ISSN 2223-0874
DOI: 10.61638/ilip23

INTERNATIONAL LAW AND INTEGRATION PROBLEMS
(Scientific-Analytical Journal)
№ 2 (69) 2024

CONTENTS

THE ROLE OF THE OMBUDSMAN İNSTİTUTİON İN ENSURİNG RİGHTS AND FREEDOMS İN THE FİELD OF İNFORMATİON

Gulnaz Rzayeva*, Zarrin Aliyeva**

Abstract

National protection mechanisms have an important role in ensuring rights and freedoms in the field of information in an era when the information society is being formed. Among these mechanisms, the activity of the Commissioner for Human Rights has a special weight. This activity includes both the consideration of complaints regarding the violation of the right to access information, and the implementation of various educational activities in the field of information. In the article, the role of the Ombudsman in the implementation of the national information policy in the field of information in the Republic of Azerbaijan and the legal regulations on the powers of the Ombudsman in the provision of rights in the field of information were studied, legal and practical proposals were presented as a result of the analysis of the experience of foreign countries.

Keywords: *freedom of information, information ombudsman, personal information, information request, human rights, information policy.*

1. Ensuring human rights and freedoms as the main direction in the formation of a national information policy in the information sphere in the Republic of Azerbaijan

In general, the central role in state policy, the main purpose of which is to create conditions and methods for the exercise of power that are acceptable to society, belongs to state authorities. State policy has a broad content and covers all areas serving the interests of the state and society, where the information sphere also has a special weight. The formation of a national information policy is not an arbitrary process, but goes through several stages. According to the UNESCO program, the process of forming National Information Society Policies includes the following:

- increasing attention among decision-makers to the importance and necessity of creating or updating National Information Society Policies;
- creating advisory expert groups to assist state officials in the formation of National Information Society Policies;
- involving other social elements of society (private sector, social organizations, etc.);
- diagnosing national and local conditions supporting the information society. Here, the national context is analyzed and the level of e-readiness of the state is compared in relation to the international context;
- main goals and directions for future development;
- creation of guidelines, budget, staff and programs for the implementation of National Information Society Policies;
- development of strategies and programs for National Information Society Policies [7, p. 43].

National information policy for each state should first of all be legally established and a normative basis should be created in this area. It is these normative sources that determine the directions of implementation of national information policy. Although the Law "On Information, Informatization and Information Protection" does not

* PhD in Law, Baku State University

** Master's student, Baku State University

provide a definition of national information policy, the term informatization is provided for (Article 2). Since this term covers the organizational, socio-economic and scientific-technical process aimed at ensuring everyone's information rights, it has the same meaning as the state's information policy in a certain sense. At the same time, the main directions of state policy in the field of informatization specified in Article 3 of the Law also directly determine the main directions of national information policy.

The national information policy in the Republic of Azerbaijan is implemented on the basis of a number of principles. These principles are based on both the Constitution of the Republic of Azerbaijan and other sources of law. First of all, we should note that all general principles of information law (guarantee of human rights and freedoms, equality before the law, legality, social justice, etc.) should also be guided in the national information policy. In addition, based on relevant sectoral sources, a number of principles of the national information policy can be determined. The principles of informatization are reflected in the National Strategies for 2003-2012 and 2014-2020.

Based on the above, it can be concluded that it is impossible to imagine the concepts of a legal state, a social state and civil society in isolation from each other, and the national information policy of the state has a special role in their development. All measures planned and implemented in various directions of this policy ultimately determine the provision of the supreme goal and declared intentions of the state reflected in the Constitution of the Republic of Azerbaijan.

In the implementation of the national information policy in the Republic of Azerbaijan, three periods can be conditionally distinguished: the period from independence until the adoption of the National Strategy for 2003-2012; the period from 2003 to 2014, that is, until the adoption of the National Strategy for 2014-2020; the period from 2014 to the present day.

Since the first period was a period when independence was just being achieved, there were gaps in the information field, as in all areas within the republic. In such conditions, there was no talk of normal provision of human rights and freedoms. Therefore, first of all, special attention was paid to cleaning up the remnants of the former USSR. The Decree of the President of the Republic of Azerbaijan of August 6, 1998 on additional measures to ensure freedom of speech, thought and information in the Republic of Azerbaijan, which included giving instructions to state bodies in this area, abolishing censorship, adopting relevant legislative acts (the Law on Freedom of Information, the Law on Information, Informatization and Information Protection, etc.), etc., were aimed at ensuring freedom of information in the country. Gradually, national projects began to be developed, and these projects gave wide scope to the application of ICT. A mobile telephone network covering almost the entire territory of the republic was formed, and projects were developed to transfer communication channels to the digital mode.

The approval of the National Strategy for 2003-2012 by the President of the Republic of Azerbaijan in order to eliminate all the problems listed above was essentially the beginning of the second stage. Thus, the main directions of the national information policy within the country began to be rapidly implemented. The goals and objectives reflected in this Strategy, as well as the priority directions, were consistently implemented with the measures envisaged in the "State Program for the Development of Communication and Information Technologies in the Republic of Azerbaijan for 2005-2008 (Electronic Azerbaijan)" and the "State Program for the Development of Communication and Information Technologies in the Republic of Azerbaijan for 2010-2012".

As for the third stage, at this stage, further development of the already formed information society and the transformation of the modern citizen into an active member of society are observed. The National Strategy for 2014-2020 and the "State Program for the Implementation of the National Strategy for the Development of the Information Society in the Republic of Azerbaijan for 2016-2020" adopted for its implementation continue to be implemented continuously.

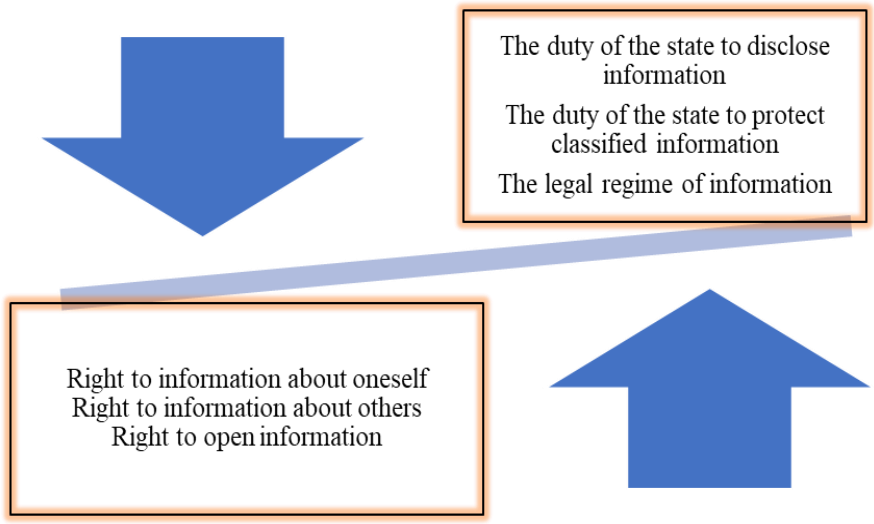
2. Legal regulation on the powers of the Ombudsman in ensuring rights in the field of information

In accordance with Article 42 of the Law of the Republic of Azerbaijan "On Access to Information", the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, as one of the entities exercising control over the implementation of that Law, carries out its activities in accordance with the procedure established by the Constitutional Law of the Republic of Azerbaijan "On the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan" dated December 28, 2001. For the purpose of implementing this Article, amendments and additions were made by the Constitutional Law of the Republic of Azerbaijan "On Amendments to the Constitutional Law of the Republic of Azerbaijan on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan" dated June 24, 2011, and the following paragraph was added to Article 1 of the aforementioned Law: "The Commissioner shall exercise control over the fulfillment of the duties of state bodies, municipalities, public legal entities, and their officials (owners of information) arising from the requirements of the Law of the Republic of Azerbaijan "On Access to Information" (Article 1.3).

The main reason for adding the mentioned norm is the establishment of an information society in our republic and ensuring the active participation of citizens in information exchange. Thus, the regulation of the right to access information is of great importance in ensuring accountability, which is one of the main goals of political structures in a democratic system. In this sense, the main purpose of legal regulations that include the right to access information is to develop institutions of accountability and transparency by justifying the operations of public administration on the basis of legal clarity. The rules on the right to access information, which emerged after developments such as the fact that the governed began to think and express opinions about the decisions made by the administration over time, did not accept these decisions as they were, questioned and tested, aim to ensure openness in administration and force the administration to be at the service of individuals. In this way, by increasing public awareness and, in particular, by creating the opportunity to participate in administration, it is possible for the governed to move from a passive position to an active position. Therefore, it can be considered that the recognition of the right to access information is one of the most important conditions for public participation in administration. If there is no information, it will be impossible to govern. Because today, management and power are concentrated in the hands of those who have knowledge [8, p. 129].

As can be seen from the content of the above-mentioned article of the Law "On the Ombudsman", the Ombudsman in our republic monitors the fulfillment of the duties of information owners stipulated in the information legislation. When we look at the list of these duties regulated in Article 10 of the Law of the Republic of Azerbaijan "On Access to Information", we can conclude that the Ombudsman can monitor the provision of all

elements of the right to information of individuals. Thus, we can describe the elements of the right to information as follows:



When we pay attention to the annual reports of the Commissioner for Human Rights, we observe that most complaints are related to the failure of information owners to fulfill their duty to disclose information. Therefore, we consider it appropriate to initially analyze the elements of the right to access information: "the state's duty to disclose information" and "the right of individuals to open information".

State bodies that govern the country on behalf of the public and in the public interest use state power and privileges to achieve this goal. This situation inevitably leads to the emergence of unbalanced relations between the state and the individual. In this unbalanced relationship, openness and accountability of the state body must be ensured so that the rights and freedoms of the individual are protected and ensured. Within the framework of the right to access information, individuals should be able to request certain information that does not directly concern them, but will allow them to get acquainted with the activities of state bodies. Such information appears to be information of general interest. In order to ensure that states fulfill their obligations to facilitate access to information, the obligation of states to inform (the obligation to actively provide information) has now been unequivocally recognized in matters of public interest, such as human rights, health and the environment.

The duty of the state to disclose information should be interpreted in the context of the list of open information specifically established by law (Article 29 of the Law "On Access to Information"). In accordance with Article 34.1 of the same Law, information, access to which is not restricted by the legislation of the Republic of Azerbaijan, is considered open information. This norm does not fully express the concept of open information. A more complete interpretation is reflected in Article 2 of the Law "On Information, Informatization and Protection of Information", where open information is explained as documented information, the access to which, processing, provision or use of which is not restricted by the legislation of the Republic of Azerbaijan and intended for general use. From the definition of documented information in the law, it is clear that this includes information recorded in accordance with specific rules. Therefore, we are talking about information created exclusively by authorized bodies and obtained from reliable sources. As can be seen from the content of the second article, the most important feature characterizing the legal regime of open information is that it is not limited by law. In order to ensure this norm, the legislator has taken a two-fold step: by

determining the scope of information whose access is restricted and establishing a separate legal regime for them; by imposing the obligation to disclose information on specific subjects in the legislative procedure.

In the first case, special regulatory rules have been established for various types of information intended for limited use (state, professional, commercial secrets, etc.). At the same time, these rules are strictly observed in the processes of electronic and informatization.

In the second case, the legislator has defined a number of duties for information owners through the method of instructions, where, first of all, the duty to disclose information that they possess or that was created or obtained as a result of the performance of public duties should be noted (Article 29.1). Who are information owners? - According to Article 9 of the Law "On Access to Information", information owners are not limited to state bodies and municipalities, but also include private legal entities and individuals.

Users of open information are guaranteed to have access, which is set as the duties of information owners "On Access to Information": the owner of information manages public information in such a way that this information is available to everyone who needs it as soon as possible (Article 31.1). The legislation establishes the methods of disclosing information, the most widespread of which is disclosure in Internet information resources. The most leading direction in the management of the National Strategy and State Programs for the Establishment of Information Security is the creation of Internet information resources. The creation of websites of all state and municipal bodies and posting open information about them on those sites, the creation of portals ensure the accessibility of open information for everyone. Based on the analysis of the annual reports of the Ombudsman for the last 3 years, it is possible to access appeals regarding the failure to achieve access to open information. Only in 2022, one complaint was filed regarding the lack of an online information request section on the official website of the Ministry of Ecology and Natural Resources of the Republic of Azerbaijan, which made it impossible to send an electronic request to that ministry. Based on the complaint, the Ombudsman contacted the ministry and recommended that the mentioned gap be taken into account [9].

Complaints sent to the Ombudsman mainly concern information that concerns individuals themselves and others. The analysis of these two elements of the right to information is related to the state's duty to protect classified information. Because in many cases, the legal regime of classified information is taken as the basis, and the execution of the information request is refused. In this sense, the determination of the purpose and reason for the restriction of information rights should be evaluated as a whole, and a conclusion should be reached by creating a balance between the research to be conducted in connection with the application regarding the right to information and the interest of the document requesters in this information and documents. The question of which information and documents are related to the security of the state and its activities, that is, which information and documents, which are often emphasized in the literature, should be described as confidential or secret information, may arise. It is believed that the answer to this question is reserved for legal regulation.

The national legal regulation of the right to information considers it acceptable to realize this right within the framework of an information request. When executing an information request, compliance with imperative norms regarding confidential information is considered an essential condition. Thus, in order to organize control over

the execution of information requests, they are registered by the information owner on the day they are received and information about the request is entered into the document register. After examining the registered request, the information owner may make one of the following decisions: it is possible to refuse to execute the request; it is possible to ensure the execution of the request; since the request does not apply to his jurisdiction, it can be sent to the information owner in accordance with the jurisdiction.

Based on the complaints cited in the annual reports of the Commissioner for Human Rights, it is difficult to determine whether individuals' rights to their own information or the information of others have been violated. In fact, such a distinction would be more practical in terms of the legal regime of closed information.

At the same time, information owners themselves may also have requests regarding closed information. In this case, it is permissible to file a complaint with the Ombudsman if the request is not satisfied. The 2023 Report states that information requests addressed to the Ombudsman as the owner of information were fully and comprehensively responded to within the time period specified by the Constitutional Law on the Ombudsman and the Law on Access to Information. The first of these requests was related to the submission of data on statistics of applications related to domestic violence from the Commissioner, and the second was related to the procedure for making proposals to state bodies [9].

3. Is there a need to create an information ombudsman: a comparative analysis of the experience of foreign states with national experience

First, let's analyze the types of ombudsman. Types of ombudsman can be divided into two groups: general and special-purpose ombudsmen. A general-purpose ombudsman is an institution that investigates complaints arising from all areas of activity of state administration bodies and organizations and tries to provide solutions to problems. General-purpose ombudsmen can be at the national, local or regional level. For example, in the USA there is no ombudsman institution at the national level, but ombudsmen operate at the state level. In individual states, ombudsmen are independent institutions that provide assistance in disputes between various individuals and industrial organizations or government agencies. Ombudsman services are free for the public and are considered a means of resolving disputes outside the court system. However, the Ombudsman Association (USOA), which has been operating in the United States since 1977, is a national organization for ombudsmen in the public sector and includes members of ombudsmen offices and related ombudsmen offices in local, state and federal governments [13].

The ombudsman institution in our republic can also be attributed to the general-purpose type. Because the position of the Ombudsman of the Republic of Azerbaijan was established by law to restore all human rights and freedoms that have been violated (Article 1 of the Law "On the Ombudsman of the Republic of Azerbaijan").

The scope of control of a special-purpose ombudsman is more specifically related to complaints arising from services in the public sphere. Examples of special-purpose ombudsmen include ombudsmen dealing with children, healthcare, the armed forces, the police, prisons, people with disabilities, consumers or students. For example, the German Military Ombudsman, the Norwegian and Swedish Children's Ombudsman, the Canadian Prison Ombudsman, etc. [10, p. 78]. The information ombudsman

operating in Australia [2], Canada [5] and other countries can also be considered as special purpose.

