existing translation of the original into the national language (Chinese); Records user data, including routing, for three years [4].

The legal framework governing the provision of online services in the EU is scattered across numerous laws on e-commerce, the provision of communications services, the processing of personal data, media activity, copyright and related rights issues, and many other areas. The European Commission believes that the use of copyright and related rights on the Internet is subject to serious criticism, mainly due to the failure to meet the demand for legal content at a reasonable price for the consumer. The European legislator is moving away from the notion that the situation can only be rectified by a system of tougher bans and prosecution of an ever-wider class of people, including internet service providers. Artificially blocking the exchange of information between individuals will lead to devastating consequences. Offering a variety of legal content online at an attractive price is seen as a cost-effective response to the piracy of copyrighted works.

In the information sphere, there is no single market in Europe. For example, to create a music store that offers online music, it is necessary to negotiate with all societies for the collective management of rights in the EU. In order to protect the trust of rights holders and users and facilitate licensing, the nature of collective rights management should be more transparent and in line with technological progress. In the context of digitization of content, service providers will soon no longer need intermediaries between authors and consumers. Large companies that produce electronic devices are trying not only to produce smartphones and other gadgets, but also to encourage users to buy new services. Services that allow you to download an unlimited amount of music during the subscription period and save it when you refuse to renew the subscription are quite common. A producer can technically replace collective management societies by issuing a commercial license for the use of music in Europe.

Piracy, not the services provided by legitimate collective management societies, hinders the development of a single digital music market. All measures that hinder the development of the single digital market are, as a rule, justified by considerations of combating piracy. No mechanism for licensing the various services available today can compete with the existence of a readily available consumer market for unlicensed music. The threat of a market for unlicensed work (including in other fields) hinders digitization. The European directive on collective rights management includes anti-piracy measures as well as a strong and effective rights management

system. This includes proposals to introduce competition between collective management societies, which have been put forward in order to reduce costs. The European Directive on the collective management of rights aims to create a (legal) framework for the management of rights in an environment where there are no borders between countries. Competition legislation alone cannot provide constructive solutions. A broader legal approach is needed to regulate the management of rights on a collective basis. The policy of states to fight against violations and crimes in the field of intellectual property rights on the Internet should be aimed primarily at creating an economically attractive alternative to illegal actions. And only after reducing the level of these violations, we can talk about repressive measures if many users prefer not to get into trouble with the law by paying relatively little money. [5]

Provisions allowing exceptions for commercialization of objects and services are important in copyright law. The digital dissemination of cultural and scientific material removes the limitations of the material world, allowing more people to be interested in and, most importantly, to have real access to it. The Internet enables the development of cultural exchange between representatives of different sections of society, and in the long run helps these sections to better understand each other's ideas and thoughts. At a time when the whole world is seriously talking about equality and the need to soften physical borders, the Internet can be considered the first step towards globalization. The Internet promotes pluralism, provides access to more sources of ideas and information, and becomes a means of self-expression for everyone who would otherwise be denied such an opportunity. Not only professional communicators, but everyone gets technical opportunities to reach a wide audience. Obviously, it is not possible to make everything free for everyone. It is necessary to pay for the work of the author, the work of the publisher, and the work of the people involved in the creation of the work. It would be strange to condemn the desire of many countries to legislate to protect this justice.

Finally, it should be noted that the development of computer technologies and the opening of the virtual space have led to the gradual integration of civil law relations into the digital space. However, in the early days, there were no copyright protection mechanisms and liability for those rights violations on the Internet. For this reason, the issue of amending the legislation of countries regarding the need to create copyright protection mechanisms on the Internet has come up. There is a need for broader legal regulation of copyright on the Internet. When reviewing the experiences of foreign countries in the field of copyright protection on the Internet, it seems necessary to create a unified legal framework.

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Date of receipt of the article in the Editorial Office
(08.02.2021)

RIGHT TO ENVIRONMENTAL INFORMATION: LEGAL BASIS FOR ENSURING

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Abstract

In the article, the issues related to the legal framework for ensuring the right to information on the environment was extensively analyzed based on the existing diversity of opinions in the legal literature, including international and domestic legal norms. In the end, it was concluded that summing up the above-mentioned, we can note with confidence that one of the important factors in ensuring environmental safety is the availability of information about the environment. An important role is also played by public participation in the decision-making process regarding cases specified in the annex to the Aarhus Convention. The improvement of existing mechanisms for informing and public participation in resolving environmental problems should be considered as the primary informational challenges of our time.

Keywords: *environmental safety, environmental information, ecology, environmental expertise, environmental education.*

As you know, the fundamental rights and freedoms of citizens are an integral part of a modern democratic state. Among them, a special place is occupied by the right of citizens to information about the environment, since it is the possibility of citizens' access to environmentally significant information that determines the level of development of democratic institutions of the state, the degree of trust in relations between citizens and state structures. Public awareness raises the level of legal consciousness of people, promotes a deeper understanding of environmental problems and direct participation in their solution [1]. It should be agreed that an important problem is the low level of ignorance of citizens about where they need to apply in order to obtain environmental information. Here educational work should play its role. Ecological education should constantly accompany a person, influence the formation of an ecological worldview, instill in him a sense of responsibility for the state of nature, as well as to realize the need for personal participation in environmental activities. One of the aspects that also negatively affect the state of the environment is the low awareness of the population about the current regulatory framework in the environmental sphere and about projects that affect the state of the environment. This factor is reflected in the active participation of the public in ongoing environmental projects. Here it would be appropriate to note the development of the concept of ecological civilization, which was formed in the 90s of the last century at the National Academy of Sciences of Azerbaijan. It was in Azerbaijan that for the first time the concept of ecological civilization appeared in the textbooks of general education schools. And in 2013, within the framework of the Baku International Humanitarian Forum, on the initiative of L.Aliyeva, a round table was held on the topic "Sustainable development and ecological civilization". As academician A. Alizade noted, sustainable development, the issue of human potential development, the transition to ecological civilization should be in the field of view not only of those involved in planning and managing development, but also for specialists of all spheres [2, p.5]. Ecological civilization consists of preventing negative and anthropogenic impacts on the environment and its main components (air, earth, water, flora, fauna, etc.)), correct and purposeful use of natural resources, their conservation and transfer to future generations [3, p.6].

The first international agreement guaranteeing the public right to access environmental information was the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (entered into force on 30 October 2001). On October 8, 2009, the Protocol on Pollutant Release and Transfer Registers to this Convention entered into force. The Protocol provides for the provision of comprehensive infor-

mation on emissions and geographical coverage of substances potentially hazardous to the public environment. In accordance with the objectives of the Convention, each Party shall guarantee human rights such as the right to access to information, the right to public participation in decision-making and the right to access to justice in environmental matters. The Protocol will make it possible to identify the largest sources of environmental pollution, including pollution associated with greenhouse gas emissions. The annual reports of the States Parties to the Protocol on Emissions into the Environment and the Transfer of Pollutants will be made available to the public.

As you know, the fundamental rights and freedoms of citizens are an integral part of a modern democratic statehood. Among them, a special place is occupied by the right of citizens to environmental information, since it is the citizens' possibility to access to environmentally significant information what determines the level of development of democratic institutions of the state, the degree of trust in relations between citizens and government agencies. Public awareness raises the level of legal consciousness of people, promotes a deeper understanding of environmental problems and direct participation in their solution [4]. One of the problems that do not allow to fully realizing the right to receive environmental information is the lack of awareness of citizens about where to apply and submit their requests (requests) for the provision of environmental information. To solve this problem, an important attention should be given to education. Environmental education should accompany a person throughout his/her life, form an ecological worldview, instill a sense of responsibility for the state of nature, help to realize the need for personal participation in environmental activities. One of the aspects that negatively affect the state of the environment is that the population is not informed and does not know about the laws in force, and even more so about projects that affect the state of the environment to some extent.

In accordance with the objective of the Convention, in order to promote the protection of the right of every person of present and future generations to live in an environment conducive to his health and well-being, each Party shall guarantee the rights to access to information, to public participation in decision-making and to access to justice in matters concerning the environment. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility of the provisions governing the implementation of the information, public participation and access to justice provisions of this Convention, as well as appropriate measures to ensure their application, in order to create and maintain a clear, an open and coherent framework for the implementation of the provisions of this Convention.

The constitutional basis for the implementation of the provisions of the analyzed Convention in the Republic of Azerbaijan is Article 39 of the Constitution, according to which everyone has the right to live in a healthy environment [5]. In accordance with Part 2 of this Article, everyone is guaranteed the right to collect reliable information about the state of the environment and the right to compensation for damage to health and property as a result of an environmental offense. As one may notice, we are talking about collecting reliable information, since information, even if complete and reliable, but provided out of time, cannot be of interest from the point of view of protecting the right to a favorable environment. The main domestic act that secures the right to receive information about the environment is the Law of the Republic of Azerbaijan "On obtaining information about the environment" dated March 12, 2002. Article 1.0.1 of this Law defines environmental information as information about the state of land, water, subsoil, atmosphere and living organisms; changes that occur and may occur in the components of the environment as a result of activities that have or may have an impact on the environment, people's lives; on the assessment of these changes, measures and costs associated with the protection and rational use of the environment [6]. This definition generally reflects the content of "environmental information" disclosed in Article 2 of the Convention. Thus, this definition does not cover information about the state of health and safety of people, living conditions of people, the state of cultural objects and buildings and structures to the extent that they are affected or

may be affected by the state of environmental elements or, through these elements, factors activity or measure.

An important condition in the Convention is the procedure for providing information. Thus, in accordance with paragraph 2 of Article 4 of the Convention, environmental information is provided as soon as possible, but no later than one month after the submission of the request, unless the volume and complexity of the relevant information justify an extension of this period to two months after the submission of the request. The applicant shall be informed of any extension of this period and of the reasons justifying such a decision. According to Article 8.1 of the Law, an appeal or request related to obtaining information about the environment must be submitted in writing, drawn up accurately and clearly, and reflect complete information about the requester. At the same time, it is not necessary to indicate the legal or other interests of the applicant in obtaining information. An appeal or request related to obtaining information about the environment is registered, considered, they receive a response in the manner prescribed by law. In this case, the Law does not specifically define the term for responding to an appeal and refers to the provisions of another law - the Law of the Republic of Azerbaijan "On the procedure for considering citizens' appeals" dated June 10, 1997. According to Article 10 of this Law, the appeal must be considered within a month, with the exception of cases provided for by law, and the appeal that does not require additional study and verification, no later than 15 days, unless otherwise provided by law. In cases where it is necessary to conduct a special check, require additional materials or take other measures to consider the appeal, the head or deputy head of the relevant body, institution, organization, enterprise, in exceptional cases, may extend the period for considering the appeal by no more than one month. This should be reported to the applying citizen, and when the state authority takes control of the consideration of the appeal, to the state authority.

Although it should be noted that the Law "On obtaining information about the environment" determines the deadlines for responses to appeals (requests) in case of refusal. Thus, in accordance with article 9.2, when the application or request is refused, a reply with the reasons is sent to the addressee no later than within 10 days. In the event that the information covered by the appeal or request loses its meaning when it is not provided in time, the answer will be sent without delay and if this is not possible - within 24 hours. In other cases, the response to the appeal and request for receiving information about the environment is sent no later than one month, if the information is complex, - within two months (with a preliminary response to the requester).

It is important to note that Article 4 of the Convention also establishes an exhaustive list of grounds for refusing to provide environmental information [7].

The Convention contains sufficient provisions providing for the conditions for public participation in decision-making on specific types of activities. Each Party shall apply the provisions of Article 6 of the Convention in relation to decisions on the appropriateness of permitting proposed activities, which are listed in the Annex to the Convention.

Thus, the only conditions for public participation in accordance with Azerbaijani legislation are the exercise of public control in the field of environmental protection by public associations and the right of citizens to put forward proposals for public environmental expertise (Articles 6 and 7 of the Law on Environmental Protection). It is important to note that the conclusion of the public environmental review is informational and advisory in nature. The Law focuses on state environmental expertise. In general, environmental expertise determines the possible impact of economic activity on the environment and its consequences in order to prevent or predict them in order to determine to what extent they comply with established environmental standards and requirements.

Article 9, which provides for access to justice, occupies a special place in the Convention. Thus, each Party shall ensure, within the framework of its national law, that any person who

believes that his/her request for access to information has not been considered is wrongfully denied, whether in part or in full, inadequately approach that does not comply with the provisions of this article, had access to the procedure for reviewing the decision taken in court or in another independent and impartial body established in accordance with the law. Where such a judicial review is provided for, a Party shall ensure that such person also has access to a statutory fast and timely-justified judicial process, at no or minimal fee, for reconsideration by a public authority or review by an independent and impartial body other than a court.

The law of the Republic of Azerbaijan "On obtaining information about the environment" provides for the possibility of applying to the court in case of refusal to grant permission to use open information about the environment and information about it, the receipt of which is restricted, as well as unreasonable classification of open information as information, the receipt of which introduces restriction, evasion or refusal to provide information, an incomplete or inaccurate answer. Persons who received an inaccurate answer or an answer with an unjustified refusal related to the environment have the right to demand compensation for the material and moral damage caused to them. Disputes about the unreasonable attribution of information about the environment to the type of information, the receipt of which is restricted, as well as claims for compensation for damage caused as a result of an unreasonable refusal to provide this information to the applicant or violation of his other rights, are and should objectively considered at the national courts.

In a number of special environmental legislation, an important place is occupied by the Law of the Republic of Azerbaijan "On Environmental Protection" dated June 8, 1999, according to which citizens are assigned the right to receive accurate information about the existence of an environment favorable for the life and health of each citizen, its condition and measures for improving her condition. The same right is granted to public associations (Article 7 of the Law). It would be appropriate to note that this law narrows the circle of persons who have the right to receive information about the environment, while the law "On obtaining information about the environment" speaks in general about persons. In accordance with Article 64 of this Law, information in the field of environmental protection includes the state of the environment, financing of measures regarding its pollution, improvement and protection, the state, restoration and use of natural resources, environmental impact, environmental quality regulation, environmental requirements for business and other activities.

In addition, according to Article 50 (part 1) of the Constitution of the Republic of Azerbaijan, everyone has the right to freely seek, receive, transmit, produce and disseminate information in any legal way. This provision of the constitution was enshrined in the Law of the Republic of Azerbaijan "On Freedom of Information" dated June 19, 1998. For the purposes of this Law, information means information, regardless of the form of their presentation, about events, processes occurring in nature, society and the state, as well as about facts and persons.

Along with the above domestic acts, the submission of a request for information and consideration of this request are regulated by the Law of the Republic of Azerbaijan "On the receipt of information" dated September 30, 2005. The purpose of this Law is to determine the legal basis for ensuring the right, enshrined in Article 50 of the Constitution of the Republic of Azerbaijan, to free and unhindered access to information on equal terms for all based on the principles of an open society and a democratic rule of law, as well as creating conditions for citizens to control the performance of public functions. According to Article 29 of the Law, in order to more easily and more quickly ensure the interests of society, reduce the large number of information requests, the information holder must disclose information about the state of the environment, damage to the environment and dangerous environmental impacts. In addition, information holders cannot read information about the state of ecology, health care, demography, education, culture, economy; including transport and agriculture, as well as crime provided for official use (Article 37).

The publicity of information about the environment is also confirmed by Article 7 of the Law of the Republic of Azerbaijan "On State Secrets" dated September 7, 2004, which contains a list of information that is not subject to classification as state secrets and classification. Such information, in particular, also includes information on the state of the environment.

Important provisions on the right of citizens to access information are enshrined in the Law "On Information, Informatization and Protection of Information", adopted on April 3, 1998.

The above analysis provides reason to assert that the provisions of national acts generally comply with the provisions of the Aarhus Convention, and the problems of conflict, as enshrined in laws (Article 13 of the Law "On Obtaining Information on the Environment", Article 82 of the Law "On Environmental Protection" etc.) will be decided in favor of the latter. It should be noted that in the post-Soviet space only in the Republic of Azerbaijan the constitutional provision on the right of access to information about the environment has been enshrined in a special law.

It should be noted that in the post-Soviet space, only in the Republic of Azerbaijan, the constitutional provision on the right to access information about the environment was enshrined in a special law. In other states, this issue is regulated in various regulatory legal acts. Thus, in the Russian Federation, the possibility of obtaining information about the natural environment is based on Article 42 of the Constitution and special environmental legislation. Thus, the right to demand the provision of timely, reliable and complete information on environmental pollution and measures for its protection for citizens and public organizations is provided for by Article 11 of the Law of the Russian Federation "On Environmental Protection". In Ukraine, these are Article 50 of the Constitution and the Law "On Information" of October 2, 1992. In the Republic of Belarus, Article 34 of the Constitution guarantees citizens the right to receive, store and disseminate complete, reliable and timely information about the activities of state bodies, public associations, political, economic, cultural and international life, the state of the environment.

Within the framework of the CIS, on April 17, 2004, the Model Law was adopted "On the right to access to information", which includes environmental information in the list of information received.

The problem of ensuring the realization by citizens of their right to receive information about the state of the environment is also widely discussed in European countries, where there is a tendency towards greater transparency in relations between the state and society. Thus, on June 7, 1990, the Council of the European Community adopted the Directive "On freedom of access to information about the environment" (90/313 / EEC), according to which information about the environment or otherwise - environmental information - is defined as any information available in written, visual, acoustic or fact-recording form about the state of water, air, soil, fauna, flora, land and natural resources, as well as about activities (including activities that cause such an unpleasant phenomenon as noise) or activities that have an adverse impact on the environment (or capable of influencing it in this way), or on activities and measures aimed at protecting the environment, including administrative measures and environmental programs. This definition does not include information about climate change and human conditions as a result of environmental disasters. In accordance with Article 3 of the Directive, Member States must ensure that the authorities are obliged to provide information on the environment to natural and legal persons upon their request without ascertaining the reasons for their interest. Member States should also define a system of practical measures to ensure access to such information. The Directive establishes a list of grounds (part 2, article 3) that states can establish in their legislation, according to which information may be refused.

The provisions of the directive were reflected in the domestic acts of the EU Member States (for example, the German Law on Environmental Information of July 8, 1994; the Norwegian Law of May 9, 2003 No. 31 "On the right to receive environmental information and public participation in decision-making processes relating to the environment environment"). Although it should be noted that in a number of European countries there is no constitutional fixing

of the right to receive information. The right to a favorable environment is mainly confirmed (for example, article 55 of the Bulgarian Constitution, article 45 of the Spanish Constitution).

Summing up the above-mentioned, we can note with confidence that one of the important factors in ensuring environmental safety is the availability of information about the environment. An important role is also played by public participation in the decision-making process regarding cases specified in the annex to the Aarhus Convention. The improvement of existing mechanisms for informing and public participation in resolving environmental problems should be considered as the primary informational challenges of our time.

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Date of receipt of the article in the Editorial Office
(19.01.2021)

LEGAL REGULATION OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN UKRAINE IN THE 21ST CENTURY

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Abstract
The article examines the peculiarities of the legal, in particular, the legislative regulation of the right to freedom of peaceful assembly in Ukraine during the period of December 2013. - February 2014. Historical and legal analysis of the conditions that became the driving factors for the adoption of relevant legislative norms showed an unusually high activity of civil society in determining the national interests of domestic and foreign policy development in Ukraine. At the same time, the features of implementation of the right to freedom of peaceful assembly, in particular, the possibility of applying legal responsibility measures to the subjects of the exercise of the right to freedom of peaceful assembly were carefully studied. Such legislative practice more actively encourages the legislator to qualitatively regulate the powers of public authorities in the direction of approval, ensuring the exercise of the right to freedom of peaceful assembly through the adoption of legislative acts, the norms of which would have not retrospective but progressive prospective nature of determining the content of public relations on the exercise of the right to freedom of peaceful assembly, aimed at limiting the powers of executive authorities, local authorities, law enforcement.

Keywords: *peaceful assembly, right to freedom of peaceful assembly, implementation, amnesty, revolution of dignity.*

The legal reality is characterized by extraordinary dynamism. There are many reasons for this and key ones among them are those that originate precisely in the political leadership, the desire to realize their own interests of political elites who are in power or have acquired it and are trying to legitimize their political slogans, which ensured the acquisition of political power in the country.

Ukraine passes not only the formal declaration and normative enshrining of the list of human and civil rights and freedoms, but also the creation of conditions for the freedom to exercise them, ensuring the exercise of rights and freedoms by state administration bodies, among which the right to freedom of peaceful assembly occupies a prominent place. The realization of opportunities to use and exercise the right to freedom of peaceful assembly, as well as the means of guaranteeing the exercise of this right, is impossible without a combination of legal and political means. Today, the conditions of social existence are such that the significant sphere is the political component, which is present both in the legal, social, economic life of society and the individual. This state of affairs affects the legal regulation of public relations and has a corresponding impact on the formation of understanding of legal concepts and categories, bringing political connotations into them, which negatively affects not only the theoretical perception, but also the formation of the content of public relations and qualitative legal norms of their regulation. In recent years the political component is increasingly spreading, evidence of this process is the increase in the number of political talk shows on TV and their popularity among the population of the country.

Unfortunately, in the historical, legal and theoretical national sciences, the issues of peculiarities of implementation of the right to freedom of peaceful assembly, its legislative regulation in the early 21st century, in particular in the context of the Revolutions of Dignity, as a historical period that almost directly depended on the understanding, implementation and realization of the right to freedom of peaceful assembly did not find proper historical and legal study, although the right to freedom of peaceful assembly (the right to assemble peacefully) has been a direct subject of dissertation research, e.g. S.Onischenko, M.Sereda, as well as research within scholarly articles. Separate issues of the right to freedom of peaceful assembly were studied by V.Lytvyn,

V.Nesterovych, A.Kolodiy, however the last didn't receive comprehensive coverage, which led to gaps in legal understanding.

On this basis, the purpose of the study is to analyze the legislative acts adopted in 2014 in the context of the increasing activity of Ukrainians in the choice of the vector of state development in the direction of reunification with the European legal family and its democratic values, directly related to the regulation of the exercise of the right to freedom of peaceful assembly in Ukraine.

Ukraine of the twenty-first century is a completely different country compared to the one whose independence arose on the ruins of the Soviet Union, with a communist, Soviet ideology with the same name. The second decade of the twenty-first century for Ukraine was also marked by the fact that the country has become an adult generation, which was born and raised in an independent state, which is not burdened by any traces and horrors of a totalitarian country. A generation of Ukrainians who aspire to live and build their own statehood, introducing and implementing modern achievements of Western European and civilizational tradition of building the rule of law on the ideals of the rule of law, respect for human rights and freedoms, and the development of civil society.

Under such conditions, the acquisition and assertion of political and state power by an individual or political elites, without the support of civil society, is simply impossible. At the same time, the mentioned subjects in power are trying in every possible way to keep it and turn it into the realization of their own interests, for the sake of which they are trying, using the peculiarities of the relevant historical period, to turn, or rather, to perfectly disguise private interests into national ones, which will allow them (elites) to get state power, or legitimize it, relying exactly on the ideas or ideals of society.

The mastery of political elites or their individual representatives depends directly on the extent to which the latter are able to successfully exploit both the relevant historical moment and the psychological moods and aspirations of society in their own interests. Elites must be able to maneuver perfectly within a given society to be able to set sails in time for the transitory mood of public interest instead.

Obviously, the events of 2013-2014 were exactly the historical time that allowed the history of the development of Ukrainian statehood to be turned upside down. This is what the political elites in power at the time were thinking or dreaming about. At the same time, the latter did not realize that there could be quite powerful elites in the country, seeking to gain political and state power, using the relevant public interests in their own interests, thereby legitimizing their way to power through civil society.

It was from such a spark, which could permanently change the vectors of development of the state-legal and civil structure of Ukraine, the flame of the Revolution of Dignity arose, which simultaneously became one of the most tragic episodes of modern Ukrainian history, and one of the defining events that changed the thinking, stereotypes, consciousness and the visible circle of Ukrainians.

The wave of rallies, rallies that were later directed to a single nationwide rally and rally, which, without exaggeration, was attended by the vast majority of the population of Ukraine, spreading from Kiev to all localities, allows us to conclude about the general social sentiments that existed among Ukrainians, but for one reason or another were inactive, while the events of November 2013 excited the latter to an active social and political life. As a result of a number of decisions made by the subjects of power, in particular the political and state leaders of Ukraine at that time, certain social contradictions aggravated, the results of which today require scientific and legal understanding.

At such stages of history, it seems that the spirit of law and its perception by all subjects of public relations are really manifested, and the extent to which the legal consciousness of these subjects is distinguished by the unity of categories and concepts, the uniqueness of their under-

standing, directly depends on the extent to which the state apparatus and civil society are able to overcome these problems. As a result, in such a context, it is important to comply with legal procedure, implementation and use of legal norms, which guarantees the legitimization of relevant decisions, the legality of the actions of the participants of events, as well as will allow an objective analysis of the content of social relations and date their objective historical assessment with time.

The constitution has a decisive influence on public law because of its worthy legitimization and the process of exercising public power. The subject of constitutional regulation can be represented as a kind of constitutional pentagram: 1) guarantees of human rights and fundamental freedoms; 2) models of legitimization of power and its limitation of human rights; 3) models of national sovereignty and control of the people over power; 4) power relations and ensuring the balance of power; 5) the relation of constitutional and international law, constitutional and supranational law. This pentagram reflects the classical view of constitutional law as a vertical relationship between the individual and the state. From this construction the formula of the vertical structure of human rights as a legitimate demand of an individual to the state to protect the violated right by third parties or to ensure equal access to material or spiritual benefits is derived [5, p. 59].

Normative formulations of the right to freedom of peaceful assembly in the constitutional norm have not only a formal legal load, but also an expanded legal understanding of this right in the natural law doctrine of law, which reflects the unity of the normative material.