In addition, with the increase in technological development, the interaction between states has increased and the institution of the ombudsman has become an international institution after the Second World War. An example of an international ombudsman is the European Ombudsman, established in 1995 within the framework of the European Union in accordance with the Maastricht Treaty of 1992. There are Rules establishing the norms and rules governing the performance of the Ombudsman's duties, adopted by the European Parliament on 9 March 1994. Any person who is a citizen of a Member State of the European Union and resides in the territory of the European Union may apply to the Ombudsman. At the same time, legal entities registered in any of the Member States of the Union may also apply. Two forms of application are considered: a person may address the Ombudsman personally or through a Member of the European Parliament. The complaint is submitted in writing and the application may be written in free form or in a specific template. The Ombudsman can be contacted in one of 11 official languages [1, p. 313].

Therefore, since the information ombudsman belongs to a special type, his or her scope of authority is also limited and specialized compared to the general type. As an example, it would be appropriate to consider the experience of several countries. In Canada, the Information Ombudsman reports to Parliament and investigates complaints about how federal agencies handle and respond to requests in accordance with information legislation. The Ombudsman's activities are not limited to this, but also include educational campaigns. For example, starting in 2024, September 28, in connection with World Freedom of Information Day, Canada has declared "Right to Know Week" (September 23-29) [3]. The Information Ombudsman of Canada stated in its statement that government information belongs to Canadians and access to information is a means of holding their governments accountable for their decisions and actions. To ensure effective and responsible management of public funds and to combat disinformation and misinformation, measures and decisions must be properly documented and communicated in a spirit of transparency [6].

The Australian Information Ombudsman's work is broader, covering both personal data protection and freedom of information. The institution's website provides individuals with the opportunity to make online complaints about breaches. Personal data here is characterised by a very wide range of content: a person's name, signature, address, telephone number or date of birth; location information on mobile devices (as this can reveal user activity patterns and habits); sensitive data (racial or ethnic origin, political opinions or associations, religious or philosophical beliefs, trade union membership or associations, sexual orientation, criminal convictions, health or genetic data) [12].

In our opinion, the Australian experience can be considered a successful and pioneering experience. Because today, states around the world use information technologies to collect, store and, where necessary, process basic demographic data about individuals in order to facilitate public services. States mainly aim to facilitate the implementation of public services through projects that ensure the collection, registration and processing of personal data on a large scale and in a single center. One of the most important elements of the right to information is that it includes rules that allow individuals to obtain all kinds of information and documents that are under the control of the state about them. However, the inclusion of this element raises some

questions regarding the systems that allow the collection of personal data. What part of this data will be accessible to third parties and on what grounds? Which government agencies will use this information and for what purposes? How accurate is the personal data collected and how is its accuracy verified? – As a result, along with its positive aspects, the spread and power of information technologies give rise to some concerns. Allowing the continuous monitoring of an individual, excluding the individual from the information flow, collecting and storing unlimited personal data without the individual's knowledge, and the possibility of misuse of personal data for various purposes are some of the concerns and shortcomings on the agenda of the time. The increase in the number and diversity of transactions, especially in electronic environments, has necessitated the adoption of new measures and regulations to protect and ensure the confidentiality of personal data. Along with respect for private and family life, the right to the protection of personal data has also begun to be legally recognized in various European countries. The issue of personal data protection was first raised within the Council of Europe in the late 1960s.

In 1981, the member states of the Council of Europe adopted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in Strasbourg, and the protection of personal data began to be ensured by all states. The Convention was also ratified by the Republic of Azerbaijan with relevant declarations on 30 September 2009. The Convention also provides certain guarantees for the data subject. Accordingly, the data subject will have the opportunity to determine the existence of a data file subject to automated processing, the purpose of its storage and the identity and function of the body storing it. The data subject will be informed at reasonable intervals and without delay whether personal data relating to him are stored in an automatic data file and, if so, of the data stored. The data subject has the right to obtain access to data processed in violation of the provisions of domestic law drawn up in accordance with the principles of the Convention and, where necessary, to have them erased or rectified. In addition, it has the ability to take legal action if the request for verification, correction, or deletion is not met, if necessary [11].

As can be seen from the provisions of the Convention, an important aspect of the protection of personal data is the right of individuals to receive information about the data stored about them. The purpose of regulating this issue is to minimize the harm that individuals have suffered or will suffer as a result of recent developments in information technologies. Therefore, it is the natural right of individuals to check the accuracy of the data about them and to request its correction or deletion if it is incorrect. Undoubtedly, if no other mechanisms are provided, the right to access information will be the most effective means for individuals to exercise these rights. In this regard, special attention should be paid to the issue of personal data protection in the activities of the Ombudsman.

According to the reports of the Commissioner for Human Rights in our Republic, it is not possible to obtain accurate information on the number of complaints regarding the execution of requests for the provision of personal data. According to the Ombudsman's approach in his reports for 2019 and 2021, the Law "On Access to Information" does not provide for the submission of an identity document in written information requests, except for cases where the requester wishes to obtain personal information. According to Article 4 of that Law, this Law does not apply to proposals, applications and complaints regulated by the Law "On Citizens' Appeals". Despite the

above, the requirements imposed on appeals in the online appeal sections of the official websites of state institutions also apply to information requests, which limits the rights of the persons submitting the request. Taking into account the above, the Ombudsman considers it necessary to bring the online appeal sections of the official websites of state institutions into line with the requirements of the Law "On Access to Information" [9].

We believe that an information request should not be equated with a citizen's appeal. A person exercising the right to appeal either applies with an application to exercise any of his rights, or submits any proposal, or formalizes a complaint regarding any violation. Although information acts as an object here, there is no requirement for the state body to provide any information. In the right to information, the state is obliged to provide the information requested by the person to the person. For example, if the requested information concerns a natural person and is of a nature that will change his legal status, failure to respond may result in administrative disputes as it will lead to legal consequences for the person. This means giving an individual an advantage in terms of forcing the state body to take action on a certain issue. From the point of view of political participation, we can say that the right to access information can be used as a much more effective tool than the right to appeal. This right allows individuals to learn about state policy on issues that interest them and try to influence the government using other means of participation. Thanks to this right, individuals who learn about the points they do not like or lack in state policies have the opportunity to put forward proposals for solutions to these policies and to convey these proposals to the government in various ways.

The online appeal section on the website of state bodies is related solely to appeals (proposals, applications and complaints). Therefore, requiring an identity document is permissible. Because, according to the Law "On Appeals of Citizens", an appeal sent in written form without the citizen's surname, name, patronymic, address, personal or electronic signature (in relation to legal entities, the name and legal address of the legal entity, the signature of its head) is considered anonymous. Anonymous appeals are not accepted and are not considered by the entities considering the appeal and their officials. In addition, it is clear from Article 13 of the Law "On Access to Information" that the execution of an information request is carried out in a different manner.

Based on the above, it can be concluded that special attention should be paid to the powers granted to that institution by law, rather than to the existence of a general or special-purpose ombudsman institution to protect rights and freedoms in the field of information.

4. Conclusion

In world practice, either an independent information ombudsman institution operates to protect information rights, or a separate department is formed in the Ombudsman's Office. Both from a legislative and practical point of view, information rights are protected along with other rights in Azerbaijan, and a separate institution has not been established. In our opinion, since freedom of information is realized in most cases in conjunction with other rights, there is no need to establish an independent information ombudsman. It is more expedient to simply establish a separate department for the protection of information rights in the Ombudsman's Office, as well as to increase the number of separate regional centers in the territories and have them operate in a coordinated manner. Based on the analysis of the annual reports of the

Commissioner for Human Rights, we can conclude that both the consideration of complaints and the implementation of educational activities regarding the provision of the right to information are of particular importance in the activities of the Commissioner. However, separating complaints regarding access to information related to personal data may be more practical in terms of protecting this data.

References:

1. Aliyev, A.I. Human rights. Textbook. Revised and supplemented second edition. – Baku: Nurlar, – 2019. – 352 p (in Azerbaijani).
2. Australian Information Commissioner: [elektron resurs] URL: https://www.oaic.gov.au/ (last access: 12.08.24)
3. Canada marks Right to Know Week: [elektron resurs] URL: https://oic-ci.gc.ca/en/right-know (last access: 10.08.24)
4. Information law: textbook / A.I. Aliyev, G.A. Rzayeva, A.N. Ibrahimova, B.A. Maharramov, Sh.S. Mammadrazali – Baku: Nurlar Publishing House, – 2019. – 448 p (in Azerbaijani).
5. Information Commissioner of Canada: [elektron resurs] URL: https://oic-ci.gc.ca/en/information-commissioner-canada (last access: 13.08.24)
6. Information Commissioner's Statement for Right to Know Week 2024: [elektron resurs] URL: https://oic-ci.gc.ca/en/resources/news-releases/information-commissioners-statement-right-know-week-2024 (last access: 10.08.24)
7. National information society policy: A template. Developed by The Information For All Programme of UNESCO. – Paris, – November 2009. – 143 p.
8. Rzayeva, G.A. International and national-legal problems of ensuring basic human rights and freedoms in the field of information: / Dissertation for the degree of Doctor of Law / – Baku, – 2024. – 288 p (in Azerbaijani).
9. Reports of the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman) for 2019, 2020, 2021, 2022 and 2023: [electronic resource] URL: https://ombudsman.az/az/pages/32Sezen, S. Ombudsman: Türkiye İçin Nasıl Bir Çözüm? // Amme İdare Dergisi, – 34(4). – s. 71-96 (in Azerbaijani).
10. Sezen, S. Ombudsman: What is the solution for Turkey? // Amme Administration Journal, – 34(4). - p. 71-96 (in Turkish).
11. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108): [elektron resurs] URL: https://www.coe.int/en/web/data-protection/convention108-and-protocol#:~:text=The%20Convention%20for%20the%20Protection,in%20the%20data%20protection%20field. (last access: 12.08.24)
12. The Office of the Australian Information Commissioner: [elektron resurs] URL: https://www.oaic.gov.au/about-the-OAIC (last access: 12.08.24)
13. The United States Ombudsman Association: [elektron resurs] URL: https://www.usombudsman.org/ (last access: 12.08.24)

Date of receipt of the article in the Editorial Office
(21.08.2024)

COMPARATİVE ANALYSİS OF THE EXPERİENCE OF FOREİGN COUNTRİES ON THE REGULATİON OF RELATİONS İN VİRTUAL SPACE

Elnur Humbatov*

Abstract

Despite the fact that the virtual space is borderless and uniform, the traditional differences existing in the management and legal systems of individual states also affect the regulation of relations formed in the virtual space. Thus, the legal regulations of the states with the Anglo-Saxon system differ from those of the countries belonging to the Roman-Germanic system by giving priority to democratic elements. In addition, the formation of information communication infrastructure and the development of the information economy also have an impact on the practice of legal regulation of virtual space. Therefore, regulation was formed and improved faster in technically and economically developed countries of the world. In the article, such issues were investigated on the basis of comparative analysis and advanced practices were distinguished and their advantages were determined.

Keywords: *virtual space, protection of human rights, legal regulation, Anglo-Saxon system, Romano-Germanic legal system, national legislation.*

I. Introduction

In order to analyze the experience of foreign countries on the regulation of new relations formed in the virtual space, we consider it appropriate to use three development models presented by Azerbaijani authors. European, Anglo-American and Asian models [1, p. 154]. The main reason for the differentiation of these models is that if European countries pay more attention to the protection of economic rights, in the Anglo-American countries the protection of political rights and freedoms in the virtual space and the development of e-democracy have been brought to the agenda. Despite the fact that Asian countries are characterized by more technical developments, the stereotypes prevailing in public administration continue to influence the regulation of virtual relations.

II. European experience

The European Union's (EU) interest in legal regulation of the Internet and virtual space has a relatively short history. Although relevant intellectual property and data protection laws existed earlier, specific e-commerce initiatives can be traced back to the mid-1990s. Historically, the first document showing an interest in Internet law and influencing the EU's subsequent approach to the Internet is the European Initiative on Electronic Commerce from 1997 [10]. Although the main purpose of the document was to promote the development of e-commerce, it was based on a special interest, such as the desire of the Commission to create a relevant regulatory framework.

Four guiding principles have been developed for the framework. The first is related to technology: the EU must promote the technological and infrastructure necessary to ensure competitiveness. The second is related to regulation: the EU should ensure a coherent regulatory framework based on the Single Market. The third is about promotion: consumers and industries had to be made aware of the opportunities that

* Ph.D. in Law, Baku State University

electronic commerce allowed. The last was related to the international dimension: the EU had to ensure an effective international presence.

At the same time, the four principles were supposed to provide an adaptable and appropriate framework for legislation:

• There should have been no regulation for regulation's sake;

• Full and comprehensive regulation based on Single Market freedoms should have been preferred;

• All arrangements had to take into account business realities;

• It had to be possible to obtain all interests efficiently and objectively.

The initiative of a new policy on Information Technologies under the Council of Europe was proposed at the Strasbourg Summit in 1997 and was developed in 1999. Digital technologies, especially freedom of expression, transparency, pluralism, etc. While highlighting its significant potential for issues like The Declaration mentions an output that is particularly important for any potential success of information technology [17].

The third historic step was taken with the Lisbon Declaration and the e-Europe initiative. The main priority of the initiative was to make Europe the most dynamic knowledge-based economy in the world by 2010. It was thought necessary for the Internet to become more widespread and for better acceptance of e-commerce. Both problems were directly related to the need to liberalize the telecommunications sector in the member states. Following this, work was started on a number of Directives, including the Electronic Commerce Directive. In addition, self-regulation was encouraged, such as the creation of a separate .eu domain name.

The practical plans for the regulation of the Internet were two action plans: eEurope 2002 and its sequel eEurope 2005. The 2002 Action Plan, which set the main task of penetrating the Internet, made a significant contribution to the 2002 revision of the regulation of the telecommunications sector [13]. In addition to services such as e-health, e-government, e-education and e-business, the 2005 Action Plan focused on connectivity. The 2005 plan was revised in 2009 [14].

We can also mention I2010: European Information Society for Growth and Employment, an information society initiative launched in June 2005 as a new strategic framework defining rather broad policy guidelines for the information society and media. It has three objectives:

- Creation of the Single European Information Space;

- strengthening investments in innovation and information technologies;

- Improvement of public services and quality of life through better use of ICT [7].

In essence, this document is just a continuation of the previous initiative.

In Europe today, within the framework of the Europe 2020 strategy [15], the Digital Agenda for Europe is a key action plan aimed at helping to deliver a digital Single Market [9]. This document is based on seven pillars: Digital Single Market, interoperability and standards; ICT standards setting and interoperability; trust and security; fast Internet access; improved ICT research and innovation; improved digital literacy and digital skills; Social benefits enabled by ICT. The agenda also includes a list of 101 action plans that must be implemented to achieve these goals. In 2015, the digital single market strategy further developed the digital agenda with three pillars:

1) Providing better access to digital goods and services in Europe;

2) creation of optimal conditions for digital networks and services;

3) strengthening the growth potential of the digital economy.

Aiming to shape Europe's digital future, the 2020 strategy focuses on technologies that benefit people, a competitive economy and an open, democratic society. In 2021, this strategy was supplemented by a digital compass for 2030, which details the EU's digital goals for the decade [8].

Today, the Council of Europe is an important European and world information provider. Therefore, the Council decided to set an example by developing an information policy based essentially on two pillars: declaring transparency as a principle (for example, confidentiality is lifted only one year after the release of restricted documents) and using the website as a spearhead for disseminating information (including creation of a common and comprehensive network for various websites developed over time, which will greatly simplify the tasks of both users and content providers: www.coe.int) [17].