At first, it should be noted that representatives of the state authorities at the end of 2013 used the constitutional provisions quite freely in their private interests. In particular, the provisions revealing the essence and content of the right to freedom of peaceful assembly and its implementation in the state regardless of the goals pursued by its bearers: economic, social, political, etc. Representatives of the authorities have deviated from the generally accepted and constitutionally formulated provisions on the freedom to exercise the right to peaceful assembly, on the notifying nature of the exercise of this right, on making the prerogative of permissive nature, when it is not enough to inform about the intentions to exercise the right to freedom of peaceful assembly, but it is necessary to obtain the consent of representatives of bodies, primarily of the executive branch, and, as practice has shown, to convince representatives of judicial. In our opinion, this state of affairs resulted from the fact that the state-political elites and their representatives did not seek, but seem to have the impression that they did not know and did not want to understand those fundamental legal concepts, the specifics of their content, among which, in our opinion, the right to freedom of peaceful assembly was key, but sought to shape them in this way, to satisfy their own interests, justify and legitimize the relevant decisions, which, obviously, did not correspond to the democratic ones.

Obviously, such mobilization constitutionalism in the conditions that took place in Ukraine in late 2013, the use of legal practices that would resemble methods of domination of the principles of political and economic expediency in solving socio-economic problems [7, p. 10], led to the search for forms of pressure on society primarily through restrictions and prohibitions of the right to freedom of peaceful assembly, in particular the citizens in the center of the Ukrainian capital - Kiev, the justification of this position, including the need to establish a Christmas tree, both by administrative methods and by using the capabilities of the judicial branch of government.

The February events in Ukrainian politics, in particular the escape of President V. Yanukovych and the majority of the authorities abroad, the desire of political elites in such "favorable" conditions to win and hold political power in the country, forced the latter to reconsider the existing legal positions of their predecessors and to take measures, above all, to satisfy the masses, on the crest of which politicians managed to win power in the state, please the Ukrainian people as the only source and bearer of power in Ukraine, legitimize the power they acquired.

The constitutional and legal reality that emerged at the end of 2013 in early 2014 led to the need for state authorities to respond to the need to regulate social relations at their democratic pole of statehood and society development by adopting appropriate legislative and other normative acts that would concretize the constitutional ideals of guaranteeing the right to freedom of peaceful assembly in Ukraine. Since the overwhelming majority of events that took place at that time directly related to the exercise of the right to freedom of peaceful assembly, including the fact that this right was exercised, in the opinion of state authorities (primarily the executive and judicial branches of power) contrary to the norms of existing legislation, the question of restoring justice, legality and equal right to freedom of peaceful assembly as well as a number of other human and civil rights that were derived from the right to freedom of peaceful assembly, or under such conditions, the institutions of a number of state bodies, including the highest ones, such as the President of Ukraine, the Cabinet of Ministers of Ukraine, have lost the trust of the Ukrainian people and the legitimacy granted to them, as a result of direct confrontation of the latter with the only source of power in Ukraine - the Ukrainian people. Under such conditions, the only legitimate body of state power that combined representative functions and managed to find a compromise was the Verkhovna Rada of Ukraine.

Signs of the Verkhovna Rada of Ukraine as a parliament are: it is a representative body of the people, has a legitimate nature, a national body and therefore extends its powers to the entire state, considers and decides issues of state and public life, which require regulation by laws, whose main function is the adoption of laws of Ukraine [8, p.5]. Legislative power in Ukraine, according to Y. Fritsky, is the main branch, or form, type of the unified state power, built on the principle of distribution of the only state power, which is exercised by the only legislative body in Ukraine - the Verkhovna Rada of Ukraine, on the basis of powers determined by the Constitution, with the help of organizational, legal and organizational forms of activity and appropriate methods of work, in order to adopt laws and other regulatory legal acts on issues of their own powers in the sectors of state building, social and cultural development, the state budget, the formation of foreign and domestic policy, the formation of state bodies defined by the constitution on the basis of cooperation and coordination with other branches of government using a system of checks and balances and parliamentary control [8, p.7]. Consequently, it was the Verkhovna Rada of Ukraine that remained capable of taking active steps and upholding democracy in Ukraine.

Acting in the interests of society and in the conditions of the new reality, the Verkhovna Rada of Ukraine, being in the same format and convocation, adopts a legislative act that is aimed at restoring its power and democratic principles of functioning and establishing the rule of law in the state, meeting requests for the restoration of justice, legality, human and civil rights and freedoms. Obviously, the legislative initiatives and decisions of the Verkhovna Rada of Ukraine on legislative regulation of the legal consequences of the subjects of the right to freedom of peaceful assembly were aimed at achieving the stated objectives.

The Law of Ukraine "On elimination of negative consequences and prevention of prosecution and punishment of persons regarding events that took place during peaceful assemblies" [1] contained 5 articles, which referred to the need to exempt from liability persons who participated in protests and mass events regarding their actions and decisions during the period from November 21, 2013 to the date of entry into force of this Law (Article 1 of this Law). Administrative offenses initiated in connection with the events specified in Article 1 on new criminal proceedings and proceedings on administrative offences may not be initiated in relation to the events specified in Article 1 of this Law (Article 1 of this Law). Persons who have been held criminally liable or liable for administrative offences in respect of the events referred to in article 1 of this Law shall be released from liability and shall be recognized as having no criminal record or liability for administrative offences. The course of events that took place in Ukraine in December 2013 - early 2014 showed that the norms of the mentioned Law were rather vague, and

some provisions of this Law, in particular in terms of closing of open proceedings on administrative offenses, must be quite unstable, if not without any legal basis, since the rules of the Code of Administrative Offences of Ukraine, do not contain norms that would regulate the opening of proceedings on cases of administrative rights. The provision that no new criminal or administrative offence proceedings may be commenced in respect of protests and mass events from November 21, 2013 to the date of entry into force of this Law is also incorrect, since there is enough information on opening of criminal proceedings. Circumstances, which may provide evidence of committing a criminal offence (Article 214 of the Code of Criminal Procedure of Ukraine), which cannot provide an exhaustive answer about the place, time, participants in such an event, and the like. The specified circumstances shall be established in the course of criminal proceedings and an appropriate legal decision shall be taken based on the results of the collected evidence.

In our opinion, the adoption of the Law of Ukraine "On eliminating negative consequences and preventing the prosecution and punishment of persons regarding events that took place during peaceful assemblies" pursued not so much the legal goals that would be accompanied by the relevant legal consequences, as the political goals - in particular, to ease the social and political tension that was in December 2013, to stop peaceful assemblies, and so Ukrainians gave up any intention of exercising their right to freedom of peaceful assembly.

Socio-political sentiments both among the Ukrainian people and among those political elites, who tried on the role of leaders of the whole people, could not agree with such legal norms, which, in our opinion, were a political declaration more than means of legal regulation of social relations on the application of legal (administrative, criminal) responsibility to subjects of the right to freedom of peaceful assembly or release of the latter from such legal responsibility. As a result, on January 16, 2014, almost a month after the adoption of the Law of Ukraine "On the elimination of negative consequences and prevention of prosecution and punishment of persons concerning the events that occurred during peaceful assemblies", the Verkhovna Rada of Ukraine, being aware of the state in which the Ukrainian civil society, as well as the statehood of Ukraine is, adopted the Law of Ukraine "On Amendments to the Law of Ukraine "On eliminating the negative consequences and preventing the prosecution and punishment of individuals for events that took place during peaceful assemblies" [3], stating the text of the Law of Ukraine "On the elimination of negative consequences and prevention of prosecution and punishment of persons concerning Lawmakers decided to exempt from criminal liability in the manner and under the conditions specified in this Law, persons who are suspects or accused (defendants) of committing in the period from November 21 to December 26, 2013, including the crimes under Article 109 (actions aimed at violent change or overthrow of the constitutional system or seizure of state power), 122 (intentional moderate bodily injury), 161 (violation of equality of citizens on the basis of their race, nationality, regional origin, religious beliefs, disability and other characteristics), 171 (obstruction of lawful professional activities of journalists), 185 (theft), 194 (intentional destruction or damage to property), 259 (deliberately untruthful reporting of a threat to the safety of citizens, destruction or damage to property), 279 (blocking of transport communications, as well as entrainment of a transport company), 289 (illegal possession of a vehicle), 293 (group disorderly conduct), 294 (mass riots), 295 (calls to commit acts that threaten public order), 296 (hooliganism), 341 (entrapment of state or public buildings or structures), 342 (resistance to a representative of authority, law enforcement officer, public performer, private performer, member of public formation from protection of public order and state border or military personnel, authorized person of the Deposit Guarantee Fund of individuals), 343 (interference in the activities of a law enforcement officer, forensic expert, employee of the state executive service, private performer), 345 (threat or violence against a law enforcement officer), 348 (attempt on the life of a law enforcement officer, member of a public formation from the protection of public order and state border or military personnel's), 349 (entrapment of a representative of

authority or law enforcement officer as a hostage), 365 (abuse of power or official authority by a law enforcement officer), 376 (interference with the judiciary), 382 (failure to comply with a court order), 386 (hindering the appearance of a witness, victim, expert, specialist, forcing them to refuse to testify or to give a conclusion) of the Criminal Code of Ukraine, provided that these crimes are related to the mass protests that began on November 21, 2013, and to close the relevant criminal proceedings. Such changes did not affect the effectiveness of regulation of social relations, especially in conditions when the judiciary and law enforcement agencies preferred not legislative norms (which also in terms of their legal certainty, both for understanding and on technical and legal issues), which did not comply with the current Ukrainian legislation, but the authoritarian imperative influence in the constructed hierarchical system of power in Ukraine.

Among the aforementioned we would like to highlight the specific features of the criminal offenses, for the commission of which the persons - subjects of the right to freedom of peaceful assembly were subject to exemption from legal liability. Of the 23 articles defined in the list of the Criminal Code of Ukraine, it is safe to say that only 14 were directly related to the subjects of the exercise of the right to freedom of peaceful assembly (109 (actions aimed at a violent change or overthrow of the constitutional order or at seize of state power), 279 (blocking of transport communications, as well as seizing of transport company), 293 (group violation of public order), 294 (mass riots), 295 (calls for actions threatening public order), 296 (hooliganism), 341 (hijacking of state or public buildings or structures), 342 (resistance to a representative of authority, law enforcement officer, public performer, private performer, member of public formation from protection of public order and state border or military personnel, authorized person of the Deposit Guarantee Fund of individuals), 343 (interference in the activities of a law enforcement officer, forensic expert, employee of the state executive service, private performer), 345 (threat or violence against a law enforcement officer), 348 (attempt on the life of a law enforcement officer, member of a public formation from the protection of public order and state border or military personnel's), 349 (entrapment of a representative of authority or law enforcement officer as a hostage), 382 (failure to comply with a court order), 386 (hindering the appearance of a witness, victim, expert, specialist, forcing them to refuse to testify or to give a conclusion), since it is possible to assume that such acts may have been committed entirely by the subjects of the exercise of the right to freedom of peaceful assembly while opposing the actions of the public administration, which attempted in every way to limit or prohibit the exercise of this law. The rest of the corpus delicti of criminal offences, such as 122 (intentional bodily harm), 161 (violation of equality of citizens on the basis of their race, national or regional identity, religious beliefs, disability and other grounds), 171 (obstructing the lawful professional activities of journalists), 365 (abuse of power or official authority by a law enforcement officer), 376 (interference in the activities of the judiciary), they were about the representatives of the subjects of public administration, to the sphere of interests of which belonged the establishment of restrictions or in general - prohibitions on the exercise of the right to freedom of peaceful assembly, as the right of people to resistance and revolt to usurpation of power, directs the latter in the direction of an anti-democratic regime. Thus, the authorities strived for parity: exempting from liability as subjects the exercise of the right to freedom of peaceful assembly, the right of which was illegally restricted or the implementation of which was prohibited, as well as avoiding liability to the representatives of power themselves not only from unreasonable and dishonest use of power granted by the people, but also from unlawful actions against the Ukrainian people - the source of all power in Ukraine.

As a result, the Law of Ukraine "On elimination of negative consequences and prevention of prosecution and punishment of persons concerning the events that took place during peaceful assemblies" in the new edition "lived" almost a month and expired under the Law No. 743-VII of 21.02.2014. Such rapidity of the legislative act, is not due to the phenomena of social reality, in particular ensuring the freedom to exercise the right to peaceful assembly, but rather the imper-

fection of the legislative process and the extreme promptness in making legislative decisions aimed at partial and temporary filling the gaps of legal and, above all, legislative regulation, implementation and exercise of the right to freedom of peaceful assembly.