An interesting experience of the Council of Europe in the field of information provision is the Internet library LOREG (Local and Regional Government) [23]. This database not only offers very powerful and user-friendly search tools, but also takes on the difficult task of creating a real network between different information providers in the field of local and regional democracy. This multi-level networking service from LOREG includes several features:

- LOREG works as both a database and a meta-database, the search results are both documents hosted by LOREG and documents hosted by official national websites and databases;

- creates a physical network of editors representing different European countries, responsible for entering and updating information referring to their countries;

- LOREG is designed to communicate with other databases so that research in one database can bring information from another database. In addition, the Council of Europe Conventions database provides not only the texts and explanatory reports of the current 185 Council of Europe Conventions, but also real-time information on signatures, ratifications. The case law database of the European Court of Human Rights [18], the Council of Europe Web Directory [22], which offers online access to the document library of the Council of Europe, should also be mentioned among the main and reliable sources of information.

With human rights and democracy at the core of its interests, the Council of Europe has launched a series of activities to help find standards, tools and instruments that will help maximize the benefits of new technologies for democracy. These activities explore the impact of new technologies in general, and e-democracy in particular, on the role, functioning and means of action of both central and local/regional governments. Following the results of a comprehensive study of the situation in Europe, they try to put forward proposals to help states meet the challenges of tomorrow's democracy [17]. Let's take a closer look at the experience of several European countries.

Germany. Germany is the first European Union member state to resolve legal issues related to the Internet. On June 13, 1997, the Law on Television Services classified three groups of users as access providers, service providers and content providers, and their criminal liability was also regulated in this context [6, p. 74].

In Germany, Internet users' obligations regarding Internet content are governed by the Telecommunications Media Act of 2007. According to this law, service providers

are not responsible for the content of data transmitted on their servers. In Germany, two main issues regarding censorship have been accepted. The first is the promotion of racial hatred against minorities, and the second is the denial of the Jewish holocaust. The Federal Children's Network Authority has the authority to regulate various pornographic and violent content. In fact, in 2009, the German Federal Parliament adopted the Law on Combating Child Pornography in Communication Networks, which mandates service providers to block access to sites that contain child abuse [6, p. 74].

Italy. Italy was the first country in Europe to publish a declaration on the Internet. Thus, although the Declaration of Internet Rights published in 2015 does not have legal force, it is considered an important document for Internet freedom in Italy. The right to access the Internet, data protection, Internet neutrality, anonymity and the right to be forgotten as regulated in this declaration are important regulations for Internet freedom. In Italy, blocking or censorship of Internet access is generally not practiced on social, political or religious topics. There are legal regulations and barriers to entry related to gambling, child pornography, anti-terrorism, and copyright. Recently, there have been many requests to Google to remove content in Italy, especially on topics such as defamation, hate speech, privacy and security, violence, harassment and copyright. The highest requirement for content removal is defamation. Internet is free in Italy [12].

France. France is a country that supports freedom of the press and access to online content. According to the current report of Freedom House, the Internet is free in France. In France, the main law dealing with illegal content and actions on the Internet is the LCEN (Law on Confidence in the Digital Economy) on copyright. According to this law, service providers will not be liable if they are not aware of illegal content and remove that content as soon as they become aware of the content. However, if there is a court order sent to them regarding illegal content, they are also obliged to check whether this content has been re-uploaded. In France, terrorism and child pornography websites are blacklisted by the Information and Communication Technology Crime Center, which is updated monthly. After the terrorist attack on Charlie Hebdo magazine in January 2015, two decrees were issued by the prime minister allowing access to terrorist websites to be blocked without a court order. Parliament has passed a law that gives intelligence agencies the power to intercept electronic communications and demand user data from service providers without first obtaining a court order. The rationale for this law is public safety, terrorism and crime prevention.

After the terrorist attack in Paris in November 2015 and the terrorist attack in Nice in July 2016, the request of the French authorities to block access to websites with terrorist content has increased significantly. In 2017, President Macron's proposal to give discretion to the courts to prevent access to fake news sites to prevent disinformation during the elections was the subject of debate, and after the bill was approved by the parliament, the senate rejected the bill [19].

III. Anglo-American experience

The Communications Decency Act (CDA), which entered into force in the United States on February 8, 1996, is one of the first legal texts designed to solve the problems caused by the Internet in the world [5, p. 176]. This law was enacted as part of the Telecommunications Law. According to the Communications Ethics Act, the publication and transmission of obscene images, text and similar content shared on the Internet, and the sharing of violent content, is regulated as a crime. To enforce the said

law, authorities were given the ability to monitor people's e-mail correspondence and chats on the Internet. Later, an opposition movement against this law began under the leadership of the American Civil Liberties Union. Based on this, in the lawsuit opened in the Philadelphia Court, it was stated that the word "obscene" is ambiguous and contradicts the principle of determinacy of criminal norms, and it was decided that this law contradicts the freedom of expression established in the Constitution. The US Supreme Court approved this decision in 1997 and justified that the Internet as a means of mass communication should be protected from government interference. The lack of regulation of online publishing has certainly created chaos, but it shouldn't have. It should not be forgotten that the power of the Internet also originates from this chaos [6, p. 73]. This decision of the Federal Supreme Court is very important in terms of Internet freedom.

In the United States, a number of laws have been passed regarding Internet content, especially child pornography. However, there is still some conceptual debate between freedom of expression and Internet freedom. For example, it is up for debate whether to regulate issues such as gambling and cyber security, or to what extent the regulations interfere with freedom of expression. In the United States, the Federal Communications Commission declared the Internet a public property by its decision dated February 26, 2015. In addition to all this, it is noteworthy that in 2014 Reporters Without Borders added America to the list of Hostile Countries of the Internet [12].

England. In terms of Internet access restrictions, the British Defamation Act, the Copyright Act and legislative provisions related to the fight against terrorism and child pornography are at the fore in the country. In the UK, the filtering system is generally applied to matters such as dating sites, drugs, alcohol and tobacco, gambling, pornography, violence, terrorism, suicide and cyberbullying. Filtering is removed only when subscribers indicate that they do not require filtering. In other words, some content is automatically prevented from reaching users by the government. This idea was first brought to the agenda in 2010 during the coalition government and later started to be implemented. Filtering is also implemented in most schools and libraries. However, this system is criticized due to insufficient filtering software. For example, when all sites containing a word are blocked, it can be seen that the corresponding content is also blocked [6, p. 78].

IV. The experience of the Republic of Turkey: approximation to the European experience and strict legal regulations specific to Asia

In some paragraphs, information on the level of individual rights and freedoms has been provided regarding the regulations carried out by Turkey in the virtual space. The leading legislative act in this field in Turkey is Internet Law No. 5651, adopted on May 4, 2007. The main purpose of this Law is to define the entities related to the Internet and to determine the responsibilities and sanctions against them.

The European Commission emphasized that Law No. 5651 contains content that violates the freedom of expression, and stated that this law should be revised within the framework of the proportionality of the interference with rights and freedoms and Turkey's international obligations. The law has been heavily criticized in the European media by the NGO European Digital Rights (EDRI) [21].

In general, the analysis of Turkey's judicial experience shows that Internet freedom is not fully protected here, and in many cases access is blocked. In the decision of the Constitutional Court No. 2014/5552108 Ali Kıdık, the conversation refers to the

claim that the decision to block access to articles and some news on the Internet news site violates the freedom of expression and press. The applicant is the owner and editor-in-chief of the website airporthaber.com. On the said website in April 2014, the name of O.Y., who was the president of the Turkish Aviation Authority (THK) at that time, was mentioned. Thus, five separate articles were published about him. On the basis of the complainant's (O.Y.) application, the first-instance courts made a decision to prohibit access to the articles that are the subject of the complaint. According to the Constitutional Court, Internet journalism should be evaluated within the framework of freedom of the press as long as it fulfills the main function of the press. From the point of view of the press, the freedom of the Internet, which is considered within the framework of the freedom of opinion and expression, is considered as the freedom to obtain news or opinion, which is protected by the Constitution and constitutes the basis of freedom of expression. For those who access the Internet, freedom of expression and freedom of the press are valid for everyone and are vital to the functioning of a democracy. Freedom of expression and the press refers not only to the content of information, but also to the means of dissemination of this information. Therefore, any restriction imposed in the form of blocking access to websites or news on websites violates the freedom to receive and impart information. It should not be forgotten that the freedom of the press provides one of the best means for conveying various ideas and attitudes to the society and forming an opinion about them. In the mentioned decision, the Constitutional Court stated that the concept of Internet freedom should be considered within the framework of freedom of expression, and the restrictions in the form of blocking access have the nature of interfering with Internet freedom. According to the Constitutional Court, other rights and freedoms related to Internet freedom, especially freedom of expression and press, are vital in a democratic society. Authorities exercising state power regarding the Internet must be very sensitive. In this regard, blocking access to the Internet should be a last resort. If it is possible to combat harmful content on the Internet by other means, or if the interests protected by blocking access will be more harmed, then the decision to block access is a violation of freedom of expression [2, para. 43, 82]. Similarly, Medya Gündem Dijital Yayıncılık Tic. in the Inc. decision, the Constitutional Court stated that Article 10 of the European Convention protects not only the content of opinions and opinions, but also the method of their delivery and noted that in the case of interference with the freedom of expression and the press, there were relevant and sufficient grounds to justify the interference in local court decisions. - absence, as well as whether there is a reasonable balance between the purpose of the restriction and the means, should be evaluated in terms of the requirements of the democratic social structure [2, para. 41].

As can be seen, the Constitutional Court of Turkey refers to the connection of the Internet with freedom of expression in most of its decisions. However, despite all these decisions, there is an increase in the number of websites blocked in Turkey and the number of people convicted for their statements shared on the Internet. In this regard, the blocking of access to Wikipedia can be mentioned in particular. According to the interpretation of the Constitutional Court, if access to the entire site is blocked due to the content shared by the user, even if there is a precautionary measure, it becomes impossible for all individual users to benefit from the site, and this constitutes a violation of the law [2, para. 39, 40]. Therefore, the decision to block access to Wikipedia should be revoked immediately. Although interferences with Internet content are often

carried out within the framework of Law No. 5651, it seems that the decisions of the Constitutional Court always give importance to Internet freedom and specifically mention that the restriction is exceptional [6, p. 216].

V. Conclusion

As existing laws in nations around the world do not cover behaviors that have the harmful effects of virtual reality, legal systems in the real world are taking steps to combat these new forms of crime. For example, Korea passed laws in 2007 prohibiting the use of hacking software [16]. In January 2024, virtual sex crime was investigated by the police for the first time in Great Britain, which has been planning to develop legislation to combat crime for virtual worlds since 2007 [20]. So right now, police are investigating the first rape case in the metaverse after a child was assaulted in a virtual reality video game. A 16-year-old girl is said to be left distraught after her avatar - her digital character - was raped by people online. Even if the victim wearing headphones was not injured because there was no physical assault, police officers said she suffered the same psychological and emotional trauma as someone who was raped in the real world. Because the virtual reality experience is designed to be completely immersive [11].

New technologies allow states to be more accountable to the will of the people, to work and to make democracy work better than ever before. This is one of those exciting moments in history when leaders and authorities are called to action. New challenges require new coordinated responses. Networks do not stop at national borders, so states must cooperate to take advantage of new opportunities and limit the risks they pose. Thanks to more than 50 years of experience in international cooperation, the Council of Europe is ready to help state bodies and citizens maximize their capabilities in the international arena, both as a standard-setting body and as a service provider [17].

At the same time, the American experience in this field is not far behind. Anglo-Saxon countries, which use virtual space as a convenient space for the realization of political rights and freedoms, are also trying to resolve disputes related to intellectual property rights.

References:

1. A Əliyev, Ə.İ., Rzayeva, G.A., İbrahimova, A.N., Məhərrəmov, B.A., Məmmədrzalı, Ş.S. İnformasiya hüququ. Dərslik. Bakı: Nurlar, 2019. – 448 s.
2. AYM, Ali Kıdık Kararı, Başvuru No. 2014/5552, 26.10.2017. https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/5552 (last access: 07.07.24)
3. AYM, Medya Gündem Dijital Yayıncılık Tic. A.Ş. Kararı. https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/14965 (last access: 04.07.24)
4. AYM, YouTube LLC Corporation Service Company ve Diğerleri Kararı. https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/4705 (last access: 05.07.24)
5. Doğan Kılınç. İnternet Sitelerine Erişimin Engellenmesi ve İfade Hürriyeti. Ankara: Adalet Yayınevi, 2016, 438 s.
6. Zarifoğlu, A.E. Avrupa İnsan Hakları Mahkemesi kararları işığında türk hukukunda Internet özgürlüğü / Yüksek lisans tezi / – İstanbul, 2019. – 278 s.
7. 2010 – A European Information Society for growth and employment. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_05_184 (last access: 10.07.24)
8. 2030 Digital Compass: the European way for the Digital Decade, COM/2021/118 final. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118 (last access: 09.07.24)

9. A Digital Agenda for Europe, 2010. https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.3.pdf (last access: 05.07.24)
10. A European Initiative in Electronic Commerce, 16 April, 1997. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0157:FIN:EN:PDF (last access: 01.07.24)
11. British police probe VIRTUAL rape in metaverse: Young girl's digital persona 'is sexually attacked by gang of adult men in immersive video game' - sparking first investigation of its kind and questions about extent current laws apply in online world, 1 January, 2024. https://www.dailymail.co.uk/news/article-12917329/Police-launch-investigation-kind-virtual-rape-metaverse.html (last access: 07.07.24)
12. Countries that Censor the Internet 2024. https://worldpopulationreview.com/country-rankings/countries-that-censor-the-Internet (last access: 07.07.24)
13. eEurope 2002, An Information Society For All, Action Plan. https://cordis.europa.eu/programme/id/IS-EEUROPE-2002/es (last access: 04.07.24)
14. eEurope 2005 Action Plan: An Update. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0380:FIN:EN:PDF (last access: 03.07.24)
15. EUROPE 2020: A strategy for smart, sustainable and inclusive growth. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020 (last access: 07.07.24)
16. Gagliano, Rico. Online 'gold farming' more than a game. https://www.marketplace.org/2007/07/09/online-gold-farming-more-game/(last access: 29.06.24)
17. Guy de Vel. The Council of Europe in the New Information Era. https://www.coe.int/t/dgap/democracy/activities/ggis/e-governance/work_of_egovernance_committee/DeVel_CoE_Info_Era_en.asp (last access: 05.07.24)
18. http://hudoc.echr.coe.int (last access: 07.07.24)
19. https://freedomhouse.org/sites/default/files/FOTN%202017_France.pdf (last access: 07.07.24)
20. Jonathan, Richards. Government to police virtual worlds // Times Online, Oct. 24, 2007. https://www.thetimes.co.uk/article/government-to-police-virtual-worlds-blh52mfgt6z (last access: 05.07.24)
21. Oral intervention of the Head of EU delegation to the CoE on recent legislative amendments in Turkey (Internet law), 1191 CM meeting (12/02/2014). European Union - EEAS (European External Action Service) | Oral intervention of the Head of EU delegation to the CoE on recent legislative amendments in Turkey (Internet law), 1191 CM meeting (europa.eu)
22. Webcat, Cataloguing Manual. https://rm.coe.int/168063de3b (last access: 09.07.24)
23. www.loreg.org (last access: 06.07.24)

Date of receipt of the article in the Editorial Office
(19.07.2024)

SCIENTIFIC AND LEGAL FOUNDATIONS OF THE FIGHT AGAINST INTERNATIONAL TERRORISM

Hafiz Musayev*

Abstract

The main goal of the article is to study the scientific and legal basis of the fight against international terrorism in modern conditions. The main focus of the article is to conduct a scientific and legal analysis in the field of identifying terrorist activity, preventing it and minimizing its consequences in the presence of terrorist threats. The article also paid special attention to predicting the causes and conditions that give rise to terrorism and contribute to its existence, as well as the main directions of interaction during anti-terrorist activity. Taking into account the current situation in the world and in our country in order to optimize the anti-terrorist activity, expanding the information on ensuring the fight against terrorism, examining the legal framework, and coordinating the activities are also focused in the article.