On January 29, 2014 at the legislative level it was realized that the exemption from liability for the exercise of the right to freedom of peaceful assembly and participation in such actions has not pacified the Ukrainian people, because these norms have not found effective and rapid implementation of them in the legal and social reality, as such actions continued in Ukraine, the Verkhovna Rada of Ukraine adopted the Law "On elimination of negative consequences and prevention and punishment of persons in connection with events that took place during peaceful assemblies" [4], which was intended, guided by the principle of humanity, to exempt from prosecution and punishment persons in connection with mass protests, and in fact duplicated the Law of Ukraine "On eliminating the negative consequences and preventing the prosecution and punishment of individuals for events that took place during peaceful assemblies" as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the elimination of negative consequences and prevention of prosecution and punishment of persons on the events that occurred during peaceful assemblies". However, he also had his own "short stories", since in Art. 6 clearly provided for the subjects to whom it applied: regarding suspects, criminal cases in respect of which are carried out by the pre-trial investigation bodies, - by the court, within the territorial jurisdiction of which the pre-trial investigation is carried out, at the request of the suspect, his defense counsel, legal representative or prosecutor, who exercises procedural guidance relevant pre-trial investigations; relevant petitions are filed without conducting a pre-trial investigation in full; with respect to the accused (trial), whose criminal cases are carried out by the court and have not been considered by the entry into force of this Law, as well as with respect to the accused (trial), whose criminal cases have been considered, but the sentences have not gained legal force, - by the courts that carry out the relevant judicial implementation at the request of the accused (judicial), his defense counsel, legal representative or prosecutor, who maintains public prosecution; regarding convicts - by the courts that adopted the relevant verdicts, at the request of the convicted person, his defense counsel, legal representative or prosecutor who carried out the support of public prosecution; within the framework of criminal cases provided for in Article 3 of this Law - by the prosecutor, who exercises procedural management of the relevant pre-trial investigations, without conducting a pre-trial investigation in full; regarding persons to whom an administrative penalty in the form of administrative arrest is applied - by the courts that issued the relevant decisions, at the request of the person subjected to administrative arrest, his defense counsel or legal representative. In addition, the norms of this law established that such "amnesty" was not "automatic" as a result of the adoption of this law, and the court decides the application of the law in a court session (Article 7 of the Act). In this way, the Verkhovna Rada of Ukraine, by adopting a political and legal decision in the form of a corresponding legislative act, tried to remove itself from the social and legal processes associated with the establishment of the rule of law and humanism, leaving the solution to the courts, which are empowered to establish the truth in cases, making appropriate legal decisions that must justify the social and legal expectations of both individual citizens and Ukrainian society as a whole. Only on February 21, 2014, after more than one such peaceful participant was killed in the central part of Kiev, where protests were held, the subject of the state-guaranteed right to freedom of peaceful assembly, it became clear that the initiatives adopted by legislators to exempt the use of the guaranteed right to freedom of peaceful assembly are not effective, do not find the desired positive response not only among the Ukrainian people and possibly among the direct executors in the face of authorized state bodies and as a result, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On prevention of prosecution and punishment of persons regarding the events that took place during peaceful assemblies and the recognition of the invalidity of certain laws of Ukraine" [2]. The norms of this legislative act were to exempt from administrative responsibility persons who were participants

of the mass protest actions that began on November 21, 2013, for committing any administrative offenses in the period from November 21, 2013 to the date this law came into force, including any administrative violations, provided for by these personal data shall be destroyed in the manner prescribed by law.

According to the results of the study of the content of these legislative acts, we can confidently say that the adoption of the latter formed a certain legislative precedent of legal regulation of the right to freedom of peaceful assembly by eliminating a separate category of subjects exercising the right to freedom of peaceful assembly in Ukraine in a certain period of legal, in particular criminal liability. Thus, the legislative body of state power aimed at simultaneously eliminating all the negative factors, which in a fairly limited time were "worked out" by the executive authorities represented by the relevant state institutions authorized to conduct investigations and bring persons to administrative responsibility, first of all administrative and criminal, and sometimes all judicial, since a number of court decisions, in particular in cases of administrative offenses, have been brought to execution, in particular in cases where administrative penalties in the form of administrative detention for up to 15 days were imposed on persons.

The adoption of the above-mentioned regulatory legal acts did not mean that the social expectation of the subject of legislative power was filled, namely the effective regulation of social relations from the exercise of the right to freedom of peaceful assembly in Ukraine.

In our opinion, these legislative norms were not so much intended to regulate through legislation the freedom to exercise the right to peaceful assembly, but thereby demonstrated amnesty measures for participants of public actions: meetings, rallies, the so-called Auto-Maidan, etc. (including representatives of the authorities themselves, in particular the subjects of law enforcement) who as well "zealously" embodied the ideas of the ruling elite in the Ukrainian social environment of free people), rather than the legality of the implementation by these actors of their right to freedom of peaceful assembly. Undoubtedly, it cannot be noted that the amnesty took place in this way, since the amnesty is a full or partial release from serving the sentence of persons found guilty of committing a criminal offense, or criminal cases against whom the courts, but the sentences against these persons have not entered into legal force [9] , whereas, based on the content of the analyzed legislative acts, both those found guilty of committing the relevant offenses and those only accused were exempted from liability, or it was determined when it was necessary to stop the implementation of the facts related to the protests themselves.

Such scheme of legal regulation of the exercise of the right to freedom of peaceful assembly lays down a profound idea of neglecting the general principles of the legislative process of regulating human and civil rights and freedoms and its impact on social relations, as well as legally defined legal definitions and legal ideas and legal positions.

The Verkhovna Rada of Ukraine, possessing its own rich politicism, as it united politicians and political organizations and currents in some places with diametrically opposite visions of the course of social and political processes in the country, including those that took place in November 2013 - February 2014, ensured legalization of exemption from legal responsibility of persons whom the state apparatus represented by executive authorities, law enforcement bodies, with the involvement of the judicial branch of power tried to accuse, and in some places already brought to legal responsibility, in particular administrative, for violation of the order of participation in peaceful assemblies, as it is mentioned in all the mentioned legislative acts without exception, in particular in their titles, which should, according to all rules of legal technique, express the content of the rules that. At the same time, the legislature sought to preserve the legitimacy of the actions of the relevant subjects, individual officials who at the time of adoption of the legislative acts under study committed actions that under them had the will of the highest state officials, rather than the will of the only source of power in Ukraine - the Ukrainian people, as well as legislative norms. We are convinced that in this way the Verkhovna Rada of Ukraine ensured the liquidation of the aggravated conflict between the civil society, which was at the highest stage of

its activity, and the state apparatus. After all, by adopting a legislative act by which the Verkhovna Rada of Ukraine would have recognized the objectively illegal actions of government officials and noting the legality of the exercise by the people of Ukraine of their right to freedom of peaceful assembly, such legislative norms would have been a signal to bring the entire state apparatus, which at that time unfolded all its activities to suppress the interest of the Ukrainian people in unification with the European Community countries, to legal responsibility.

The adoption of these legislative norms, of course, was a necessity of the time, but this form of them became, in our opinion, only a device of the legislative power to the socio-political situation in the country. We assume that there should be these legislative acts, but they should have another name, more appropriate to their content and the idea, which pursued the interest of exemption from legal responsibility for contrived and falsified circumstances. In the case under study, the legislative norms did not exonerate the participants of peaceful assemblies, but only absolved them of responsibility, thus confirming the guilt of such people. Indeed, the order to destroy the personal data of the persons who were participants in the mass protests that began on November 21, 2013, which were obtained in connection with the participation of these persons in the protests, in the manner prescribed by law, is one of the external means of reassuring the public.

Legitimacy of law is determined by a certain legal thinking; it is in the modern historical period the law is the main normative element regulating society. And here a decisive role is played by a particular legal thinking, which determines the legal legitimacy of power [6, p. 70]. At the beginning of 2014 it was the Verkhovna Rada of Ukraine that was the national body that was least involved in the confrontation between the authorities and the people, the minimal trust in the Ukrainian Parliament - the representative body, was preserved in the people as the only source of power, and therefore these legislative acts could and were perceived by the society as an act of reconciliation of the authorities and its source - the people. In people's consciousness only the Verkhovna Rada of Ukraine remained that legitimate body because it was formed on the basis of direct suffrage, which could eliminate the negative factors that arose as a result of confrontation between people and state power, first of all interests of the person who at that time held the office of President of Ukraine. Undoubtedly, these legislative acts had an ad hoc character of applying their norms, but they reproduced the fact that peaceful assemblies, as a result of the exercise by the people of their guaranteed right to freedom of peaceful assembly, is an important democratic means of bringing the interest in the freedom of the Ukrainian people to the authorities, and the right to freedom of peaceful assembly is a unique right, which between the one that provides communication of the subjects of its implementation, acts as a guarantee of compliance with other rights and freedoms of man and citizen, a kind of right to rebel against the authorities that neglects the interests of its source.

In our opinion, this experience of regulating the right to freedom of peaceful assembly should be taken into account in further lawmaking activities aimed at providing conditions for the free exercise of this right, unhindered implementation, as well as establishing guarantees for the right to freedom of peaceful assembly, both functionally and institutionally. However, its norms should become an insuperable barrier primarily for subjects of state administration, law enforcement agencies, prosecutors, judicial authorities in inadmissibility to suppress peaceful assemblies. At the same time, the excessive politicization of both the legislative and rulemaking process, especially during the regulation of the right to freedom of peaceful assembly, negatively affects the democratic processes in any country of the world, nullifies the achievements of the rule of law and civil society and leads to complications in the socio-legal and state-political spheres.

Summarizing the research, we emphasize that the laws of Ukraine "On Elimination of Negative Consequences and Prevention of Prosecution and Punishment of Persons Concerning Events that Occurred during Peaceful Assemblies", "On Prevention of Prosecution and Punish-

ment of Persons Concerning Events that Occurred during Peaceful Assemblies and the Annulment of Some Laws of Ukraine", including their various revisions and changes to the laws of Ukraine, have only a one-time application of their norms, aimed at eliminating the mistakes of public authorities, which were made by individual officials of the latter regarding the subjects of the exercise of the right to freedom of peaceful assembly. In addition, the investigated legislative norms are similar in nature to the norms of legislative acts on amnesty, because they do not regulate the relations on exercising the right to freedom of peaceful assembly, but define the grounds and conditions of release from legal responsibility of participants of peaceful assemblies seeking to implement the guaranteed right to freedom of peaceful assembly. In turn, we are deeply convinced that the right to freedom of peaceful assembly should have effective preventive levers against unjustified or arbitrary interference in its implementation by representatives of public administration, state authorities or local authorities. In this regard, Ukraine urgently needs to approve, and sometimes to ensure the effective performance by such officials of their duties regarding non-interference in the exercise of the right to freedom of peaceful assembly, prohibiting the obstruction of its implementation by establishing appropriate legal liability measures for representatives of such state bodies, local authorities or other representatives of public administration. Only under such conditions the Ukrainian society will acquire real rather than imaginary features of civil society, and the state of Ukraine will become a state governed by the rule of law, where not only civilizational principles of the rule of law, respect for human and civil rights and freedoms are proclaimed, but also the latter are actually implemented, including through clear implementation by public authorities of their powers, prevention of their abuse through administrative discretion, priority of human rights and freedoms, including the right of peaceful assembly in the activities of such bodies.

An important step in this direction is to realize and understand the right to freedom of peaceful assembly: its form and content, or the content of the form and the formed content. The realization of such principles of the right to freedom of peaceful assembly is possible through the search and formation of a holistic understanding of the right to freedom of peaceful assembly through the prism of the natural law principle of law, which should find itself both in legislative norms and reflected in the relevant casuistic decisions of law enforcement bodies, first of all courts, through proper legal reasoning and complicity. An example of such an approach is the decision of the European Court of Human Rights, which widely, and most importantly, qualitatively, primarily from the perspective of legal science, uses natural-law prerequisites to justify its decisions.

Finally, it should be noted that modern civilizational society, which seeks not only to establish, but above all to develop the rule of law, democracy, freedom, equality and justice, should clearly define the freedom of exercise of the right to peaceful assembly, which should not be limited by the administrative discretion of public administration, but only by the rights and freedoms of third parties. Therefore, we believe that the right to freedom of peaceful assembly should have unquestionable freedom of exercise, with the power of state authorities to restrict or prohibit it being described in the law to the maximum extent possible, as well as effective judicial control over any administrative discretion of state administration representatives regarding measures to restrict or prohibit the right to freedom of peaceful assembly.

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Date of receipt of the article in the Editorial Office
(23.01.2021)

NORMS OF SOFT LAW IN INTERNATIONAL LEGAL REGULATION OF CULTURAL HERITAGE PROTECTION

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Abstract

The article broadly analyzes the role of norms of "soft" law in the international legal regulation of cultural heritage protection, on the basis of the existing diversity of opinions in the legal literature and key international documents. It is noted that in the regulation of relevant field, the norms of "soft" law attract attention with their effectiveness along with the norms of "hard" law. At the same time, the norms of "soft" law in the international legal regulation of cultural heritage protection play an important role not only in the creation of the norms of "hard" law in the future, but also in the formation of relevant domestic legislation. Finally, the article analyzes the main provisions of some of the recommendations adopted by UNESCO, an important international organization in the field of cultural heritage protection. The above is carried out in parallel with the analysis of the national legislation of the Republic of Azerbaijan. In conclusion, a number of theoretical and practical proposals are put forward on the role and development of the regulation in this direction of the norms of "soft" law on cultural heritage protection.