Keywords: *terror, terrorism, international terrorism, international security, separatism, international law, convention, international relations.*

The characteristic of terrorism, which is particularly dangerous among the threats to international security, is almost similar in most literature (from the Latin "terror" - fear, panic, "terrorist" - causing fear, panic) and is generally understood as follows: "Any institution or organization creating fear in the society or in other states in order to achieve its goals" - which is considered the classic definition of terrorism. However, terrorism is not a simple process as shown in this definition, because it is "violence of a weak party with a known motive, including political goals" and is aimed at specific goals [4, p. 7]. Just as there are different reasons for the occurrence of terrorism, its forms and methods of implementation are also different. This variety, diversity makes the fight against terrorism extremely difficult. R. Sevdimaliyev, one of the Azerbaijani authors, characterized terrorism as an "action" carried out secretly or openly by various forces for the realization of their interests in various forms and means, as a phenomenon with a millennial history [11, p. 432].

The continuous discussion about the concept of international terrorism shows that the steps taken to solve the problem are insufficient. It is possible to interpret the concept of international terrorism on the basis of the provisions of Article 1 of the Framework Decision of the Council of the European Union dated 2002, as well as the last paragraph of the Preamble of the Convention of the Council of Europe "On the Prevention of Terrorism", which is worth focusing on separately. A comprehensive approach to the concept of international terrorism should be demonstrated, that is, political, economic, social, religious, spiritual, cultural, etc. should be considered as an act committed in order to ensure interests in the relevant fields. Practice shows that the abusing the principle of self-determination of international law, national, ethnic, religious, and other separatist activities aimed at breaking up the territories of states under the cover of international law should also be considered among the sources of international terrorism. Territories outside international and state control formed as a result of separatist activities are called "grey zones" in international law and are a favorable ground for locating terrorist camps, providing shelter to wanted terrorists,

* Ph.D in Law, Baku State University

training new members, as well as planning and committing terrorist acts, and in addition to creating conditions, it plays a major role in "terror export" to different regions of the world [5, p. 220].

In our opinion, the investigation of the causes and circumstances of the emergence of international terrorism should not be based only on the criminological method. Here, the methods and means of managing socio-political processes should be kept in mind, and the economic, social, political and ideological circumstances that lead to the emergence of international terrorism at the national, regional and global levels should be investigated and evaluated. Currently, international terrorism, which has gained citizenship in the international lexicon, has not been perfectly interpreted in international documents as a serious threat to international security, and probably will not be attempted soon. In this regard, it is necessary to pay attention to two points, firstly, in the conditions of such high speed of scientific and technical progress, inter-social stratification, the differences between wealth and poverty are deepening, so that in the created conditions, unimaginable types of terrorism arise and the scale of threats expands and deepens; secondly, the absence of a generally accepted international legal norm in relation to the terrorist, so that the person or groups who are the cause of any international terrorism can be described as "heroes" in one state and "terrorists" in another state.

Despite the fact that Armenian terrorist G. Nijde is recognized as a "national hero" in Armenia, he is recognized all over the world as a person who collaborated with the German fascists and committed murder. Even though his statue was erected in St. Petersburg, Russia, it was removed due to public pressure. The current situation requires the elimination of existing gaps in international legal norms. It is no coincidence that 109 different explanations were given to the concept of terrorism between 1936 and 1981. After the terrorist events of September 11, 2001 in the United States, although the VI Committee of the UN General Assembly considered numerous proposals in terms of the meaning of this concept, a general decision has not yet been adopted [2, p. 457-458].

However, according to researchers, international terrorism is considered as one of the important types of international crime. One of the researchers, L. Huseynov, divided international crimes into several groups according to the object of intent, and included international terrorism, along with aggression, genocide, apartheid and war crimes, as crimes against peace and security of humanity [9, p. 84]. It should be noted that L. Huseynov's textbook was published long before the terrorist incidents in the United States. The fight against international terrorism is considered a prerogative of the UN International Court of Justice, although the United States continues to fight against international terrorism without obtaining the consent of this organization.

The regional aspects of the fight against terrorism are included in Article 1 of the Framework Decision of the Council of the European Union and in the preamble of the Council of Europe Convention on "Prevention of Terrorism" adopted on May 16, 2005. According to those documents, "international terrorism - violation of public security by the state through the employees of any person, group, etc., in order to ensure their interests in political, economic, social, religious, spiritual, cultural, and other fields, keeping the population in panic. It is the perpetration of actions aimed at the destruction of any country or international organization from a political, constitutional, economic and social point of view by forcing the state bodies and international organizations to action or inaction on the territory of several states or in a way that may harm the interests of several states, as well as the threat that ends with the perpetration

of such acts". The National Assembly approved this Convention on February 3, 2014 and the Additional Protocol on December 30, 2023.

According to the Additional Protocol, the Parties established a 24/7 contact point for timely and rapid exchange of existing information on persons traveling abroad for terrorist purposes. In relation to the Republic of Azerbaijan, in accordance with Article 7 of the Additional Protocol, the State Security Service is designated as the point of contact. The statement also stated that the provisions of the Additional Protocol will not be applied by the Republic of Azerbaijan to the Republic of Armenia until the consequences of the conflict with the Republic of Armenia are completely eliminated and relations between the two states are normalized.

The Additional Protocol, which imposes new obligations and duties on each of the parties, shall be submitted to the depository (General Secretariat of the Council of Europe) of the sixth state, including at least 4 member states of the Council of Europe, on the first day of the following month. (July 1, 2017) should have entered into force. After its entry into force, any State acceding to the Convention could accede to this Protocol, and at the same time, this Protocol could be denounced at any time. Additionally, denunciation of the Convention will automatically entail denunciation of this Protocol. So far, there have not been any incidents related to such a situation in practice.

According to the Additional Protocol, the criminal liability of the following acts was provided and the scope of liability was expanded in this regard:

- participation in a terrorist organization or group (Article 2);
- receiving terrorist training (Article 3);
- traveling or attempting to travel abroad for the purpose of terrorism (Article 4);
- provision or collection of funds for such trips (Article 5);
- organization and facilitation of such visits (Article 6).

The specified articles extended the scope of liability for other preparatory acts (public provocation, provision of training and involvement in terrorism, etc.) beyond those already covered by Convention No. 196 (Council of Europe "Convention on the Prevention of Terrorism"). Through the Additional Protocol, a number of provisions were added to Convention No. 196 aimed at implementing measures aimed at preventing the flow of foreign terrorist fighters into conflict zones, taking into account UN Security Council Resolution No. 2178 (2014) on "Threats to international peace and security as a result of acts of terrorism" [11, p. 432].

The events of September 11, 2001 in the United States gave impetus to the improvement of universal legal and organizational mechanisms in the field of combating terrorism, and the legislative base in this field was strengthened, and practical steps were taken. At the suggestion of UN Secretary General A. Guterres, the Counter-Terrorism Committee was established in order to implement practical measures on anti-terrorism based on Security Council Resolution No. 1373 [15]. Due to these facts, the events of September 11 can be considered as the beginning of a new stage in the fight against terrorism. However, it should be noted that despite the measures taken at the global level, terrorist actions carried out in the countries show that anti-terrorist activities are not very effective. At the same time, the possibility of terrorist acts being committed by means of weapons of mass destruction shows that the threats directed against the future of humanity are becoming stronger and more intense. Another important fact is that in modern times, the Western world blames the Eastern countries for terrorist activities, Islamic fundamentalism is blamed for the

occurrence of terrorist incidents, while the main cause of the two world wars is the civilized Western countries.

The main issue that complicates the fight against terrorism is that it has socio-economic reasons as well as political reasons. So, according to a number of researchers, terrorism is sometimes caused by people's financial situation, poverty, difficulties and deprivations they experience, and injustices they face. It should be noted that those who resort to terrorism for the sake of political interests often use socio-economic difficulties to implement their dirty intentions, which ultimately makes it difficult to prevent terrorism. Because people who consider the world unfair and want to restore it have always existed, exist and will exist from the time when humanity was formed. As a result of some terrorist organizations taking advantage of such people, we see that terrorism is expanding day by day, becoming global and "internationalized". It was no coincidence that the UN Security Council, after examining the international situation, created a special international commission to combat all types of international crime on December 1, 1950, and adopted its charter [7, p. 26-27].

In general, even if we accept that terrorism serves political interests, it is impossible to deny that "socio-economic problems" are at its root. The division of society into rich and poor is of such a serious nature that it allows us to say that the phenomenon of terrorism has a historical character, and it is clear that the authorities ensure that special groups protect their interests in this way. Although terrorism as a concrete concept in the modern sense emerged in the 20th century, its first forms existed even in ancient times and gradually became a state policy.

In modern political and legal literature, the presence of different forms of terrorism is one of the issues that cause serious debates. In the legal literature, it is possible to find quite extensive information about the "variety of types and forms" of terrorism. Among such forms, we see that state terrorism occupies a special place. According to researchers, state terrorism manifests itself in two forms. Firstly, the state's policy of terrorism against the opposition forces, ethnic minorities and protesting groups, and secondly, extremist non-governmental organizations. In the modern era, when there is a fierce fight against terrorism in the international world, the fact that states, which are the main actors of international politics, commit terrorism or support terrorism, even if secretly, shows that this fight is going very badly [8, p. 432]. In order to effectively fight against terrorism, first of all, it is required that the states refrain from such cases.

All forms and manifestations of terrorism began to be condemned in the conferences held since the late 80s of the XX century, only after that some progress was made in this field. However, there are other factors that turn the field of the fight against terrorism into a confused area, among which nationalism and separatism occupy an important place. After the end of the bipolar world order, great powers paid special attention to local conflicts in creating a new balance in the broken world order, and separatism was of great importance in creating such conflict centers. Ethnic groups living compactly in the territory of a certain state tried to establish their own national state at the expense of the territory they would get from that state, which ultimately led to separatist terrorism. The concept of "secessionist conflict" currently in political opinion is the result of separatism [9, p. 84].

The Nagorno-Karabakh conflict faced by the Republic of Azerbaijan among the conflicts that arose in the South Caucasus at the end of the 20th century can be considered a classic example of secessionist conflicts, in which the terrorist-separatism

policy of Armenia and Nagorno-Karabakh Armenians played a particularly serious role. The states of the world community, which supported the Republic of Armenia and a number of international organizations, who turned a blind eye to the terrorist acts committed by the Armenian bandits, took the position that the occupation of Nagorno-Karabakh was the realization of the Armenians' right to self-determination. This was compatible with the interests of the Armenian separatists who tried to separate Karabakh from Azerbaijan. It was not by chance that the Armenian-Russian military forces occupied Nagorno-Karabakh and 7 districts around it, and more than 1 million of our compatriots lived as refugees/displaced people in their homeland for 30 years. This showed that their goal was to invade Azerbaijani lands and carry out mass terrorist-genocide policy against Azerbaijanis [3, p. 16]. If terrorism were not such a conflicting problem, if some states and international organizations did not approach this issue from "double standards", other nations with Armenian characteristics would not be able to use it. In general, according to statistics, more than 50 acts of terrorism were carried out by Armenia against our country at different times, as a result of which thousands of our compatriots were killed and many innocent people were crippled for life. Therefore, terrorism is a crime against humanity, regardless of its manifestations.

One of the main problems in the fight against terrorism is the religious factor, which the Western political-legal opinion (S. Huntington) called the "clash of civilizations". The religious factor, which is among the reasons that lead to terrorism, has always been used by some forces using its influence on people, and many have tried to justify it by giving religious content to terrorist acts. One of the reasons why terrorist organizations and groups operate "successfully" under the name of the religious factor is that it is easier to attract people to certain terrorist acts in the name of religion and jihad, because the struggle conducted through ideological or political factors sometimes does not produce the desired results. At all stages of history, certain forces skillfully used the religious factor to achieve their goals. In this sense, the clash of civilizations is an unavoidable reality. What is happening between the West and the East in modern times is a practical proof of this.

A characteristic feature of "religious" terrorist organizations is that their goals are quite broad. According to the ideology of most of these organizations, anyone who denies their religion is an enemy and should be treated as an enemy. Today, the most obvious example of "religious" terrorism is the Al-Qaeda terrorist organization. Despite all this, it is unacceptable to equate the name of a religion with terrorism. Instead of preventing terrorism, such an attitude deepens and leads to consequences that are extremely difficult to imagine , are individuals who target all people regardless of their political and social status, although all religions consider killing innocent people a sin.

From this point of view, the genocide and terrorist acts committed against all humanity by Armenian terrorist organizations, especially ASALA, who dream of "Greater Armenia" are more terrible. Citizens of Turkey and Azerbaijan predominate among its victims. Genocide, which is a more terrible form of such terrorism, has gone down in memory with countless tragedies against the Turkish world. In the 20th century alone, Armenians committed two terrible genocides against the people of Azerbaijan. The March genocide of 1918 and the Khojaly genocide of 1992 are clear evidence of Armenian brutality. The killing of thousands of innocent children, women and old people by Armenian terrorists during these genocides is a grave crime not only against the people of Azerbaijan, but against the entire humanity. This nation, poisoned

by Nazism fighting for "Greater Armenia", first of all targeted the Turkic world, opened a front against the Islamic world under the cover of religion and caused tragedies. In the sanctions imposed by the US government against Iran on May 9, 2002, the names of Armenian institutions were included, and they were accused of crimes against humanity. However, despite the existence of facts, the absence of any punishment for the terrorist organizations sponsored by Armenia is primarily due to the actions of those who patronize Armenia itself.

In 1998, the national leader Heydar Aliyev, by signing the decree on the political-legal assessment of the March genocide, showed the atrocities caused by Armenian vandalism to the whole world, and the international community saw the terrible consequences of Armenian terrorism [1]. H. Aliyev voiced his opinion that "these terrible events should receive their political and legal price as serious crimes against humanity" and called the world to fight against the consequences of terrorist-separatism. Currently, as a result of the successful foreign policy of Azerbaijan, the number of countries recognize the Khojaly genocide and condemn Armenian terrorism. However, Armenian terrorist groups like Asala, Dashnaksutyun, etc., continue their terrorist acts, if necessary, against other nations, in order to achieve their ugly goals whichl lead to suffer and death of an innocent people. During the 44-day Patriotic War and the anti-terrorist operations carried out soon after, the Azerbaijani Armed Forces punished all the terrorist acts committed by Armenians throughout history, and established the right and justice.

Terrorism is divided into different types, not only for what reasons and by what forces, but also by what means and under what conditions, and such variety makes the fight against terrorism quite difficult. It is no coincidence that according to the nature of the means used, terrorist acts are divided into two groups: traditional and technological. The use of means used to attack people and material objects for political purposes is considered traditional terrorism. Terrorist acts involving the use of radioactive, highly dangerous, toxic substances, chemical and biological means are considered technological terrorism. One of the most characteristic features of technological terrorism is that it is based on new technologies and has a wide range of applications. According to researchers, the most dangerous form of technological terrorism is atomic-nuclear terrorism, which is very likely to be carried out using this tool in modern times. In general, the more serious the application of new technologies is to the development of science, the more it leads to the development of terrorism. The application of modern information technologies to various fields has led to the emergence of new types of activities in the information environment - information conflict, information attack, cybercrime, cyberterrorism and a number of other similar phenomena. Currently, the issue of ensuring national information security is very urgent in the world. That is why cyber-terrorism is considered one of the most widespread terrorist methods in modern times and has been included in the national security doctrines of all states, on the other hand, this type of terrorism forces states to cooperate seriously.