Keywords: *cultural heritage, soft law, hard law, international documents, national legislation, archeological excavations, historical monuments, movable cultural property.*

Along with international contractual and international customary norms, norms of a recommendatory character have an important role in the field of protection of cultural heritage. Article 38 of the Statute of the International Court of Justice notes that the International Court of Justice, when resolving disputes submitted to it, may be guided by an international treaty, international custom, general principles of law and judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law [6]. Although the norms of a recommendatory character are not mentioned here, it is already unambiguously accepted that the role of norms of a recommendatory character in improving domestic legislation and in regulating international relations is huge. This is also called "soft" law in the legal literature.

In order to implement the principles reflected in their statutes, international organizations develop relevant international standards, exercise control over their application, and also adopt recommendatory norms that allow achieving important results in the practice of States. This process is carried out within the framework of various international organizations. For example, the International Labor Organization adopts conventions and recommendations on various aspects of social and economic rights. To date, the International Labor Organization has adopted about 200 such conventions and the same number of recommendations [10, p.233].

There are various types of decisions adopted by international organizations, and decisions of a recommendatory character have a special place. Most of the decisions of international organizations do not have binding legal force, they are advisory in nature. Thus, as an example, it can be cited the power of the General Assembly to make recommendations, provided for in Articles 10 and 11 of the UN Charter [5]. As more general and imprecise rules gradually evolve through custom or even so-called "soft law" (i.e. non-legally binding standards and general rules), these rules become "hard" law.

While an international treaty and international custom establish binding obligations for States in the system of international legal regulation of the protection of cultural heritage, "soft" legal norms do not do the same. In other words, an international treaty and international custom usually have an imperative character and provide rules of conduct binding on States. The term "soft" ("soft law") includes legal documents that have no legal force. "Soft" law often includes relations that are not consistent with the norms of "hard" law. Although the term "soft law"

originally appeared mainly in the context of international law, in recent times it has entered almost exclusively into domestic law and, to some extent, already into certain branches of it.

The practice of international organizations in this context is also varied. Thus, the UN, the European Union, the International Labor Organization, UNESCO and others have a special place. The main common feature of the documents adopted by these organizations is that they do not establish specific obligations for States do not include sanctions and, finally, are not legally binding.

In the legal literature, it is noted that the norms of a recommendatory character are not the norms of international law, although they have a special place in the social norms that exist in the international arena. As regards changing the existing norms of international law, norms of a recommendatory character cannot change the norms of international law. They can only determine the need to change the existing norm; in fact, a change in the norm is possible only with the consent of the States. In this case, the existing norm is not advisory in nature, but changes when a new international custom is formed [15, p.123].

The norms of "soft" laws are mainly defined within the European Union. Thus, the European Union has "recommendations", "codes of conduct", "guidelines", etc. to implement its various legal policies, norms of an advisory character are used. These policies are implemented more successfully within the European Union. It is about faster and more precise implementation of these rules by Member States. In the European Union law, "soft" rules are often used to assist in the implementation or interpretation of European Union law, as well as to fill gaps in the legislation of the Member States. As in the case of the norms of "hard" law, since general rules and principles are reflected here, they become binding on the Member States. This distinguishes the European Union from other international organizations. The legal basis for the adoption by the European Union of soft law is set out in Article 288 of the Treaty on the Functioning of the European Union. Thus, the various legal acts of the European Union that the Union may adopt in order to exercise its powers (e.g. statutes, directives, ordinances, recommendations, opinions, etc.) are described in this Article. Directives are binding on at least one Member State depending on the result to be achieved, but the choice of forms and methods is determined by the internal authorities of the Member States. Among the acts within the framework of the European Union, it can be mentioned the Regulation No. 3911/92 of 1992 on the Export of Cultural Goods, Directive No. 93/7 of 1993 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of the European Union, etc.

The recommendations of the International Labor Organization should also be mentioned. The Recommendations within the International Labor Organization, which are usually characterized as the norms of "soft" law, serve to facilitate and further expand the application of rules not adopted in the form of conventions. As for the Council of Europe, its conventions are binding on the States that ratify them, while its recommendations are not binding. They usually reflect the position of the Parliamentary Assembly of the Council of Europe.

The norms of "soft" law or non-binding international instruments are generally recognized as international instruments that have great potential for future development into the norms "hard" law or legally binding international instruments. This process may usually develop in three directions. The first of these is the drafting of declarations, recommendations, etc. The fact is that this is the first step towards the contracting process, and in this case, one should refer to the principles already set out in the norms of "soft" law. The second case is that the norms of "soft" law are aimed at directly influencing the practice of States and, if successful in this matter, lead to the emergence of basic domestic norms in this field. Finally, the last case, relevant norms, leading to further convergence of the legislations of the States, also lead to the adoption of international instruments of a mandatory character in the future. The norms of "soft" law usually do not bind States with international obligations, which offers States to make a convenient choice for the activities in the relevant field. States adopt the relevant principles, form their own na-

tional legislation, which is characterized by the fact that the paths are different, but the results are the same. In other words, the norms of "soft" law can be transformed into the norms of "hard" law by adoption by States domestic legislation in accordance with the law or by joining to specific binding agreements. The latter is more common with standards governing contracts or other business activities. Contracts are a prime example of an agreement that is traditionally considered "hard" law by default. When State ratifies a treaty, if the State has national laws that conflict with the treaty, the State is required to change those laws to be consistent with the treaty. In the recommendations, a more differentiated path is chosen, that is, there is a process of gradual changes in legislation, if agreement is not reached immediately.

The position of UNESCO in this direction is especially noteworthy and is distinguished by a number of specific features. Recommendations of UNESCO are adopted by a simple majority vote at the General Conference of UNESCO, the ratification by States is not required, but approval by States (legislative and other bodies) is considered desirable. It is no coincidence that Article 8 of the UNESCO Constitution defines that Member States must regularly submit reports to UNESCO, including those containing information on the implementation of conventions and recommendations [18]. Apparently, UNESCO, by its charter, also clearly defined the importance and place of recommendations.

The adoption of the UNESCO Recommendation of December 5, 1956, which defines the international principles applicable to archaeological excavations, is justified by a number of factors. First of all, it was noted that, though the regulation of excavations is first and foremost for the domestic jurisdiction of each State, this principle should be brought into harmony with that of a liberally understood and freely accepted international co-operation. Moreover, it is considered that, while individual States are more directly concerned with the archaeological discoveries made on their territory, the international community as a whole is nevertheless the richer for such discoveries. This creates confidence that the surest guarantee for the preservation of monuments and works of the past rests in the respect and affection felt for them by the peoples themselves, and persuaded that such feelings may be greatly strengthened by adequate measures inspired by the wish of Member States to develop science and international relations. Paragraph 1 of the Recommendation notes that by archaeological excavations is meant any research aimed at the discovery of objects of archaeological character, whether such research involves digging of the ground or systematic exploration of its surface or is carried out on the bed or in the sub-soil of inland or territorial waters of a Member State. Part 4 of Paragraph 2 defines that each Member State should ensure the protection of its archaeological heritage, taking fully into account problems arising in connection with excavations, and in conformity with the provisions of the present Recommendation. To this end, the States are recommended to take the following actions: make archaeological explorations and excavations subject to prior authorization by the competent authority; oblige any person finding archaeological remains to declare them at the earliest possible date to the competent authority; impose penalties for the infringement of these regulations; make undeclared objects subject to confiscation; define the legal status of the archaeological sub-soil and, where State ownership of the said sub-soil is recognized, specifically mention the fact in its legislation; consider classifying as historical monuments the essential elements of its archaeological heritage [4].

Obviously, this Recommendation, along with the statement that archaeological issues are an internal affair of States, defines the foundations for international cooperation in the relevant field, and finally analyzes the relevant activities to regulate these relations.

Further, Paragraph 32 of the Recommendation contains two important provisions. The first is related to the existence of the obligation of each Member State that has occupied the territory of another State during an armed conflict to refrain from carrying out archaeological excavations in that territory. The second important provision is related to the fact that in the event of chance finds being made, particularly during military works, the occupying Power should take all

possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto. One of the facts pointing to the barbaric attitude of Armenia towards the historical monuments of Azerbaijan as a war crime is the holding since 2003 of "archaeological excavations" in the Azykh cave of the Khojavend region, and since March 2005 in the vicinity of the city of Aghdam, as well as in certain territories of Azerbaijan occupied by Armenia in different periods [13, p.71]. This action is also considered a violation of international law: Article 11 of the 1970 UNESCO Convention on the Means of Prohibition and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property defines that the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit [9, pp.140-141].

Another recommendation adopted by UNESCO in this field is the Recommendation of 16 November 1972 Concerning the Protection at National Level, of the World Cultural and Natural Heritage. One of the important features of this Recommendation is that it is addressed to all non-Member States of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. Another characteristic feature of the Recommendation is the indication to the States of specific areas of activity, as well as the orientation towards the protection of cultural heritage from all dangers. So that, the States are recommended to pursue an active policy, and it is also envisaged to ensure the joint activities of all interested public and private services in this direction, the active involvement of the local population in this work, the use of all the achievements of science and technology. The Recommendation defines the main features of the organization of specialized Public services for the protection of cultural heritage and their main tasks in this field. At the same time, the Recommendation provides for the adoption of certain measures of responsibility in relation to the circumstances that led to the destruction of cultural heritage. One of the important characteristic features of the Recommendation is the development of culture and education, the proper coordination of the activities of State bodies [11].

In general, this document is based not only on the passive preservation of cultural property, but also on the need for their active use [12, p.155]. Furthermore, the Recommendation notes that the implementation of interaction in this direction is entrusted to State bodies as an important task.

This document also has a kind of guiding character for other recommendations adopted within UNESCO. Adopted as a result of the activities of a Committee of Experts for almost 5 years, the Recommendation also played an important role in the adoption by States of domestic legislation in the relevant field. The analysis of the legislation of the States in this field proves this fact. This is once again confirmed by the analysis of the important provisions of the national legislation of the Republic of Azerbaijan in this field, including the State programs, including the Concept of Culture. So that, paragraph 3 of the Concept notes that the cultural heritage of each people is a means of reflecting national and spiritual values in it and recognizing them throughout the world. Therefore, the restoration and preservation of immovable historical and cultural monuments, the improvement of the activities of historical and cultural properties and bringing them in accordance with modern requirements, the modernization of museum networks and library and information systems, the creation of electronic catalogs and electronic libraries, the support of intangible cultural heritage and folk art, the development local cultural centers, culturally significant parks, ethnic parks are priority areas of the State policy of the Republic of Azerbaijan in the field of culture. In addition, paragraph 1 of the Concept notes that the State policy of the Republic of Azerbaijan in the field of culture is characterized by the principles that guide the State in the direction of preserving and promoting cultural heritage, creating and developing cultural properties. A number of principles put forward exactly in the same direction as the Recommendation: equality - ensuring the realization on equal terms of their cultural and creative rights and opportunities for everyone; democracy - education of the population in the

spirit of free thinking, expansion of rights and freedoms in the organization and management of the cultural sphere on a State-public basis, ensuring freedom of aesthetic thinking, stimulating the creation of new cultural organizations; humanism - acceptance as a priority of secular values, free development of the individual, human rights and freedoms, health and safety, care and respect for the environment and people; integration - ensuring the implementation, enrichment and development of national culture in the world, not isolating itself from world culture, accepting the universal values of world culture; balance - establishing a balance between the cultural industry and the markets for cultural products and services, ensuring the development of the activities of cultural societies; quality - ensuring the compliance of products and services in the field of culture with the most advanced standards, norms, socio-economic requirements, the interests of the individual, society and the State; secularism - ensuring the creation, preservation and development of secular values; efficiency - the organization of creativity in the field of culture by modern methods that are constantly evolving, useful and focused on the final result; continuity - the transfer of cultural property, knowledge and experience in this field to subsequent generations; the factor of talent - a manifestation of special concern for the growth of creative achievements of people with innate talent [2].

At the same time, it is necessary to mention other norms of a recommendatory character adopted within the framework of UNESCO: the 1960 Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone; the 1962 Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites; the 1964 Recommendation Concerning the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; the 1968 Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works; the 1976 Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas; the 1976 Recommendation Concerning the International Exchange of Cultural Property; 1978 recommendation on the protection of movable cultural property, etc.

The 1976 Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas is one of the considerable documents in this field. It is noted that every historic area and its surroundings should be considered in their totality as a coherent whole whose balance and specific nature depend on the fusion of the parts of which it is composed and which include human activities as much as the buildings, the spatial organization and the surroundings. It is also justified to carry out restoration works on a scientific basis. At the same time, it is proposed to pursue a "cultural revitalization" policy in relation to historic areas. Further, it is noted that the ancient occupations of the population should be preserved in historic towns. At the same time, when developing new functions, they must meet the social, cultural and economic needs of people [12, p.156].

Furthermore, this Recommendation notes that historic areas should become the main centers of cultural life, the process of urbanization should not jeopardize this process. It is noted that these processes also serve to preserve the heritage of mankind by preserving historic areas. At the same time, it is mentioned that the laying of new road system should not cause damage to historic areas. Rather, the State should properly address this problem, the restriction of certain places for traffic should be implemented, and more attention should be paid to pedestrian crossings and roads [17]. In this direction, it is necessary to study world practice (for example, on the practice of the Rome, Prague).