The fact that terrorism is such a multifaceted and contradictory process is one of the main factors that complicates the fight against it. According to the modern political opinion, if all mentioned types of terrorism are fully understood and states do not allow terrorist acts, people will not be deceived by terrorist groups that influence their minds in the name of serving religion. In this way, the media will reconstruct the propaganda work, determine the concrete criteria that separate the two legal categories, such as

separatism and the determination of national destiny, and then the fight against terrorism at the international level will bear fruit. However, in the conditions of state terrorism and geopolitical interests, in the conditions of serious socio-economic differences between societies, classes and states, it is impossible to clear the minds of people of jealousy and envy, cognitive factors in a broad sense. Therefore, it will not be possible to remove the factors that cause terrorism from the intelligence of the world, which ultimately makes it impossible to abandon terrorism as a means of struggle. If we proceed from the norms of religious morality, despite the injustices we have observed, no one has been given the right to restore justice at the cost of the innocent lives of others [12, p. 95-96].

At the end of the 20th century, the end of the bipolar world order and the transition to a new international security system created new threats to international security. In the current situation, the threats arising from the competition between the militarily and technically powerful states and which existed over time have faded into the background. The threats of nuclear conflict and war with the use of other modern weapons have given way to "new threats" - international terrorism, proliferation of weapons of mass destruction, internal military conflicts and international military interventions, disruption of the ecological balance, spread of new types of international crime and other threats. In the modern era, the international complex activity covering a wide range of areas has become a necessity, not the one-directionality of ensuring security, either at the national level or in the international world [13, p. 6].

It should be noted that after the end of the "cold war", the countries of the NATO block, especially the USA, England, France, Italy, and other countries believed that the main reason for the emergence of international terrorism is threats and dangers created by socialist countries. However, even after the well-known events and the collapse of the socialist block, the threat of international terrorism not only did not disappear, but took on a more dangerous and serious scale, because after the international balance was disturbed, open/covert competition and struggle began between the Western block states to fill the void, the causes and manifestation of terrorism forms have also been updated.

According to the typology in the current political and legal literature, the attitude towards the classification of types of terrorism is ambiguous, in our opinion, the main reason for this is the emergence of new types of terrorism and international criminality in the course of social and political development. According to R. Sevdimalyev, terrorism has become an independent global political, economic and international power in modern times, and has the ability to solve not only local, but also regional and international issues. Terrorism in all its manifestations has the ability to threaten the countries of the world. The author also notes that international terrorism is particularly dangerous and the success of the fight against it depends on its collective conduct [10, p. 11-13].

There is no consensus among political scientists and lawyers on the issue of dividing terrorism into different types, as generally, state, international and domestic terrorism types are distinguished, each of which has specific characteristics and forms.

References:

1. Decree of the President of the Republic of Azerbaijan Heydar Aliyev on the genocide of Azerbaijanis. Azerbaijan Gaz., 1998, March 26

2. International law. B.: Law publication, 2002, 752 p.

3. Huseynova H. Azerbaijan in the system of European integration processes. B., Military publishing house, 1998, 280 p.

4. Usubov M. Features of the criminological characteristics of terrorism (based on the judicial and investigative experience of the Republic of Azerbaijan). B.: UniPrint ed., 2008, 216 p.

5. Huseynov L.H. International law. Textbook. B.: Legal ethics. ed., 2000.

6. Ahmadov S., Hasanov R. Causes and typology of international terrorism. Journal of military knowledge, 2008, No. 3, pp. 100-111.

7. Севдималиев Р.М. Международный терроризм и политико-правовые проблемы борьбы с ним. Б.: İNDİGO, 2011, 504 с.

8. Международное право. Учеб. М.: Междунар.отношения, 2000, 720 с.

9. Терроризм в современном мире: истоки, сушность, направление и угрозы. М.: Право, 2003, 348 с.

10. Европеизация и разрешение конфликтов: конкретные исследования европейской периферии. М., изд. Весъ Мир, 2005, 312 с.

11. Международное право. Учеб. М.: Междунар.отношения, 2000, 720 с.

12. Кулагин Б.М. Международная безопасность. М., Аспект-Пресс, 2006, 319 с.

13. Севдималиев Р. Международный терроризм - глобалная проблема современности. Б.: Элм, 2004, 312 с.

Date of receipt of the article in the Editorial Office
(11.08.2024)

CONSTITUTIONAL LEGAL PROBLEMS AND SOLUTIONS FOR THE PROTECTION OF FREE ENTREPRENEURSHIP

Bayram Orujov*

Abstract

This article examines the constitutional and legislative challenges to the protection and development of free entrepreneurship in the Republic of Azerbaijan. Despite significant reforms, discrepancies in the Constitution and inconsistencies among legislative acts continue to impede entrepreneurial activity. The article identifies key issues, including the narrow scope of state regulation grounds under Article 59 of the Constitution, the lack of explicit recognition of commercial freedom of expression, and the absence of constitutional guarantees for legal entities. It also highlights inconsistencies in laws such as the Law on Entrepreneurial Activity, Civil Code, and Tax Code, which hinder the effective implementation of entrepreneurial rights. Drawing on good practices from countries such as Poland, Spain, Kazakhstan, and others, the article emphasizes the need to establish an Entrepreneur Ombudsman in Azerbaijan to enhance the protection of entrepreneurial rights. The recommendations aim to strengthen the legal framework, ensure consistency across laws, and improve the overall entrepreneurial environment in Azerbaijan.

Keywords*: free entrepreneurship, constitutional protection, legislative framework, entrepreneurial rights, Entrepreneur Ombudsman, comparative analysis, commercial freedom of expression, Azerbaijan.*

Introduction

Free entrepreneurship serves as a cornerstone of a nation's economic growth and social progress. While the Republic of Azerbaijan has made notable strides in reforming its entrepreneurial framework, gaps persist in both legislative and enforcement mechanisms, hindering the full realization of this fundamental right. This article examines these challenges and proposes actionable solutions, supported by comparative analysis and international best practices. By addressing these shortcomings, the article aims to enhance the legal framework governing free entrepreneurship and promote its effective implementation in Azerbaijan.

Problems Regarding the Constitution of the Republic of Azerbaijan.

The first issue relates to Article 59 of the Constitution. Clause 2 of Article 59, which regulates the right to free entrepreneurship, states that the state regulates the entrepreneurial sector only in connection with the protection of state interests, human life, and health [16, art. 59]. It should be noted that state regulation of free entrepreneurship is general in nature, and the grounds of "state interests, protection of human life and health" do not fully encompass such regulation. The constitutions of several other countries define "protection of public interests" as one of the grounds for regulation in the field of free entrepreneurship. The theory of public interest is also a widely discussed concept in the area of state regulation of the economy. This theory asserts that regulation is provided in response to public demand to eliminate inefficient and unfair market practices [15, p. 1].

* PhD candidate in Law, Azerbaijani Bar Association

According to this theory, the state takes measures to prevent monopolistic activities and unfair competition, applies safety standards to protect human life and health, regulates the employer's monopsony power over employees, and ensures security in emissions to prevent investor fraud, among other measures. As noted here, neither the legislative nor organizational regulation implemented by the Republic of Azerbaijan in the field of free entrepreneurship is fully encompassed within the grounds specified in Article 59 of the Constitution. Furthermore, the basis of protecting human life and health is already covered under the umbrella of public interests. Considering these factors, it would be appropriate to amend the provision as follows: "*The state regulates the entrepreneurial sector only in connection with the protection of state interests and public interests.*"

Another issue to consider in the Constitution is ensuring the protection of commercial freedom of expression. Article 47 of the Constitution of the Republic of Azerbaijan protects everyone's freedom of speech and expression. However, as the rights and freedoms specified in the Constitution apply only to natural persons, this article does not cover the commercial freedom of expression. By comparison, U.S. constitutional law recognizes the protection of commercial freedom of expression. The protection of freedom of expression for legal entities in the U.S. Constitution was established in the *Citizens United* court case [17]. It should be noted that constitutional guarantees of commercial freedom of expression are of great importance for the realization of free entrepreneurship. Therefore, it is proposed to add the following second sentence to Clause 1 of Article 47 of the Constitution:

"*Freedom of thought and expression also protects the expressions of entrepreneurs within the framework of their right to free entrepreneurship.*"

The rights, freedoms, and guarantees envisaged in the Constitution of the Republic of Azerbaijan for entrepreneurs protect individual entrepreneurs acting as natural persons. However, the Constitution does not guarantee the rights and freedoms of entrepreneurs operating as legal entities. By comparison, the German Constitution protects the rights of legal entities as well. According to Clause 19(3) of the German Constitution, fundamental rights apply to legal entities to the extent that their nature allows [2, art. 19.3]. The German Federal Constitutional Court emphasizes the importance of considering both the nature of the rights and the nature of the legal entities [14, p. 692].

Among the rights that occupy a central place in the Constitution and should also apply to legal entities, the most important are the rights to free entrepreneurship and property, as well as constitutional legal guarantees. Although the provisions regulating these rights do not explicitly state that they apply solely to natural persons, the title of the relevant section is "Fundamental Human and Civil Rights and Freedoms." This creates certain ambiguities regarding the application of these rights to legal entities in appropriate cases.

The precedents of the European Court of Human Rights (ECtHR) are relevant in this context for several reasons. Due to the inherent prominence of companies, the ECtHR does not limit human rights standards to natural persons. Consequently, the ECtHR has provided comprehensive opinions on the human rights of commercial organizations in its cases [12, p. 43]. In this regard, the Hungarian Constitutional Court, in one of its decisions, stated that the Constitution also guarantees the fundamental rights of entities with legal personality.

Throughout American legal history, corporations have made various attempts to claim constitutional rights. This is understandable when considering the need to protect corporations' rights regarding private property and contractual obligations. The U.S. Supreme Court examined the property rights of corporations in *Terrett v. Taylor, 13 U.S. 43 (1815)*. In this case, the Episcopal Church (a legal entity) asserted its property rights over specific land. The Supreme Court upheld the church's property rights and affirmed that corporations and other legal entities also possess fundamental rights [19].

In its early cases, the U.S. Supreme Court ruled that corporations are covered under the Contracts Clause of the Constitution. Article I of the Constitution states that no state shall pass laws impairing the obligation of contracts [7, art. 1]. The term "contractual obligations" refers to obligations arising from agreements between two parties. In the *Dartmouth College v. Woodward (1819)* case, the college (a corporation) sought protection under the Constitution's Contracts Clause [120]. The Supreme Court ruled that constitutional guarantees of contracts applied to colleges operating as educational corporations and held that New Hampshire had violated the Contracts Clause [13].

Based on the aforementioned points, it can be concluded that, in recognizing the progressive role of legal entities in achieving economic development, the aforementioned countries have determined that the rights and obligations under their constitutions apply to legal entities in appropriate cases. Since the Constitution of the Republic of Azerbaijan does not contain a provision addressing this matter, it remains unclear whether the rights, freedoms, and guarantees stipulated therein extend to legal entities. To address this gap, it is proposed to add a Clause IV to Article 24 of the Constitution with the following content:

"*Fundamental rights, freedoms, and obligations stipulated in this section shall apply to legal entities in appropriate cases, to the extent permitted by the nature of the rights, freedoms, and obligations.*"

Problems in Legislative Acts on Entrepreneurial Activity

To strengthen the legal guarantees for entrepreneurship, the following problems and solutions related to the legislative acts in this field should be considered:

a) Law on Entrepreneurial Activity

- Clause 2 of Article 2 of the *Law on Entrepreneurial Activity* states that entrepreneurial activity carried out by establishing an enterprise is also regulated by the legislation of the Republic of Azerbaijan on enterprises [10, art. 2.2]. It should be noted that the *Law on Enterprises*, which regulated the activities of enterprises in the Republic of Azerbaijan, is no longer in force. Currently, the activities of legal entities are regulated by the Civil Code, as indicated in Clause 1 of this article. Therefore, it is appropriate to remove this clause.
- Article 6 of the law lists several fundamental rights of entrepreneurs. Although these rights cover a wide range of activities, they do not fully encompass the rights established for entrepreneurs in other legislative acts. For example, the rights listed in this article do not include the right of micro-entrepreneurs to obtain a startup certificate. Therefore, it is proposed to add the following paragraph as Clause 20 to this article: "*To exercise other rights provided for by legislation.*"
- Article 7 of the law outlines the obligations entrepreneurs bear in connection with their activities. Since other legislative acts also establish obligations for entrepreneurs, and this article does not cover those obligations, it is proposed to

add the following paragraph as Clause 19 to this article: "*To fulfill other obligations provided for by legislation.*"

- According to Article 8 of the law, the list of property exempt from payment demands is determined by the Civil Procedure Code of the Republic of Azerbaijan. It should be noted that the code does not contain any legal norms on this matter. Instead, this list is specified in the Cabinet of Ministers' Decision No. 89 dated June 5, 2002, titled "*On the Approval of the Exact List of Types of Property Exempt from Payment Demands During the Execution of Enforcement Documents Against a Natural Person.*" For this reason, it is proposed either to remove this provision or to amend it as follows: "*The list of property exempt from payment demands is determined by relevant legislative acts.*"
- Article 11 of the *Law on Entrepreneurial Activity* includes legal norms related to licenses and permits required for conducting entrepreneurial activities. According to Clause 3 of this article, a decision on granting a special permit (license) by the relevant state authorities must be issued within 15 days after the submission of an application and the relevant documents in accordance with the law [10, art. 11]. However, according to Clause 19.8 of the *Law on Licenses and Permits*, unless a shorter period is specified in the laws of the Republic of Azerbaijan (excluding the *Law on Administrative Proceedings*), the licensing authority must issue a license or adopt an administrative act on refusal no later than 10 working days from the date the application and accompanying documents were registered [11, art. 19.8]. Regarding permits, Clause 19.9 of the *Law on Licenses and Permits* states that unless a shorter period is specified in the laws of the Republic of Azerbaijan (excluding the *Law on Administrative Proceedings*), the permitting authority must issue the permit (sign the contract or perform any other required action concerning the applicant) or adopt an administrative act on refusal no later than 7 working days from the date the application and accompanying documents were registered [11, art. 19.9]. As seen, while the *Law on Entrepreneurial Activity* sets a 15-day period for deciding on the issuance of licenses and permits, the *Law on Licenses and Permits* specifies 10 working days for licenses and 7 working days for permits. To resolve this discrepancy, it is proposed to align Clause 3 of Article 11 of the *Law on Entrepreneurial Activity* with Clauses 19.8 and 19.9 of the *Law on Licenses and Permits*.
- Additionally, the grounds for refusal specified in Clause 4 of Article 11 of the *Law on Entrepreneurial Activity* are inconsistent with Article 20 of the *Law on Licenses and Permits*. Therefore, to address this inconsistency, it is proposed to align Article 11 of the *Law on Entrepreneurial Activity* with Article 20 of the *Law on Licenses and Permits*.

b) Civil Code and Tax Code

- The definition of entrepreneurial activity provided in the *Law on Entrepreneurial Activity* does not align with the definitions provided in the Civil Code and Tax Code. This discrepancy relates to the primary purpose of the activity. Specifically, the Civil Code uses the term "sale of goods," while the Tax Code uses the term "provision of goods," both of which fall under the broader phrase "production and/or sale of goods" in the *Law on Entrepreneurial Activity*. To

ensure consistency in the definitions of entrepreneurial activity across legislative acts, relevant amendments should be made, and the definitions in the Tax Code and Civil Code should be aligned with a newly revised version of the definition of entrepreneurial activity in the *Law on Entrepreneurial Activity*.

- It should be noted that while the Tax Code's Article 13 provides definitions for various categories of taxpayers, it does not define the term "individual entrepreneur." In the Tax Code, this term is used under the headings "individual entrepreneur," "a person engaged in entrepreneurial activity without establishing a legal entity," and "a natural person conducting entrepreneurial activity without establishing a legal entity," creating a degree of ambiguity. To ensure legal uniformity, it is proposed that these headings be unified and replaced with the term "individual entrepreneur." Furthermore, it is suggested to include a definition for "individual entrepreneur" in the Tax Code under Clause 13.2.86 as follows:
  "*Individual entrepreneur – a natural person conducting entrepreneurial activity without establishing a legal entity.*"

Other Improvements in the Field of Entrepreneurial Activity and Good Practices from Foreign Countries

Taking into account examples of good practices from other countries, the following measures can be proposed as additional improvements in the field of entrepreneurial activity:

a) Establishing an independent body – an Ombudsman – for the protection of entrepreneurs' rights. The institution of an Ombudsman specifically responsible for safeguarding entrepreneurial rights already exists in the practices of several countries. In the Republic of Azerbaijan, the responsibility for protecting entrepreneurs' rights has been assigned to the Small and Medium Business Development Agency (KOBIA). However, given the broad scope of this state agency's activities, establishing a specialized Ombudsman body dedicated exclusively to the protection of entrepreneurial rights would ensure more effective protection of entrepreneurs' rights.

Several countries have established non-judicial bodies authorized to ensure the realization of entrepreneurs' rights and implement related measures. One example is the Ombudsman for Entrepreneurs in Poland. This institution was created to collect and evaluate information regarding violations or misuse of the right to free entrepreneurship by law enforcement agencies, government offices, local governments, and regulatory bodies [8, p. 50]. Based on this information, the Ombudsman appeals to relevant authorities for changes in laws or practices.

In Spain, the Defender of the Entrepreneur organization, established by the Catalan Confederation representing business organizations and enterprises, provides services to protect entrepreneurs whose rights are violated by local, regional, or national public authorities [8, p. 50].

Kazakhstan has also taken significant steps by establishing the position of the Business Ombudsman. A Presidential Decree on February 27, 2014, concerning essential measures for developing Kazakhstan's business environment, instructed relevant state bodies to strengthen the role of the National Chamber of Entrepreneurs and create the Business Ombudsman institution through legislative amendments [5]. The legal status of the Business Ombudsman is regulated by the Entrepreneurial Code, which came into

force in 2016. The Business Ombudsman's primary functions include representing and protecting the rights and legitimate interests of entrepreneurs and addressing their complaints [5].

Similar institutions exist in Russia, Uzbekistan, Tatarstan, Kyrgyzstan, Georgia, and Ukraine. In Ukraine, the Business Ombudsman Council focuses on protecting entrepreneurial rights, improving the investment climate, and combating corruption. This institution was established with support from the European Bank for Reconstruction and Development [4]. In Georgia, the Business Ombudsman, operating since June 5, 2015, monitors the protection of the rights and legitimate interests of individuals engaged in entrepreneurial activities and identifies cases of rights violations by administrative bodies, supporting the restoration of those rights [3].

In Australia, there is a more specific institution: the Ombudsman for Small Businesses and Family Enterprises. Established on March 11, 2016, its mission is to support and protect the rights of small businesses and family enterprises [1]. A similar body operates in the United States. Based on the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration created the National Small Business Ombudsman, responsible for addressing small business complaints against federal executive agencies.

In the United Kingdom, two relevant bodies protect entrepreneurs' rights: the Financial Ombudsman Service and the Small Business Commissioner. Established in 2011, the Financial Ombudsman Service initially focused on resolving complaints between financial entrepreneurs and their clients. However, since 2019, this institution has also been tasked with protecting entrepreneurs' rights [148]. The Small Business Commissioner has a narrower scope, focusing on issues related to payments owed by large businesses to small enterprises [16].

Based on the above, it can be concluded that the institution of an Ombudsman for Entrepreneurs has been in place in many countries for years. Given the critical role of effectively and promptly protecting entrepreneurs' rights in realizing the right to free entrepreneurship, establishing such a body in the Republic of Azerbaijan is essential. The Ombudsman for Entrepreneurs would oversee the protection of rights and legitimate interests related to entrepreneurial activities, identify violations of these rights, and assist in restoring them. Therefore, it is proposed to establish an Ombudsman for Entrepreneurs in Azerbaijan and regulate its activities through an appropriate law.

The protection and development of free entrepreneurship require a robust legal framework that aligns with contemporary international standards and addresses existing legislative and procedural gaps. By incorporating amendments to the Constitution, ensuring consistency across legislative acts, and adopting practices such as establishing an Entrepreneur Ombudsman, Azerbaijan can provide stronger safeguards for entrepreneurs' rights. These measures not only advance economic freedom but also bolster the nation's overall socio-economic stability and global competitiveness. It is essential to prioritize these reforms to create a more conducive environment for sustainable entrepreneurial growth.

References:

1. Australian Small Business and Enterprise Ombudsman
URL: https://www.asbfeo.gov.au/what-we-do (last access: 02.01.24)
2. Basic Law for the Federal Republic of Germany of 23 May 1949
URL: https://www.gesetze-im-internet.de/englisch_gg/(last access: 04.01.24)
3. Busines Ombudsman Office of Georgia.
URL: https://businessombudsman.ge/en/about-us/activities (last access: 03.01.24)
4. Business Ombudsman Council Ukraine.
URL: https://boi.org.ua/en/about/(last access: 05.01.24)
5. Business Ombudsman Office of Kazakhstan.
URL: https://ombudsmanbiz.kz/eng/biznes_ombudsmen/istoriya_instituta/ (last access: 02.01.24)
6. Constitution of the Republic of Azerbaijan. November 12, 1995. Collection of Legislation of the Republic of Azerbaijan, July 31, 1997, issue no.: 01.
7. Constitution of the United States. Written in 1787, ratified in 1788, and in operation since 1789. URL: https://www.senate.gov/civics/constitution_item/constitution.htm (last access: 06.01.24)
8. European Union Agency for Fundamental Rights. Freedom to conduct a business: exploring the dimensions of a fundamental right Luxembourg: Publications Office of the European Union, 2015 p. 66.
9. Financial Ombudsman Service of the United Kingdom.
URL: https://sme.financial-ombudsman.org.uk/who-we-are (last access: 09.01.24)
10. Law of the Republic of Azerbaijan "On Entrepreneurial Activity," dated December 15, 1992. Bulletin of the Supreme Soviet of the Republic of Azerbaijan, December 15, 1992, issue no.: 23.
11. Law of the Republic of Azerbaijan "On Licenses and Permits," dated March 15, 2016. Azerbaijan Newspaper, April 23, 2016, issue no.: 86.
12. Murray N. Ruthbard, An Austrian Perspective on the History of Economic Thought, Vol.1, Misses İnstitute, 2006, p. 574
13. Omarov V., Competition Law and Ensuring Citizens' Right to Free Entrepreneurship. 2016.
14. Peter Oliver, 'Companies and their fundamental rights: A comparative Perspective' 64 (June) International Law Quarterly, 2015, p. 661–696
15. Richard A. Posner. Theories of Economic Regulation. NBER Working Paper Series, Working Paper 4, 1974, p. 44
16. Small Business Commissioner of the United Kingdom
URL: https://www.smallbusinesscommissioner.gov.uk/deal-with-an-unpaid-invoice/get-advice/complain-to-the-small-business-commissioner/ (last access: 12.01.24)
17. Supreme Court of the United States. Citizens United v. Federal Election Commission.21 January 2010. 558 U.S. 310
18. Supreme Court of the United States. Dartmouth College v. Woodward, 17 U.S. 481, 1819
19. Supreme Court of the United States. Terrett v. Taylor, 13 U.S. 9 Cranch 43 43, 1815.

Date of receipt of the article in the Editorial Office
(25.01.2024)

CONCEPT, MAİN FEATURES AND TYPES OF CULTURAL HERİTAGE

Leyla Hashimova*

Abstract

The article analyzes the concept, main features and types of cultural heritage on the basis of important international documents and national legislative norms. One of the main issues that should be taken into account in general is that establishing a precise definition of cultural heritage can determine the scope of these objects and make a positive contribution to legal relations in this direction. Cultural heritage itself manifests itself in many cases as a concept or way of self-identification of a society. This increases its importance even more. From this point of view, it goes beyond the boundaries of legal protection only in the cultural field and it is necessary to ensure its protection with special attention. The first of these involves understanding cultural heritage as an information resource and indicator in a cultural context. In the second group, it is argued that cultural heritage is an object of inheritance or property belonging to the society and it is proposed to evaluate it in the context of legal relations. In addition, the third group studied within the concept of economic development is also distinguished because it has the potential to bring economic value and income from tourism and other public directions. Regarding the classification of cultural heritage, cultural heritage can be grouped based on several criteria. In general, cultural heritage can be divided into two categories: world cultural heritage and national cultural heritage, and then classified into 2 groups, tangible and intangible. Here, it is possible to divide the category of tangible cultural heritage samples into two subcategories. They are movable and immovable material cultural heritage. As another sub-category of tangible cultural heritage, underwater cultural heritage should be specially mentioned.

Keywords: *cultural heritage, cultural area, cultural objects, cultural indicators, historical monuments, international agreements, national legislation, legal relations, armed conflicts.*

As a result of globalization, no matter how many similarities exist between the cultures of societies in the world, this in itself proved once again that the existence of diversity and differences between cultures is sufficient. The cultural heritage, which is the basis of the mentioned cultures and whose legal protection is important at the global level, acts as a very important category from the social, economic, political and legal point of view. It should be noted that the protection of cultural heritage is the main goal and duty of all civilized states. Therefore, provision of legal protection of cultural heritage, elimination of legal consequences arising from damage to cultural heritage, and determination of the legal grounds for holding the subjects responsible for such consequences by committing a violation of law are one of the main topics of discussion in the modern era. It is accepted that such cases of damage can be associated with various circumstances. For example, war, military conflict, armed conflicts, terrorist acts, vandalism crimes, other cases of damage to cultural heritage can be shown as a result. As the most important of these, the destruction or damage to cultural heritage as a result of military conflicts should be specially emphasized and studied. Before examining all this, it would be quite appropriate to give an understanding of cultural heritage, as well as to clarify its essence.

One of the main issues that should be taken into account in general is that determining the precise definition of cultural heritage can determine the scope of these

* Ph.D. in Law, Baku State University

objects and make a positive contribution to legal relations in this direction. Analyzing the content of international agreements in the legal literature, it is noted that there is no unified approach to the definition of cultural heritage, and its only legal definition has not been established in the normative framework. Therefore, the emergence of negative situations in legal relations related to cultural heritage is inevitable. This problem manifests itself more in the field of legal struggle with cases of legal protection of cultural heritage or damage to it [1]. Taking into account the wide spread of illegal acts such as destruction, illegal expropriation, as well as falsification of these objects, the importance of legal struggle with them emerges. For the formation of legal mechanisms related to the prevention of such violations of law, it is necessary to lay the foundation of the normative base regulating these relations. It should also be noted that providing a clear understanding of cultural heritage is one of the main factors that ensure the functioning of the legal mechanism.

We believe that there is no single academic approach to understanding cultural heritage. Different researchers approached this issue from different aspects and put forward ideas that give different understanding of cultural heritage. Thus, it is shown in the literature that it is possible to generalize the approaches of the researchers who clarify the relevant term by studying the works that give an understanding of cultural heritage, and based on this, it is possible to combine these ideas into 3 groups. The first of these involves understanding cultural heritage as an information resource and indicator in a cultural context. In the second group, it is argued that cultural heritage is an object of inheritance or ownership belonging to the society, and it is proposed to evaluate it in the context of legal relations. In addition, the third group studied within the concept of economic development is also distinguished from tourism and other public directions because it has the potential to bring economic value and income [2]. The grouping of concepts in the mentioned direction brings the context of relations in which it is evaluated to the central position while giving the concept to the cultural heritage. From this direction, researchers of various humanities or socio-political sciences can easily apply works suitable to their research fields. That is, to put it more simply, it is possible to give different understandings of cultural heritage according to the subjects of different fields of study.

For this purpose, we first consider it more correct to clarify the semantic or lexical meaning of cultural heritage. In the explanatory dictionary of the Azerbaijani language, cultural heritage is not defined together as a word combination, but each of the words cultural and heritage is defined separately. Thus, it is mentioned in the dictionary that "cultural" means an adjective related to culture. In turn, several explanations have been given to culture. As for the word culture, it has been explained as expressing certain things that society has gained and created in its social as well as economic life [3]. As for the word heritage, it is understood as a cultural object inherited from the past, many years ago [4]. Then, taking into account both concepts, it is possible to give the definition of cultural heritage in the Azerbaijani language as a work or cultural object that belongs to the society, was created as a result of the activities of different subjects in different periods and is related to the historically significant culture that has survived to this day.

In the dictionary of the University of Cambridge, cultural heritage is described as a combination of words, the word cultural is related to customs and traditions, and the word heritage is explained as objects related to historically existing cultures [5]. We can note that although the given concept is established, this concept is given by

approaching it from a broad point of view. By analyzing the given explanation, it is also possible to determine the main elements characteristic of cultural heritage. This is important for understanding cultural heritage.

Regarding the cultural heritage, it is mentioned in the literature that the cultural heritage refers to objects related to the history of the society, which allow to identify this society and maintain their existence until today [6]. As can be seen from the concept given in the theory, the cultural heritage includes objects in itself, and the main feature of these objects is that they have preserved their existence until the present day, despite being created in a certain period of history. From this point of view, objects that are considered cultural heritage were created in the past and maintain their existence despite historical events.

Culture and cultural heritage are considered as resources of society. From this point of view, the works that reflect the culture are presented as evidences that show the times in which these works were created to the future generations. Protecting the cultural heritage of societies means protecting human history in a certain sense. According to the Turkish Language Institute, heritage is defined as "what one generation leaves to the next generation" [7]. According to the explanatory dictionary of the Azerbaijani language, heritage is defined as "cultural works left from previous times, centuries, and great personalities" [8]. Cultural heritage means works created by human hands, historical monuments and buildings, including archaeological objects. However, the concept of cultural heritage is broader than that, considering the connection of societies with the nature they live in today, settlements, underwater cities and the natural environment can also be considered as a part of cultural heritage [9].

In general, cultural heritage and culture should be considered as two closely related phenomena. There is a close, inseparable and reciprocal relationship between them. It can even be expressed in this way that the relationship between culture and cultural heritage manifests itself as the relationship of the whole to the part. It is rightly noted in the literature that cultural heritage is a form of manifestation of culture, as well as a visual evidence of culture or its elements. Thus, cultural heritage means culture and includes the cultural achievements of society in historical times [10]. When defining the concept of cultural heritage in normative documents, it is possible to consider what is mentioned as more appropriate. It is accepted that the cultural heritage includes objects that are closely related to the national-spiritual life of the society. In many cases, the value it carries can be related to the fact that it has survived from different periods of history. Therefore, considering such factors when understanding cultural heritage is a very important issue for ensuring its legal protection in the future.

Although the positions encountered are different, all the researches conducted in this direction are aimed at giving a more accurate understanding of the cultural heritage. But it should also be accepted that in order for a given concept to be considered correct, that concept must necessarily complement the concept of culture or be included in its scope. Taking this into account, it has been noted in the literature that cultural heritage means objects in various forms, which are the result of the labor of individuals or a group of individuals collectively, and are distinguished by their importance in various directions today [11]. This concept carries with it the main issues specific to culture. This makes the concept more understandable.