The Recommendation also defines a number of recommendations on the formation of the provisions of domestic legislation in this field. In this context a detailed reflection of specific circumstances in State programs, concepts, etc. is noted. The Recommendation defines that the fulfillment of obligations to protect any element of cultural and natural heritage should be determined regardless of the transfer of ownership of the object. Further, provisions were also

reflected on the possibility of State confiscation of cultural property in private ownership, if necessary, taking into account the requirements of the relevant legislation [17].

The 1968 Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works focuses Member States on the feasibility of preserving the historical links of a monument, including its current conditions. Along with the fact that these monuments can be moved, it is also important that special attention has to be paid to the preservation of circumstances that repeat their former characteristics. In addition, in the course of measures to save cultural property, detailed scientific and other researches have to be carried out. In this direction, the need to develop several options is noted; the choice of the best way has to be chosen as the basis while preserving historical features. To this end, States are also encouraged to allocate the necessary funds in this direction. In addition, as the best option, it is recommended to establish private funds in this direction and coordinate their activities. The development of tourism and measures to combat its destructive impact are also noted [16].

In general, one of the main characteristic features of the UNESCO recommendations, in our opinion, is that the measures to be implemented should be aimed at solving important global problems, such as environmental protection, combatting international crime, ensuring international security, etc., and it should be highly appreciated that this is fully consistent with the modern concept of development.

It is worth emphasizing one important point. Despite the fact that the international documents on environmental protection adopted by the end of the XX Century were recommendatory character, important steps have been taken to form standards in this field and the right to life in a healthy or favorable environment has been defined as a fundamental right. In addition, in Paragraph 1 of Article 1 of the Declaration on the Right to Development, adopted by the UN General Assembly in 1986, it is noted that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized [8]. In paragraph 1 of the Declaration on the Right of Peoples to Peace, adopted by the UN General Assembly on November 12, 1984, it is solemnly proclaimed that the peoples of our planet have a sacred right to peace. Paragraph 2 of the Declaration, declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State [7]. Article 39 of the Constitution of the Republic of Azerbaijan is directly devoted to "the right to life in a healthy environment" [1].

In general, it should be noted that some of the important international documents adopted in other fields, although not directly, but indirectly, are aimed at the preservation of cultural heritage. For example, documents concerning sustainable development, environmental protection, the right to peace, the right to development and other related international instruments should be emphasized in this context. In the XXI Century, another feature of human rights has emerged as a factor in the sustainable and balanced development of society. This was the concept of sustainable development, and basically the value of the condition of sustainable development for each person is related to survival in a society that is predicted and protected. Sustainable development is a balanced development that reconciles conflicts. The document entitled Transforming our world: the 2030 Agenda for Sustainable Development, approved by the UN General Assembly on September 25, 2015, also contains provisions related to the preservation of cultural heritage. The Declaration on Environment and Development, adopted at the UN Conference on Environment and Development in Rio de Janeiro in June 1992, contains a number of principles aimed directly at the preservation of cultural heritage. For example, principle 23 refers to the protection of the environment and natural resources of people under oppression, domination and occupation [14]. In addition, Section 10 of "Azerbaijan 2020: A Look into the Future" Concept of Development, approved by the Decree of the President of the Republic of Azerbaijan dated December 29, 2012, entitled "Protection and effective management of cultural heritage", notes that in historical territories of special importance, actions will proceed in order to create

historical and cultural reserves, the inclusion of historical and cultural monuments of universal value in the World Heritage List of UNESCO and in the Islamic World Heritage List of ISESCO. Activities will be strengthened in the direction [3].

Common forms of "soft" law in the field of cultural heritage protection include the resolutions of international organizations, final texts of summits or international conferences, recommendations of the treaties, executive political agreements, adopted guidelines, recommendations or codes of conduct. In general, "soft" law is also seen as a flexible direction that avoids immediate and uncompromising commitments made on the basis of international treaties, as well as a potentially fast track leading to legal obligations rather than slow pace of development of international traditions. It is more realistic within the framework of UNESCO. In addition, when certain and serious international cooperation cannot be achieved through the norms of "hard" law, cooperation and coordination between States is established within the framework of UNESCO especially through the mechanisms of "soft" law. Such coordination is of particular importance in terms of harmonizing information and policies, mutual learning, exchange of best practices. In this context, during its activity, UNESCO has achieved notable results in the field of science, education and culture, as well as in the field of protection of cultural heritage through its conventions and recommendations.

Thus, in view of the aforementioned, we conclude that in the international legal regulation of the protection of cultural heritage, the norms of "soft" law have a significant place along with other norms of international law, in particular, with the norms of "hard" law. These norms, along with the supplementing of the provisions of any type of international treaties, are important in the development and further harmonization of the legislation of States. At the same time, this relationship is much more comprehensive and broad. Although the norms of "soft" law do not directly establish binding legal obligations, they gradually enter the life of States and play an important role in regulating the relevant relations.

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Date of receipt of the article in the Editorial Office
(23.01.2021)

AZERBAIJAN'S MODEL OF MULTICULTURALISM

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Abstract
While racism, nationalism and xenophobia are expanding around the globe, Azerbaijan has developed its own model of multiculturalism, interfaith tolerance, ethnic diversity and intercultural dialogue. The model presented to the world by Azerbaijan is a multinational model that respects the national and spiritual values of people. Today the world of politics is studying this model and multiculturalism is seen as an alternative to xenophobia, islamophobia and racism. Even today, whilst some call for peace and harmony, others call for hatred. If one side's goal is to drag the world into chaos, the other's is to achieve global harmony. The experience of Azerbaijan in this regard is unique.

Keywords: *multiculturalism, Heydar Aliyev Foundation, Humanitarian Forum, ethnic and religious groups, International Tolerance Day, Year of Multiculturalism, Intercultural Dialogue*

In a globalized world not a single society can stay out of the influence of multiculturalism, as the indoor cultures are rapidly declining.

President of the Republic of Azerbaijan Mr. Ilham Aliyev has repeatedly noted that multiculturalism is the national wealth of the country. According to Article 25 of the Constitution of the Republic of Azerbaijan, rights and duties of everyone should be respected, regardless of origin, race, and religion or spoken language. [7, p.310]

The legal framework of multiculturalism is reflected in several provisions of the Constitution. It is reflected in the Article 18 of the "Religion and State" section and Article 25 of the "Law of Equality" section. The Article 18 states that religion is separate from the state and that all religious beliefs are equal before law, and the Article 25 ensures that everyone's rights and freedoms are respected regardless of his/her race, nationality, religion, language, gender, origin, property, position, beliefs, and affiliation with political parties, trade unions and other public associations.

Article 44 of the Constitution also states that every single citizen has the right to protect his/her national identity and that no one can be forced to change their nationality. Article 11 of the Law on Culture states that the cultural identities of all ethnic minorities living in Azerbaijan are respected and legally protected. The article on "Freedom of Conscience" also addresses the respect and freedom of everyone's religious beliefs. [4, p.3]

Simultaneously with the provisions of the supreme law, the Republic of Azerbaijan also responds to international calls. The Republic of Azerbaijan complies with all the provisions of the 1996 UN Convention on the Elimination of All Forms of Racial Discrimination, the Prevention and Punishment of Apartheid Crime and, finally, the Prevention and Punishment of the Genocide. Finally, the Council of Europe's Charter of Regional or Minority Languages is being implemented by Azerbaijani government as well. [4, p.3]

Azerbaijan has been at the crossroads of cultures throughout history and has played a leading role in comprehension of various civilizations. Azerbaijan, distinguished for its tolerance from the ancient times, has been home to the Zoroastrianism, the first cradle of Christianity in the Caucasus, and Islam. Our country remarkably carries the ethnographic diversity of Achaemenid-Sassani, Roman-Byzantine, Scythian and Turkic-Oghuz cultures.

Undoubtedly, the roots of multiculturalism in Azerbaijan are very old. It is known that in the ancient Caucasian Albania, people from different nations, religions and cultures lived and contributed from time to time. Mifodiy, the Secretary of the Russian Orthodox Church of Baku and Azerbaijan, Eugene Brenneysen, member of the European Jewish Religious Community, Rasim Khalilov, leader of the Protestant community of the Word of Life, Robert Mobili,

President of the Albanian-Christian community, in their speeches, talk about the state-religion relations in Azerbaijan, the guarantees of freedoms, tolerance towards religious and national minorities. [5] It seems quite clear today that even though various ethnic groups claim to be Azerbaijani, each of them has preserved its own distinct elements of culture. [1]

In the globalized world, multicultural and tolerant values are universal, and the Republic of Azerbaijan proudly protects and promotes these values. [13] Multiculturalism aims at preserving, developing and presenting the cultural diversity of people of different nations and religions around the world, as well as integrating minorities into the national culture of dominant ethnic groups. This path is a stage of integration without assimilation, where democracy and humanism are guiding ideologies. Only in this case mutual enrichment, friendship and cooperation is possible. Multiculturalism is a guide to create a dialogue between cultures and civilizations.

In integrated world, which we live in, there are different models of multiculturalism - such as Swedish, Australian, and Canadian. But many countries from different parts of the world, from different cultures and civilizations are promoting the Azerbaijani model. A clear example of this is the adoption of resolution which approves the Azerbaijan model of tolerance by the Senates and Houses of Representatives of Utah and Oregon in 2014. [4, p.3]

Studies show that in our times there are two poles of multiculturalism policy. Formation of the first pole is linked with the name of Prime Minister David Cameron. Cameron said that multiculturalism in Europe has collapsed due to the refusal of different cultures to integrate with each other. The other pole is considered optimistic. The Azerbaijani model of multiculturalism is the optimistic one. [12, p.8]

Although the term multiculturalism has been recently introduced in Azerbaijan, its historic importance has been preserved and laid the ground for the coexistence of many different ethnic groups. Throughout the centuries, different nations and ethnicities have lived in the tolerant environment, sharing same values. The protection of their rights and freedoms, as well as their native languages has been enshrined in law as the main principle of the state, and as a result, members of each ethnic and/or religious group are widely represented in every sphere of society. [15]

The main cornerstone of multiculturalism is the transmission of the spiritual treasure of the nation to generations. At the IV Global Baku Forum, President of the Republic of Azerbaijan Ilham Aliyev said that people of different ethnic backgrounds and religions have lived in peacefully and securely in Azerbaijan. He also stated that multiculturalism and religious tolerance are preeminent state policies. [16, p.4]

2016 was declared the 'Year of Multiculturalism' by the Decree of President Ilham Aliyev of January 11 of the same year. The construction and restoration of mosques, churches and synagogues throughout Azerbaijan is seen as a clear example of multicultural atmosphere in the country. The exceptional services of the great leader Heydar Aliyev in strengthening of multicultural values in our country should be noted. Thanks to the late president, traditions of multiculturalism have been widely used in our country and have been integrated as 'a model' in domestic policies of several countries.

Before the national leader Heydar Aliyev came to power, the country was in turmoil. Right after the collapse of Soviet Union, the ideologies of chauvinism and separatism became widespread in the country and the region. Nonetheless, as a result of the far-sighted policy of Heydar Aliyev, a unique atmosphere of solidarity between different ethnic groups was established. Heydar Aliyev united every single citizen under the ideology of 'Azerbaijanianism' and simultaneously has taken the centuries-old tradition of multiculturalism to a new level, demonstrating its superiority over other political models. [11, p.37-43]

He once said: "The Republic of Azerbaijan is a multinational state. In addition to Muslims, there are also citizens belonging to other religions that live in Azerbaijan. As an independent, democratic country, Azerbaijan provides freedom to all people and nationalities living on its territory, regardless of religion, language, race, or political affiliation". [17, p.4] Even at the

inauguration ceremony on October 10, 1993, the Great Leader stated that Azerbaijan is a multinational state. All citizens of the Republic of Azerbaijan shall have equal rights regardless of their national or religious affiliation. [2] In general, the more a nation is able to unite, the more wealth it will have. It should also be taken into account that the celebration of the International Day of Tolerance in 1999 was initiated by Heydar Aliyev.

There are 644 religious organizations registered in Azerbaijan - including Christianity, Judaism, Baha'i and Krishna oriented organizations. There are currently more than 2,000 mosques, 13 churches and 7 synagogues operating around the country. [9] All these religious organizations operate and cooperate in a harmonious and tolerant manner. From this point of view, the ideology of 'Azerbaijanianism', put forward by the great leader, is remarkable by its unique strategy.

The fundament of the ideology of 'Azerbaijanianism' is the unity of different people, cultures, traditions and confessions. This ideology is based primarily on state power and national discipline and national self-determination. The ideology of 'Azerbaijanianism' seeks understandding within various social classes and propagates constant and non-radical reform of the state, which arises from its potential. 'Azerbaijanianism' is a historic value that has been shaped for centuries. The centuries-old tradition of the harmony of the confessions currently living in Azerbaijan is the product of the great history of brotherhood and interrelationship of all nations and ethnicities living in our homeland, their common destiny and their shared struggle for the integrity of independent Azerbaijan.

Thus, the ideology of 'Azerbaijanianism' is political, as well as ethical. It belongs to the citizens of Azerbaijan and to the adherents of the idea of independent statehood of Azerbaijan, and, of course, serves as a unifying function. The ideology today plays a special role in regulation of relations between ethnic and cultural differences. As the great leader said, Azerbaijan's source of strength is the joint power of all people living there.

It is clear that multiculturalism has three basic elements:

- Providing cultural pluralism in the state
- Socialization of small cultural groups
- Revival and development of different cultures

All this demonstrates that multiculturalism is a democracy of cultural values within globalization process, and tolerance is its main characteristic. [10] In 2014, the State Advisory Service for Inter-ethnic, Multiculturalism and Religious Affairs was established in the country at the instruction of President Ilham Aliyev. In May of the same year, the President of the Republic of Azerbaijan signed a decree on the establishment of the Baku International Multiculturalism Center in the name of wider recognition of Azerbaijan as an example of tolerance in the world.

First and foremost, activities of the center are - providing tolerance and protecting cultural, religious and linguistic diversity. Baku International Center for Multiculturalism explores inter-ethnic, inter-religious and intercultural relations. Without any doubt, the services of the Heydar Aliyev Foundation in promoting the traditions of tolerance and multicultural values of our country cannot be ignored. [14]

The dominant role in this direction belongs to the First Vice-President Mehriban Aliyeva. Mrs. Aliyeva states: "The Azerbaijani society, where traditional friendship and brotherhood relations and tolerance are prevailing among people, is our historic achievement and this factor has become a leading value of our socio-political life." [4, p.3] Vice President of the Heydar Aliyev Foundation, Leyla Aliyeva, has played a major role in promoting the Azerbaijani model of multiculturalism from the platforms of UN Alliance of Civilizations and the Youth Forum of Islamic Conference.

On November 8, 2012, by the initiative of the Vice-President of the Heydar Aliyev Foundation, Leyla Aliyeva, the British Parliament hosted a conference on the topic of "Perspectives of European multiculturalism: The Azerbaijani model of interfaith dialogue and religious tole-

rance". This event played an irreplaceable role in promoting the Azerbaijani multiculturalism model in the Western world. Furthermore, in 2012 Paris hosted an exhibition of Reza Degati - "Azerbaijan - A Land of Tolerance" - that reflects religious tolerance in our country. [5]

Today, dozens of activities regarding multiculturalism are taking place throughout our country, and this tendency has continued every year. One of these activities is the second World Forum on Intercultural Dialogue held in 2013 under the motto "Living together in peace in a multicultural world" initiated by President Ilham Aliyev. The event was attended by UNESCO, the UN Alliance of Civilizations, the Council of Europe, the North-South Center of the Council of Europe, ISESCO, the UN World Tourism Organization and many more organisations. Another great example is the 8th session of the UNESCO Intergovernmental Committee for the Intangible Cultural Heritage held in Baku in 2013. [19, p.5]

In addition, there are a number of activities carried out by the Heydar Aliyev Foundation: construction of the Khabad-Or-Avner Educational Center for Jewish Children living in Baku, the restoration of VII-XII-century churches in France, the restoration of the Holy Roman catacombs, and the erection of a monument for Knyaz Vladimir in Astrakhan. Undoubtedly, multiculturalism and tolerance have historically been a way of life for Azerbaijanis and have become a daily way of life for every citizen, government institutions and organizations of the Republic of Azerbaijan.

In addition to all aforementioned, Azerbaijan often hosts international events dedicated to the cooperation of nations and religions. An example of this is the conference called "Globalization, Religion, and Traditional Values", held in Baku in 2010 and attended by hundreds of representatives of different religions from all over the world. It should be noted that the World Forum on Intercultural Dialogue has been held in Baku every two years since 2011, by the initiative of President Ilham Aliyev. All of aforementioned activities are carried out by international organizations, such as UNESCO, the UN Alliance of Civilizations, the Council of Europe, North-South Center of the Council of Europe, ISESCO, and the UN World Tourism Organization. [4, p.3]

During one of these events, President of the Republic of Azerbaijan Ilham Aliyev said: "We are talking about a dialogue between civilizations. But at the same time, some statements, such as 'multiculturalism has failed' and 'multiculturalism has no future' make us sad. These are very dangerous statements. I should note that multiculturalism has no alternative in the modern world, because the majority of the world's countries are multinational. If multiculturalism (dialogue of civilizations, including religious co-operation) fails, then what is the alternative? Alternatives are discrimination, racism, xenophobia, Islamophobia, anti-Semitism". [15]

Today Baku has become not only a diplomatic and political center of the region, but also a center of multiculturalism and tolerance. Our country often hosts the International Humanitarian Forum, the Conference of Ministers of Culture of the Organization of Islamic Cooperation, the World Forum on Intercultural Dialogue, the Crans Montana Forum, the Davos Forum, and the 3rd Global Baku Forum.

In the "Year of Multiculturalism", a series of memorable events were implemented in Azerbaijan. A number of government agencies took an active part here. These include the Ministry of Education, Ministry of Culture and Tourism, State Committee for Work with Religious Organizations, Ministry of Youth and Sport, Ministry of Foreign Affairs, Heydar Aliyev Foundation, ANAS, Caucasian Muslims Office, Knowledge Fund under the President of the Republic of Azerbaijan. They have greatly contributed to the Year of Multiculturalism.

If we look at the strategic principles of the Azerbaijani model of multiculturalism, it is apparent that today ethnic and religious dialogue are the fundament of multiculturalism and are governed by proper integration processes. The core of multiculturalism is the coexistence of peace, humanism and tolerance. The primary point here is the mutual dialogue between people

of different religions and speakers of different languages. Various ethnic groups and representatives of different faiths and beliefs live in peace and mutual coexistence in our country. [6]

Intercultural dialogue is generally defined in the White Paper on Intercultural Dialogue within a framework of the 118th Session of the Council of Foreign Ministers of the Council of Europe. In the White Book, intercultural dialogue is understood as a process of open and sincere exchange between individuals and groups of different ethnic, cultural, religious, linguistic origins and heritage on the basis of mutual understanding and respect. Intercultural dialogue requires the freedom and the ability to express itself, as well as the desire and ability to listen to the opinions of others. It promotes the political, social, cultural and economic integration and convergence of multi-cultural societies. [8]

Today, the Republic of Azerbaijan is recognized worldwide as an example of the coexistence of peoples and nations. Multiculturalism taught national minorities and ethnic identities to love Azerbaijan as much as their homeland. In Intense international conditions of political world, this can only serve as good example and hope for the whole world. However, the situation is tense in one neighboring country - xenophobia, racial and ethnic-religious discrimination is an integral part of their society. The expulsion and deportation of the Azerbaijanis from the territory of Armenia in 1988 clearly support this argument. The ex-conflict that had been going for almost three decades had further precipitated the negative image of neighboring Armenia, who tries to maintain mono-ethnicity in the country by all means. Doubtlessly, a xenophobic policy of our neighbor is a considerable threat to the development of multiculturalism in the region.

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Date of receipt of the article in the Editorial Office
(02.02.2021)

PROSPECTS FOR FURTHER DEVELOPMENT OF THE IMPLEMENTATION OF THE RIGHT TO GOOD GOVERNANCE

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Abstract
The article analyzes in detail the prospects for further development of the implementation of the right of good governance on the basis of the diversity of opinions existing in the legal literature and international practice. The result of a special legal approach to the analysis of the normative regulation of the right of good governance has led to its study separately from other human rights and freedoms. In addition, new scientific research in the field of good governance creates the conditions for the emergence of various phenomena. At the same time, the article notes that presently a number of significant changes have occurred in the implementing of the right to good governance. These changes have created conditions for the emergence of new approaches and trends related to this right. These trends have given rise to a number of promising prospects in the field of good governance law.

Keywords: *good governance, Charter of Fundamental Rights, Court of European Union, European Ombudsman, human rights, judicial control, administrative procedures.*

Presently, a number of significant changes have occurred in the field of realizing the right to good governance. These changes have created conditions for the emergence of new approaches and trends related to this right. These trends have led to the following perspectives on the right to good governance:

- The recent success of the new paradigm of administrative law will have a positive impact on the detection of misbehavior in public administration and the adoption of effective decisions, including serving common interests of the development of society [1].

- Another approach to the common interest is that in the implementation of administrative procedures it is necessary to take into account public and private interests. The fact is that a public official who adheres to the principles of good governance must fully adhere to transparency, objectivity.

- Streamlining rules and procedures to help in good governance, using the scientific study of human thinking. Perhaps, in the future we will be able to draw on cognitive psychology to identify the cognitive illusion, better structure the administrative procedure, and propose the necessary standard of judicial control. In this sense, the best or prudent (sharp, efficient) regulation that is derived from good governance is more based on the development of the behavioral sciences (especially psychology and economics).

New scientific research in the field of good governance creates the conditions for the emergence of various phenomena [2]. Different phenomena refer to the use of behavioral sciences to improve the effectiveness of regulation. Great Britain and the USA are very active in this field, creating special units for the development of research in this field. In September 2015 (in connection with 'using behavioral (i.e., behavior-oriented) scientific ideas to best serve the American people'), former US President B. Obama's decision is a good example of this trend.

In this sense, one of the issues that will be implemented in the future and which are currently of particular interest is good governance, administrative procedures and cognitive limitations. Cognitive limitations combine cognitive psychology and law [3].

According to some experts, bad governance and bad administrative decisions can be the result of errors in people's opinions and in the choice between actors of power. The basic premise of cognitive psychological theory is that the human brain is a limited information processor that cannot successfully process all stimuli passing through its edges. To make the right decisions, public officials need to learn how to correctly distribute the missing (deficient) cognitive resources. This question is complicated by the two main strategies that people (including civil

servants) use to make the most of their cognitive abilities: mental shortcuts (heuristics) and organizational principles (schemes).

Heuristics basically consist of simple rules of thumb that make it easy to quickly, almost reflexively, turn around information. Schemes consist of collecting and organizing information scenarios that help people focus on information.

Relying on heuristics and schemes allows people to process a variety of complex stimulus efficiently. Although these rules are most of the time aimed at serving people, they can lead to systematic errors of opinion, which psychologists often call 'cognitive illusions'. Although applying experience to the decision-making process can help avoid cognitive illusions.

When decisions are made in an organizational situation, institutional forms can hinder the effectiveness of cognitive constraints. A government that tries to avoid bad governance and bad decisions (solutions) needs to be focused and structured. The fact is that the increase in the efficiency of public control and judicial control does not go unnoticed in the process of decision-making by administrative bodies, which ultimately leads to the adoption of positive, lawful decisions for society. Effective judicial control encourages public authorities to seek alternative courses of action that it considers relevant to its decision.

- Great importance of computers in decision-making. This is the realm of predictive information analysis. Future research will define automated decision-making, leading to a discussion of the boundaries of discrete powers and computers.

- More active development of specific indicators to measure the level of real, effective management in accordance with some of the already existing initiatives. The role of citizens should be decisive in setting the level of good government that government agencies should achieve [4]. As for the performance indicator, broader indicators are used internationally (e.g. the World Bank Good Governance Indicators).

- Expansion of obligations towards the creation of rules concerning the right to good governance. Cases for better regulation or smart regulation have been developed by the European Union (EU) without any contact with the right to good governance. In our view, better or smarter regulation is linked to the right to good governance, because good regulations are the result of good governance and prevent future corruption [5].

The EU Court of Justice in several of its decisions denied the existence of the right to be heard during the development of its rules as a component of the right to good governance. In this regard, the ECJ has pointed out that the right to good governance deriving from this situation does not include the process of adopting measures of general application. The Decree of 12 June 2015 emphasizes that the right to be heard belonged to a specific person in an administrative procedure cannot be considered in the context of the legislative process that led to the adoption of general laws.

But with the necessary caution, the EU Court of Justice has begun to take the first steps in relation to the right to good governance within certain obligations. In this direction, the judgments of Spain v. Council (C-310/04), Sungro SA and Council (T-252/07, T271/07 and T-272/07) [6] can be noted.

These judgments state that when the EU institutions have discretionary powers, they must prove to the court that at the time of the adoption of the law they were actually exercising their discretionary powers, which implies taking into account all relevant factors and conditions (para. 122 of the case of Spain v. Council).

Although it reminds us of the necessary care or necessary caution as integral components of the right to good governance. The ECJ held that the breach of such obligation constituted a breach of the principle of proportionality, and not of the right to good governance.

But here we run into typical confusion. The fact is that the duty of taking care and the principle of compliance are different. We have already discussed this before. Therefore, the right

to good governance should play a role in the judicial review of regulatory impact assessment and should be the point that closes the scope for better or prudent regulation.

- *Ubi Jus Ibi Remedium*: If you have rights, you also have legal remedies. The same is true of the right to good governance. The point here is that the victim can go to court and request a trial due to lack of necessary care. The trend should be that in order to maintain the quality of administrative behavior, it is necessary to open legal status to everyone. This rule will emphasize the importance of managing rights as part of modern citizenship.