Based on the analysis of real practical relations on cultural heritage, we can note that the importance of understanding cultural heritage can be evaluated in different

contexts. Thus, it is noted in the literature that currently defining the concept of cultural heritage is very important from an academic point of view. In earlier times, its importance was emphasized more from the administrative point of view. Thus, it was considered necessary to establish the concept of cultural heritage not from an academic point of view, but from an administrative point of view. It was the increase in the importance of cultural heritage protection that became the basis for its expansion as a category. Thus, it became the basis for conducting analyzes to provide understanding from different directions [12]. This once again shows the attention to cultural heritage from different directions. Indeed, the protection of cultural heritage, its importance, controversial issues that arise in real practical relations act as the basis for giving a comprehensive understanding of cultural heritage. From an academic point of view, it is also necessary to give an organized understanding of cultural heritage, to establish such an understanding in a normative basis. Explaining the cultural heritage using various scientific research methods plays a special role for showing a more organized approach in legal norms.

As we mentioned, cultural heritage actually includes cultural objects inherited from previous generations to subsequent generations. Therefore, although it has similarities with other objects of inheritance, its main difference can be attributed to the cultural and spiritual value it carries, at the same time, it belongs to the whole society, and sometimes to the whole humanity. Therefore, it is rightly noted in the literature that the cultural heritage should be evaluated as a heritage that has been created as a result of various individual and collective labor since its creation and allows to determine the standard of living of the period to which it belongs [13]. In fact, this kind of understanding of cultural heritage helps to understand its essence more deeply. It helps to identify its main elements. Thus, cultural heritage objects, as can be seen from the given definition, consist of material objects suitable for collective interests. This makes its protection even more necessary. Also, the fact that it has a special value from the historical and cultural aspect allows to distinguish it from the property over which individuals have acquired rights.

Another approach found in the literature shows that cultural heritage is a set of objects that provide information transmission on cultural issues. At the same time, it is noted that the main basic element of cultural heritage is related to its creation on the basis of activities carried out by representatives of historically existing society [14]. Thus, the historical-cultural heritage is one of the resources that plays the role of a bridge between the past and the future, builds a bond between generations, and forms a sense of belonging to a place, nation, and culture [15]. It is possible to agree with the mentioned position in a certain sense. Because indeed, the examples that make up the object of cultural heritage are the basis for the formation of ideas for the period to which it belongs. From this direction, the importance of cultural heritage samples is increasing. Based on what has been explained, we believe that cultural heritage has an indispensable character in terms of the formation and confirmation of scientific hypotheses about the past, the development of historical knowledge, as well as the process of self-awareness of society.

It should also be noted that cultural heritage objects are distinguished by their special importance from different directions. In addition to being important because cultural heritage is a part of culture, it is also very important in terms of determining the historical lifestyle of the society to which it belongs, and the infrastructure it has. Taking

into account the above, we believe that providing a detailed and accurate understanding of cultural heritage will help in ensuring the preservation of cultural heritage samples belonging to ethnic groups, society, and even to the whole of humanity.

It is noted in the literature that cultural heritage itself manifests itself in many cases as a concept or method of self-determination of society. This increases its importance even more. From this point of view, it goes beyond the limits of legal protection only in the cultural field and it is necessary to ensure its protection with special attention [16]. As it can be seen, it would be appropriate to take into account the mentioned position when giving an understanding to the cultural heritage. Because the consideration of this approach can provide a more detailed and accurate understanding of cultural heritage.

In addition to the approaches in the literature on cultural heritage, it would be appropriate to pay attention to the issue of establishing its concept in the sources of law. First of all, it should be noted that defining cultural heritage in a normative basis eliminates legal gaps and prevents cases of evasion of responsibility for possible legal violations. We witness the understanding of cultural heritage in both national and international acts. Therefore, analyzing these acts is very important in terms of ensuring legal protection of cultural heritage during military conflicts.

The UNESCO Convention "On the Protection of the World Cultural and Natural Heritage", which the Republic of Azerbaijan is also a supporter of, is one of the main international normative documents regulating legal relations regarding cultural heritage [17]. According to that Convention, cultural heritage is defined as cultural, historical, as well as objects containing the results of human mental activity, which are concentrated in different groups. Such objects include monuments, various sights or areas, as well as works or their collection [18]. Considering the given concept as successful, we consider it necessary to note that the grouping of cultural heritage objects and the listing of sub-class objects under the headings of those groups increase the credibility of the normative act. It leads to the elimination of legal loopholes during the regulation of relations in the future.

The International Council on Monuments and Historic Sites (ICOMOS) defines cultural heritage as practices, customs and traditions, places, objects, works of art and cultural values developed by a community and passed down from generation to generation. This concept is defined as an expression of the way of life of the society in question. In the 2005 Framework Convention on the Significance of Cultural Heritage for Society, which is one of the most modern international documents adopted on the protection of cultural heritage, cultural heritage is presented as a reflection of people's continuously evolving values, beliefs, knowledge and customs from the past [19].

Cultural property is defined in another international normative document that can be considered important for the protection of cultural heritage. The 1954 Hague Convention "On the Protection of Cultural Property in the Time of Armed Conflict", to which the Republic of Azerbaijan is also a partner, uses the term cultural property and defines its meaning [20]. That Convention, in general, is aimed at protecting such objects from illegal intentions by forming the normative basis for the legal protection of cultural objects collected under the category of cultural assets during armed conflicts. Article 1 of that Convention defines the term cultural resources. So, according to that norm, cultural wealth includes important cultural objects for the heritage of nations or societies. In that provision, the names of cultural objects included in the scope of this

concept are listed. In addition, places where movable cultural assets are stored are also classified as cultural assets [21]. Indeed, the adoption of an international normative act from the mentioned direction is quite necessary in terms of the organization of legal protection of cultural objects. The special importance of this Convention is that it directly determines the conditions for the legal protection of cultural objects during armed conflicts. It should be noted that since these are more specific relations, the existence of international attention to this issue is extremely important in terms of the formation of legal mechanisms so that cultural objects are not damaged during armed conflicts. The given understanding can be considered successful. In understanding, especially, exhibiting an approach from a broad concept increases its efficiency. However, a number of questions arise here. These questions are related to whether the concepts of cultural heritage and cultural wealth mean the same thing. From this perspective, if cultural wealth and cultural heritage mean the same thing, why are both terms used separately in various international agreements?

In this regard, it is noted in the legal literature that cultural wealth and cultural heritage cannot be used as terms to be confused with each other. First of all, cultural wealth does not go beyond the economic category and manifests itself at a limited level. Cultural heritage is a broader category and includes cultural resources in its scope [22]. Considering the mentioned position to be right, we note that cultural heritage acts as a higher category in relation to cultural wealth. This suggests that cultural assets, being related to cultural heritage, are included in its abundance. It is possible to confirm this with the legal concept given to cultural property. The Hague Convention "On the Protection of Cultural Property in the Time of Armed Conflict" defines cultural property as cultural objects that are important for the heritage of the people. This suggests that cultural heritage, being a broader category, also means cultural objects in its majority. Because cultural heritage consists not only of these objects, but also of many examples of intangible cultural heritage.

Defining the term cultural heritage in national legislation is as important as its establishment in international normative documents. Because it is accepted that national legal protection regimes are more accessible and effective than international legal protection regimes. The Law of the Republic of Azerbaijan "On Culture" regulates the main issues of legal protection of cultural heritage. Although cultural heritage is not defined in that Law, national cultural heritage and types of cultural heritage, etc. understanding is given. National cultural heritage is defined in Article 1.0.10 of that Law. According to the legal content of that article, the totality of cultural objects as national cultural heritage is expressed. The main characteristics of those cultural objects are that they belong to the people of Azerbaijan, are important for the country, and have human values [23]. It is possible to consider this concept given in the national legislation of the Republic of Azerbaijan as successful, but determining the sign of universal or human values for national cultural heritage objects may be the subject of some discussion. At this time, the question of its difference from the world cultural heritage will arise, which in itself can be the basis for a legal gap.

Another term defined in that Law is examples of cultural heritage. According to Article 1.0.15 of the Law, cultural assets that are considered as examples of cultural heritage belonging to the nation, ethnic group are considered as examples of cultural heritage. At the same time, Article 1.0.21 of the Law defines cultural resources and lists cultural objects belonging to it [24]. These cultural objects include works of culture, art

and literature, examples of folk creativity, living norms and customs of a certain group, traditional areas of activity, historical names, place names, historical monuments formed as a result of creative activity, etc. is displayed. This kind of approach of the legislator can be positively evaluated from the mentioned direction. As it can be seen, the scientific direction on the cultural heritage sub-category of cultural resources is based on the legislation of the Republic of Azerbaijan. In this direction, cultural heritage, being a broader category, includes examples of cultural heritage, and examples of cultural heritage constitute a set of cultural assets.

By analyzing the given concepts and explanations, we can identify the main elements and characteristics of cultural heritage. There are common positions in the concepts given to the cultural heritage, in the approaches shown in the studies, which allow to reveal its main features.

Now it would be appropriate to determine the main characteristics of cultural heritage. In the legal literature, it is noted that one of the most important characteristics of cultural heritage is that it has a very important historical significance and a value that is more important than the historical aspect [25]. Cultural heritage, as mentioned, refers to different periods of history and helps to reveal ideas about the way of life of a society, important socio-economic or political events that happened in those past periods, as well as ideas about the religious beliefs of a society. Therefore, examples of cultural heritage play an indispensable role in forming historical works and increasing the level of awareness of the society about its own history.

Another key feature of cultural heritage is that it is important to society in many ways. That is, the provision of legal protection of cultural heritage is important from many directions. In itself, as an object, it gives reason to say that it has importance in the context of various legal relations. In the legal literature, it is noted that the cultural heritage in many cases is distinguished by its importance from a cultural point of view, its importance from the point of view of civil law relations is not so emphasized [26]. Agreeing with the mentioned opinion, we believe that cultural heritage acts as an object of various legal relations from many directions. First, cultural heritage objects are very important in terms of cultural indicators. Secondly, it has historical significance. Because it is an example of the heritage of the creative products of the society that have survived to this day. Thirdly, from an economic point of view, cultural heritage objects are assets that have material value. Therefore, the economic importance of these objects is particularly prominent. Fourth, cultural heritage is the main potential asset of states in terms of tourism. Cultural heritage increases the tourism potential of countries, stimulates the arrival of tourists to the country, and significantly increases the number of people visiting the country. Therefore, in the context of these legal relations, the legal protection of cultural heritage acts as one of the main activities of the states. This can be characterized as one of its main symptoms.

Legal protection of intangible cultural heritage, which is considered as one of the main types of cultural heritage, is of universal importance. Therefore, there are many normative documents adopted at the international and national level, which determine the mechanisms of legal protection of these cultural heritage objects. Establishing the concept of intangible cultural heritage, its legal protection is especially important in terms of establishing legal protection mechanisms during military conflicts. It should be noted that in many cases, the subjects of military conflicts try to avoid responsibility by creating a dispute about whether the object is intangible cultural heritage or not, even if

they damage intangible cultural heritage objects, destroy them or perform actions to falsify them. This includes the threat of public danger both at the international level and at the national level.

In one of the studies that analyzed international documents, it is noted that as a result, the classification of cultural heritage can be divided into two parts, material and cultural at a high level. With this method, in the next stages, material cultural heritage samples are divided into two subcategories. They are related to the physical characteristics of cultural heritage samples and are concentrated in different subcategories, movable and immovable [27]. The mentioned academic approach should be considered successful in practice. Indeed, classification as material and non-material cultural heritage examples has been approached from the direction mentioned both in the content of international agreements and in the legal norms established in national legislations. This type of classification has been established in normative legal documents of different levels.

It is noted in the literature that it is possible to make a classification according to the importance of the value transmitted by the cultural heritage. Thus, such categorization has also manifested itself in the formation of international normative documents. National, local, regional and world cultural heritage can be distinguished from this aspect. The main difference of the world cultural heritage is that the heritage, which is the carrier of these cultural heritage samples, includes the transmission of universally important values that are very important for humanity [28]. The mentioned classification should be appreciated in the context of legal relations. It is true that all examples of cultural heritage are very necessary for the existence of culture, but some of them are considered to be unique examples of the world and humanity and transcend national and regional borders. For example, the settlements where the first people lived, the buildings of human importance from the point of view of history and architecture, etc. can be shown. By carrying out such a classification, calculation of the damage caused during military conflicts, bringing to legal responsibility, etc. acts as an extremely important legal issue.

In one of the publications of UNESCO, it is noted that the intangible cultural heritage itself contains a set of knowledge. In order for such knowledge to be considered intangible cultural heritage, it is important that it should be passed down from generation to generation, and that it should be related to the skills formed by the people's labor. It is also noted here that the intangible cultural heritage is related to the national identity of the society, ethnic group or people, and ensures the transmission of those national self-identification information from generation to generation [29]. It is very important to give a clear definition of intangible cultural heritage, Tangible cultural heritage can be distinguished by its physical characteristics with greater ease of legal protection. However, the legal protection regimes of intangible cultural heritage are somewhat different.

In the legal literature, it is also noted that at the level of international organizations, different approaches are found in the process of giving different concepts to intangible cultural heritage and determining the scope of such examples. UNESCO and the World Intellectual Property Organization, which are specialized organizations of the UN, describe intangible cultural heritage according to their functions and directions. Thus, the concept and approach defined by UNESCO is a broader concept. From that Friday, it is also noted that intangible cultural heritage includes examples of

it. While UNESCO takes a broader approach and refers examples such as language, social ceremony and event, traditions to the category of intangible cultural heritage, in the definition given by the World Intellectual Property Organization, the scope of these examples is limited to folklore, which are examples of traditional knowledge and folk creativity [30]. Based on the above, we consider it necessary to point out that narrow or skeptical approach to intangible cultural heritage and determination of opinion can create difficulties in terms of ensuring legal protection of cultural heritage. Therefore, it is appropriate to approach the mentioned category from a wider perspective in the process of forming national legislation. Because defining the concept of intangible cultural heritage in the legal norms from a narrow perspective may lead to the creation of a legal basis for the subjects who violate the law to evade responsibility and find a legal basis for it in the future.

The "Regulation on protection, restoration and use of cultural heritage samples in the Republic of Azerbaijan" approved by the decision of the Cabinet of Ministers of the Republic of Azerbaijan No. 266 dated July 14, 2015, is one of the normative legal acts that regulate relations with cultural heritage, and identifies and classifies cultural heritage objects. Thus, works, museums, art samples and historical-cultural reserves are included in the category of cultural heritage. In general, cultural heritage samples are divided into two types, tangible and intangible. The examples of tangible cultural heritage are also classified. Those cultural heritage samples are grouped into two groups as movable material heritage samples and immovable material heritage samples [31]. As it can be seen, the scope of cultural heritage provided in the normative legal act can be further expanded in a certain sense. In addition, it should be noted that, as can be seen from the content of the mentioned legal norm, the main approach to the classification of cultural heritage is also observed in the relevant regulations approved by the Cabinet of Ministers of the Republic of Azerbaijan. This can be called successful. But he should also note that the classification according to the geographical content and the category of cultural values to which it belongs has not been found in the relevant normative act. As we mentioned earlier, cultural heritage is classified in different ways from different aspects in the literature. Taking such classification into account in the process of rule-making is very important for the elimination of legal gaps that will occur in the regulation of legal relations, and for the accurate resolution of disputes.

It is noted in the literature that cultural heritage should be evaluated within the concept of time and space. Its main features should be analyzed and evaluated within these two basic concepts. The concept of time includes the historicity of cultural heritage, and the concept of space includes its connection with the society and values to which it belongs [32].

Although the indicated approach is necessary in terms of understanding the essence of cultural heritage, it is also important in terms of its classification. Because some examples of cultural heritage are limited to containing the values of a nation due to their importance, while some cultural heritage objects belong to a nation and are distinguished by the fact that they contain universal values. It is not even possible to find the people to which some examples of cultural heritage belong among existing peoples.