- It can be assumed that in the future the level of judicial control will increase. The measures to be taken will be strengthened to avoid formal approaches to the necessary legal procedure, to exercise the necessary care or proper cautiousness. In this sense, the American experience can be of interest both in positive and negative aspects. While US public law does not recognize 'good governance' as a legal term, American case law and American jurisprudence use a similar concept in their understanding that administrative procedures are important to the quality of decisions.

In the United States, the Administrative Procedure Act plays an important role in informal litigation procedures. Informal procedures make up a high percentage of all administrative procedures. Necessary legal procedural requirements in relation to these procedures will not apply at all times. Its effect depends on the type of decision (it is applied not in rule-making, but in the case of a court decision), the existence of a right and whether it is a right to life, liberty or property. But in all cases, the judiciary is considered the main instrument, since it is it that ultimately determines the level of review of administrative decisions. Thus, the last word on the level of exactingness to the good development of State functions through administrative procedures remains with the court.

Restrictions on revision of discretionary power increase the importance of administrative procedures. Courts can protect individual rights and cooperate in the field of good governance without violating the principle of functional differentiation through discussion of administrative procedural aspects.

In the United States, the Administrative Procedure Act sets out the procedural framework for federal agencies. Particularly in relation to rule-making (but with similar arguments in the case of formal and informal judgments), where discretion is broader, case law expands the requirements necessary to reach good decisions (solutions). Since the 1970s, courts, even the US Supreme Court, have required agencies to pay particular attention to relevant factors and interests. Case law established the obligation to hear citizens, to respond to their comments. In addition, as a basis for ensuring the correct rules, it would force us to study (research) the regulation carefully before making a decision [7].

This judicial approach is known as the 'hard review' doctrine, although the term 'hard review' originally meant a precise scrutiny (research) that an agency had to respond to, today it is used to refer to a more (often) detailed and intensive investigation, where the courts often use in administrative cases. The hard-review doctrine, known as the 'informed decision-making' standard, is widely used in contemporary American public law [8].

The hard-review doctrine is also referred to as the adequate look test in connection with law-making. Courts usually accept it to avoid arbitrary agency decisions.

In this sense, future EU case law may use a more specific definition of necessary caution, using the example of the US. However, future EU case law must take into account that the courts have had a significant impact on the US administrative law system. The rules have a high rate of challenge and denial. The courts impose serious procedural requirements and require extensive explanations.

Some authors have emphasized that in these cases there is judicial activity and the balance between the separations of powers is violated. Another group of authors argue that litigation

leads to delays and creates a waste of time and costs, in addition, it paralyzes public policy in some sectors, harms the public interest (health and environmental protection, etc.) [9].

There are other opinions in the scientific literature. It is believed that the rigid approach requires large material costs. Proponents of this approach, citing jurisprudence, believe that the new judicial requirements made law-making more time-consuming and costly, but the costs were considered possible not only in terms of democratic benefits, but also in terms of increasing the efficiency of results. When faced with legal requirements for transparency and participation, the administrator will almost automatically perform a regulatory cost-benefit analysis in terms of efficiency.

The US example shows that judicial control is important and necessary for good governance, but at the same time, ironically, it can be a contributing factor to bad governance. Thus, it is necessary to regulate the fairness of procedures and efficiency, avoiding unnecessary delays and costs, but guaranteeing protection and good governance. This should be an important issue for legislators and courts.

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Date of receipt of the article in the Editorial Office
(26.01.2021)

PERSONAL DATA RELATED TO HEALTH AS AN OBJECT OF INFORMATION SECURITY

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Abstract

In the article, the important issues of personal data related to health as an object of information security were extensively analyzed based on the existing diversity of opinions in the legal literature, including international and domestic legal norms. Ensuring the information security of the individual serves to protect his rights and freedoms. Ensuring the information security of the individual, respectively, the physical, material, psychological, etc., existing in the individual society. protection from threats. Failure to take appropriate measures to ensure the physical health of the population, although a threat to security in the social sphere, in particular, any obstacle to freedom of access to information about the health of the individual, improper identification and use of personal data can be considered a threat to information security. In this regard, the legal regime of personal health information is based on human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan, in particular the right to privacy and respect for private life, confidentiality, compulsory compromise, recognition of the supremacy of national law and national security interests.

Keywords: *health, personal information, personal data, information, information security, national security, personal immunity*.

As it is known, information security is one of the main elements of the national security of the Republic of Azerbaijan (hereinafter - AR) in the modern era of widespread use of the Internet. According to the Law of the Republic of Azerbaijan "On National Security" of 2004 [1], the national security of the Republic of Azerbaijan is ensured in political, economic, social, scientific, cultural, spiritual, ecological, military, information and other fields (Article 15.1). As stated in the "National Security Concept of the Republic of Azerbaijan" approved by the Decree of the President of the Republic of Azerbaijan on May 23, 2007 [2], information security of the Republic of Azerbaijan, protection of public, state and private information resources is a system of complex events held. One of the national interests sought to ensure the implementation of these measures is the formation of civil society and the protection of human rights. Of course, the rights of individuals to health are among the human rights that must be ensured. The implementation of appropriate measures to ensure human rights is the security of the individual. From this point of view, along with the security of society and the state, the security of the individual is also the goal of ensuring national security. Therefore, the Law on National Security (Article 2.0.1) includes the individual, his rights and freedoms as objects of national security of the Republic of Azerbaijan. Based on this, we believe that information security, which is an integral part of national security, has three objects: society, state and individual. Information on the individual's health status belongs to the latter object.

Apparently, ensuring the information security of the individual serves to protect his rights and freedoms. Ensuring the information security of the individual, respectively, the physical, material, psychological, etc., existing in the individual society. protection from threats. Failure to take appropriate measures to ensure the physical health of the population, although a threat to security in the social sphere, in particular, any obstacle to freedom of access to information about the health of the individual, improper identification and use of personal data can be considered a threat to information security. To understand this, it is necessary to clarify the nature of information and personal health information.

Law of the Republic of Azerbaijan of April 3, 1998 "On information, informatization and protection of information" (Article 2) [3] and Law of the Republic of Azerbaijan "On Access to Information" of September 30, 2005 (Article 3.0.1) [4], facts, opinions, information, as well as

other information, created or obtained as a result of any activity, regardless of the date of creation, form of presentation and classification.

According to the Law of the Republic of Azerbaijan "On Personal Data" of May 11, 2010 [5], any information that allows direct or indirect identification is considered personal data (Article 2.1.1). Unlike the latter law, the Law on Access to Information (Article 3.0.2) includes "any information" that includes information about an individual's personal and family life. According to Article 38 of the same Law, information on health status is included in information on personal life. At the same time, this information belongs to a special category of personal data (Law on Personal Data, Article 2.1.6).

Although there are different approaches to the classification of information in the legal literature [6], legislation distinguishes between publicly available (public) and restricted access to information, depending on the type of access or access. This classification can also be applied to personal data. Thus, Article 5 of the Law on Personal Data, entitled "Legal regime and protection of personal data", distinguishes between confidential and open categories of personal data, including health information (Article 5.4), depending on the type of access.

Information that is anonymized in the manner prescribed by law, publicly disclosed by the entity to which the information belongs, or entered into a public information system with its consent, belongs to the category of open personal data. Thus, an individual's name, father's name, and surname are clearly personal information. Confidentiality is not mandatory for personal health information that falls into the public category.

In accordance with the provisions of the legislation, the following elements of the legal regime of personal data on health can be noted: 1) personal data on health are protected from the moment of collection; 2) the collection, processing and protection of such information shall not pose a threat to human health; 3) Confidentiality is a basic principle of the legal regime of personal information related to health.

According to this principle, the collection and processing of personal health information is not allowed, except as specifically provided by law. These exceptions include: 1) if the legislation considers the collection and processing of such information mandatory; 2) if the information belongs to an open category; 3) if the collection and processing of the said information is necessary for the protection of life and health of the subject, a group of relevant persons, and if it is not possible to obtain the consent of the subject to obtain the information.

From the above, it can be concluded that the confidentiality of such information, on the one hand, ensures the confidence of the subject in health care in general, on the other hand, helps to prevent potential threats to his health and the health of society as a whole. Thus, a person who wants to get married, who is sure that the results of the medical examination will be kept secret, does not hesitate to undergo such an examination. The result of a medical examination, on the other hand, prevents the transmission of skin-venereal, human immunodeficiency virus (AIDS) disease to another person (individuals) or births with inherited blood diseases. In this regard, it should be noted that the confidentiality of personal health information should be distinguished from the concealment of the subject's health information. It should be noted that the concealment of infection, especially in connection with communicable diseases, such as COVID-19 or AIDS, leads to appropriate legal consequences. For example, according to Article 3.7 of the Family Code of the Republic of Azerbaijan [7], one of the parties to the marriage has a skin disease, conceals the presence of AIDS from the other party to the marriage, and the marriage is considered invalid.

In this regard, the Family Code, which defines the results of medical examinations as a doctor's secret (which is prohibited), does not in fact prevent the marriage and the spread of the disease by placing the responsibility for concealment of information on the subject. However, the legislature criminalizes the spread of venereal diseases (Article 139) and AIDS (Article 140) under the Criminal Code [8]. (m. 9.7.3).

We believe that the current position of the Family Code would not be acceptable. Legislation that allows the collection, processing, and transmission of health information in such cases (Law on Public Health Protection, June 26, 1997 [9], without the consent of the patient or his representative) (Article 53) should also prevent the conclusion of "sick marriages".

We believe that this approach, in accordance with the principle of compulsory voluntary reconciliation and the requirements for the protection of public health and gene pool, is enshrined in Article 32.II of the Constitution of the Republic of Azerbaijan [10] and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms [11] (hereinafter referred to as the European Convention) shall not be construed as interference with privacy as defined in Article 8.

The following features of the legal regime of personal health information as an object of information security can be noted. The first is that the information security of the individual is intertwined with the information security of society and the state. That is, the failure to ensure the information security of the individual, as a result, poses a threat to the information security of society, and then the state. Any individual's concealment of personal health information or improper collection and processing of such information may result in a public health risk. The COVID-19 pandemic proved that this feature is characteristic of both the Azerbaijani society and the international level.

The experience of combating the above-mentioned pandemic has proved that health protection is twofold: 1) protection of public health; 2) the level of protection of the individual's health must be ensured [12]. The above feature is not only in the context of individual and public safety, but also the characteristics of individual health data of sensitive groups of the population (minors, the elderly, etc.) or a group of individuals (pregnant women, people with disabilities, etc.) is also important in terms of collection and processing.

On the other hand, an important issue in terms of the legal regime of personal data is the doctor's secret, which is defined by law as a professional secret.

According to Article 53 of the Law on Protection of Public Health, information on a person's application for examination, diagnosis, health status, results of examination and treatment is a doctor's secret.

Confidentiality of this secret is guaranteed. However, with the consent of the patient and his legal representative, information constituting a doctor's secret may be provided in the following cases: 1) for the treatment of the patient; 2) to prevent the spread of infectious diseases; 3) for conducting scientific research and teaching; 4) at the request of the bodies of investigation and inquiry and the court; 5) to inform the parents and legal representatives of minors. Second, the legal regime of personal health information as an object of information security is determined in accordance with the human and civil rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan.

Thus, in accordance with Article 32.VIII of the Constitution, the collection, use, transmission and protection of personal information, including health, is part of the right to personal immunity. The case law of the European Court of Human Rights also states that the collection, storage and disclosure of health information by the state falls within the scope of Article 8 of the European Convention and constitutes a disproportionate interference with the right to respect for private life [13]. The content of the protection of personal health information as an integral part of the right to privacy includes the following rights: 1) the right to confidentiality of personal health information; 2) the right to receive information on the state of health; 3) the right to receive information on factors affecting health; 4) the right to protection against unauthorized access to personal health information.

Third, the existence of the right to health in the human rights system, the existence of a global information space and the possibility of cross-border transmission of personal information, lead to the transition of personal health information security to the international legal level.

This makes it necessary to: 1) develop international cooperation in relevant fields; 2) To ensure the harmonization of the national legislation of the Republic of Azerbaijan with the norms of international law. In this regard, the accession of the Republic of Azerbaijan to the 1981 Convention on the Protection of Persons in connection with the Automated Processing of Personal Data, adopted within the Council of Europe in 2009 [14], as well as participation in international agreements establishing the right to health, is very important in terms of determining the effective legal regime of personal data. However, the harmonization of the legislation of the Republic of Azerbaijan with the norms of international law should be based on the following principles: 1) the preference for universally recognized principles and norms of international law; 2) Non-violation of the national security interests of the Republic of Azerbaijan (order public). Thus, personal health information is one of the objects of information security.

In this regard, the legal regime of personal health information is based on human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan, in particular the right to privacy and respect for private life, confidentiality, compulsory compromise, recognition of the supremacy of national law and national security interests.

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Date of receipt of the article in the Editorial Office
(26.01.2021)