It is no coincidence that although the UNESCO Convention on the Protection of the World Cultural and Natural Heritage does not define any term under the name of world cultural heritage, it is understood that the categories of national cultural heritage

and universal cultural heritage are distinguished from the content of the legal norms expressed in the provisions of the Convention.

As we mentioned earlier, although the term cultural heritage is not directly defined in our national legislation, sub-categories of cultural heritage are defined. The Law of the Republic of Azerbaijan "On Culture" defines the terms national cultural heritage, underwater cultural heritage, tangible and intangible cultural heritage, movable and immovable cultural heritage. Although the definition is not given, the legislator used the term world cultural heritage in various provisions. In that Law, national cultural heritage is associated with three elements. The first one is related to the fact that this cultural example belongs to the people of Azerbaijan. As the second main sign of the national cultural heritage, it is associated with its all-Azerbaijani significance. As the third main feature, these cultural examples are shown to carry universal value at the same time. Taking a critical approach to the concept of national cultural heritage, we consider it necessary to point out that the given concept can cause disputes in some cases. Thus, there may be examples of a national culture that, although they have characteristics that allow identification of a specific nation and may contain its own values, may not carry universal human values. Therefore, when defining the national cultural heritage, pointing out that it has universal values as one of its main features may lead to difficulties in the organization of legal protection of national cultural heritage objects in the future, and to the avoidance of responsibility for those who commit violations of the law. Regarding the clarification of the category of underwater cultural heritage, it is possible to note that there are different approaches in this direction.

One of UNESCO's publications states that although the value of underwater cultural heritage or cultural resources may not be known for some time, these objects contribute more to the world in terms of human history and human lifestyles. It is noted that the inundation of most of the land parts of the world makes the world think about the traces of civilizations that remain under water basins [33]. Agreeing with the mentioned position, we believe that the underwater cultural heritage is a category of cultural heritage and has a very necessary importance for states, societies and the international community.

Therefore, it is no coincidence that in 2001 a special convention on this field was adopted within the framework of UNESCO. It was in that convention that underwater cultural heritage was given a legal definition. According to Article 1 of the UNESCO Convention on the Protection of Underwater Cultural Heritage, cultural, historical, archaeological traces containing the facts of the existence of people completely or partially submerged in water during a 100-year period are considered underwater cultural heritage. The names of those cultural resources are also listed in that article, together with their archaeological and natural context, the building, territory, human remains, their means of transport and other objects related to them, ancient historical and other material samples are identified as underwater cultural heritage objects. Pipelines, cables and other installations on the seabed are excluded from the category of underwater cultural heritage objects [34]. It should be noted that the given concept can be considered successful. In particular, the precise definition of the range of objects that are and are not considered underwater cultural heritage is particularly important for ensuring the legal protection of this category of cultural heritage samples.

At the same time, the Law of the Republic of Azerbaijan "On Culture" also defined examples of underwater cultural heritage. It has been noted that underwater cultural

heritage means cultural objects that have traces of humanity and are completely or partially under water, as well as cultural objects that remain today. Historical and archaeological objects can be attributed to them [35]. In this concept, which is similar in content to the convention, unlike the convention, there is no sign of being submerged during the 100-year historical period.

Nevertheless, we must also note that the normative legal act adopted in connection with the application of the Law "Regulation on the attribution of underwater cultural resources in the territorial waters of the Republic of Azerbaijan to underwater cultural heritage samples" and "Regulation on the use of underwater cultural heritage samples" of the Republic of Azerbaijan The decision No. 27 of the Cabinet of Ministers dated February 3, 2016 provided the same concept as the Convention. In the Rule "Attribution of underwater cultural resources in the territorial waters of the Republic of Azerbaijan to examples of underwater cultural heritage" approved by that Decision, cultural objects that have been underwater for more than 100 years are accepted as underwater cultural heritage. Another main feature of these cultural resources is that they exist by protecting their natural and archeological environment. These examples of cultural heritage include various relics, objects, sea and air vehicles, other relics and objects related to them, buildings, historical material objects distinguished by their antiquity, etc. attributed [36]. We can say that the concept of underwater cultural heritage in national legislation is established in accordance with the Convention. Although some adjustments are needed from the overall context, the established concepts can be considered successful. Determining the range of objects that are not considered underwater cultural heritage in the Decision of the Cabinet of Ministers, as well as in the Convention, is a very important issue in terms of precise regulation of legal relations in this field.

Based on the above, we can mention that it is possible to group the cultural heritage based on several more criteria. In general, cultural heritage can be divided into two categories: world cultural heritage and national cultural heritage, and then classified into 2 groups, tangible and intangible. Here, it is possible to divide the category of tangible cultural heritage samples into two subcategories. They are movable and immovable material cultural heritage. The main criterion for such classification is related to the nature of transportation of objects considered cultural heritage. As another subcategory of tangible cultural heritage, it is necessary to distinguish underwater cultural heritage.

References:

1. Rouhi J. De finition of cultural heritage properties and their valuesby the past, Asian Journal of Science and Technology Vol. 08, Issue, 12, 2017pp.7109-7114, p.7113
2. Копсергенова А.А. 2008. Культурное наследие: философские аспекты анализа. Дис. … канд. филос. наук. Ставрополь, 184 с. С. 23-26.
3. Azərbaycan dilinin izahlı lüğəti, Dörd cilddə, III cild, Bakı, "Şərq-Qərb" nəşriyyatı, 2006, 672 səh., səh. 316-317
4. Azərbaycan dilinin izahlı lüğəti, Dörd cilddə, II cild, Bakı, "Şərq-Qərb" nəşriyyatı, 2006, 792 səh., səh. 571
5. Cambridge Dictionary - https://dictionary.cambridge.org/example/english/cultural-heritage (last access: 20.06.2024).
6. Süleymanlı M. Mədəni irs, Dərslik, Bakı, "Elm və təhsil" nəşriyyatı, 2019, 424 səh., səh. 18-19.

7. Özlem K., Hasret U.Y., Cevdet A. Kültürel miras kavramına ilişkin algıların metafor analizi yoluyla incelenmesi. Turizm Akademik Dergisi. 2018, s.99. https://dergipark.org.tr/tr/download/article-file/496544#:~:text=K%C3%BClt%C3%BCrel%20miras%2C%20%E2%80%9Cge%C3%A7mi%C5%9Ften%20miras%20al%C4%B1nan,Bakanl%C4%B1%C4%9F%C4%B1%2C%202009%3A%203) (last access: 20.06.2024).

8. Azərbaycan dilinin izahlı lüğəti, ikinci cild. Azərbaycan Milli Elmlər Akademiyası. https://kitabxana.nmi.edu.az/wp-content/uploads/2020/09/Az%C9%99rbaycan-dilinin-izahli-lug%C9%99ti-II-cild.pdf (last access: 21.06.2024)

9. Elena Franchi. Kültürel miras nedir? https://tr.khanacademy.org/humanities/special-topics-art-history/arches-at-risk-cultural-heritage-education-series/arches-beginners-guide/a/what-is-cultural-heritage (last access: 23.06.2024)

10. Полякова М.А.., Шулепова Э.А. Вопросы охраны и использования памятников истории и культуры, Сборник научных трудов, Науч.-исслед. ин-т культуры, 1990, 141 с., с.74-77

11. Шуб М., Кособуцкая Н. Культурное наследие в свете современных гуманитарных подходов, Вестник Кемеровского государственного университета культуры и искусств., 2017, №41, Vol. 1, 33-40 с., с. 38-39

12. Sonkoly G. Vahtikari T. Innovation in Cultural Heritage - For an integrated European Research Policy, European Union, 2018, 53 p., p.11

13. Çakırca, D. Savaşın savunmasız düşmanı-kültürel miras, Munzur Üniversitesi Sosyal Bilimler Dergisi, N 4, Vol. 6, 16-35 s., s. 18-19.

14. Мазенкова А. Культурное наследие как самоорганизующаяся система. тема диссертации и автореферата по ВАК РФ 24.00.01 кандидат философских наук, Тюмень, 2009, 22 с., с. 10-13

15. Perihan K. Küreselleşme sürecinde kentlerimize giren yeni tüketim mekanları ve yitirilen kent kimlikleri. S. 14 https://www.spo.org.tr/resimler/ekler/31c83db8d2ff01b_ek.pdf (last access: 20.06.2024)

16. Upadhyay N. and Rathee M. "Protection of Cultural Property under International Humanitarian Law: Emerging Trends", Brazilian Journal of International Law, 2020. Vol. 17, N. 3, 390-411 pp., p. 390-393.

17. YUNESKO-nun "Ümumdünya mədəni və təbii irsin qorunması haqqında" Konvensiyasına Azərbaycan Respublikasının qoşulması barədə Azərbaycan Respublikası Milli Məclisinin Qərarı https://e-qanun.az/framework/8744 (last access: 19.06.2024)

18. Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 https://whc.unesco.org/en/conventiontext/ (last access: 23.06.2024)

19. Çeliktaş T. Kültürel mirasın korunmasının insan hakları hukuku ile ilişkisi ve kültürel miras hakkı. s.1446 https://dergipark.org.tr/en/download/article-file/1985582 (last access: 22.06.2024)

20. "Silahlı münaqişə zamanı mədəni sərvətlərin mühafizəsi haqqında" beynəlxalq Konvensiyaya və protokola Azərbaycan Respublikasının qoşulması barədə Azərbaycan Respublikası Milli Məclisinin 1993-cü il 21 aprel tarixli 574 nömrəli Qərarı https://e-qanun.az/framework/8226 (last access: 20.06.2024)

21. Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Hague, 1954 https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention (last access: 21.06.2024)

22. Blake J. On Defining the Cultural Heritage, The International and Comparative Law Quarterly, Vol. 49, No. 1 (Jan., 2000), pp. 61-85, p. 65-69

23. "Mədəniyyət haqqında" Azərbaycan Respublikasının Qanunu https://e-qanun.az/framework/25303 (last access: 23.06.2024)

24. "Mədəniyyət haqqında" Azərbaycan Respublikasının Qanunu https://e-qanun.az/framework/25303 (last access: 18.06.2024)

25. Чернядьева А.С. Генеральная Ассамблея ООН. «Нематериальное культурное наследие – живое наследие человечества», Океанский менеджмент №1(19)2023, 26-31 с., с. 29

26. Ахметзянов А. Международно-правовая защита культурных ценностей в случае вооруженного конфликта автореферата пкандидат юридических наук, Казань, 2005, 24 с., с. 7

27. Cosovic M., Amelio A., Junuz E. Classification Methods in Cultural Heritage, Proceedings of 1st International Workshop on Visual Pattern Extraction and Recognition for Cultural Heritage Understanding co-located with 15th Italian Research Conference on Digital Libraries (IRCDL 2019), 2019, pp. 13-24, p.22-24

28. Hua S. World Heritage Classification and Related Issues—A Case Study of the "Convention Concerning the Protection of the World Cultural and Natural Heritage", Procedia - Social and Behavioral Sciences, 2, 2010, pp. 6954-6961, p.6955, 6957.

29. Intangible Cultural Heritage, UNESCO, https://ich.unesco.org/doc/src/01851-EN.pdf 03.08.2024, 10 p., p.4-5

30. İmanov K. Qeyri-maddi mədəni irs (QMMİ) anlayışı və onun istifadəsi. Bakı, 2023, 34 s., s.7

31. Azərbaycan Respublikası Nazirlər Kabinetinin 2015-ci il 14 iyul tarixli 266 nömrəli qərarı ilə təsdiq edilmiş "Azərbaycan Respublikasında mədəni irs nümunələrinin qorunması, bərpası və istifadəsi Qaydası" https://e-qanun.az/framework/30401 (last access: 20.06.2024)

32. Jokilehto J. Defınıtıon of cultural herıtage references to documents ın hıstory, (Originally for ICCROM, 1990) Revised for CIF: 15 January 2005, 47 p., p. 5-6

33. The information kit on The UNESCO Convention on the Protection of the Underwater Cultural Heritage, https://irpmzcc2.org/upload/libreria/archivos/152883eng_202402151307.pdf (last access: 20.06.2024)

34. Convention on the Protection of the Underwater Cultural Heritage https://unesdoc.unesco.org/ark:/48223/pf0000126065

35. "Mədəniyyət haqqında" Azərbaycan Respublikasının Qanunu https://e-qanun.az/framework/25303 (last access: 10.06.2024)

36. "Azərbaycan Respublikasının ərazi sularında sualtı mədəni sərvətlərin sualtı mədəni irs nümunələrinə aid edilməsi Qaydası"nın və "Sualtı mədəni irs nümunələrindən istifadə Qaydası"nın təsdiq edilməsi barədə Azərbaycan Respublikası Nazirlər Kabinetinin 2016-cı il 3 fevral tarixli 27 nömrəli qərarı https://e-qanun.az/framework/32075 (last access: 22.06.2024)

Date of receipt of the article in the Editorial Office
(03.07.2024)

Bahruz Orujov, *Jisoo Kim*. Key contrasts between arbitrators in investment contexts and adjudicators in trade disputes. International Law and Integration Problems, 2024, №2 (69), pp. 50-56. DOI: 10.61638/JRVB1864

KEY CONTRASTS BETWEEN ARBITRATORS IN INVESTMENT CONTEXTS AND ADJUDICATORS IN TRADE DISPUTES

Bahruz Orujov*, Jisoo Kim**

Abstract

This article attempts to explain key differences between the trade and investment law regimes. It examines how the differing goals of trade and investment law result in different legal interpretations of national treatment. On the other hand, it focuses on differences between the individuals resolving trade and investment disputes to explain why the trade and investment regimes differ. This article also researches why and how the two regimes differ. In this article, we first explain how the different goals of trade and investment law result in differences in the substantive legal analysis. Finally, we observe a common goal shared by both the trade and investment regimes: establishing legitimacy.

Keywords: *investment arbitrators, settlement of investment disputes, trade disputes adjudicators, panelists, appellate body, diplomats, ex-diplomats, settlement of trade disputes, national treatment, trade law, investment law.*

1. Introduction

The rise of international organizations and agreements in the last century has resulted in numerous international dispute settlement mechanisms, each with unique historical and functional characteristics. However, the issues these rules address often overlap, leading to multiple forums claiming jurisdiction over the same dispute. For instance, under the North American Free Trade Agreement (NAFTA), parties can choose between the WTO and NAFTA for issues related to both the 1994 General Agreements on Tariffs and Trade (GATT) and NAFTA. Once a party selects the NAFTA forum, it should be exclusive, but the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) grants the WTO exclusive jurisdiction over disputes under the SPS Agreement. While parties may pre-select a mechanism when jurisdictional conflicts arise, this is not always the case. Consequently, the overlapping jurisdictions and lack of hierarchy among these mechanisms have resulted in inconsistent interpretations of similar factual and legal issues. The fragmentation of international law has resulted in inconsistent interpretations by various dispute resolution forums. For instance, the WTO interprets the national treatment principle as a breach when competitive conditions between domestic and imported products are affected, while some arbitral tribunals under bilateral investment treaties (BITs) do not consider this sufficient for a violation. This inconsistency leaves parties uncertain about which precedent to follow. Additionally, BITs often mirror the substantive rights and obligations of WTO agreements but require disputes to be resolved through arbitration rather than the WTO. Consequently, similar disputes can be litigated in both investor-state arbitral tribunals and the WTO, as seen in the softwood lumber dispute between the U.S. and Canada, which involved multiple cases across different forums [6, p. 191-192].

The Bilateral Investment Treaty (BIT) fosters a supportive environment for companies investing in foreign countries. Since the late 1980s, BITs have become widely

* Master's student, Central European University

** JD Candidate, University of Toronto

accepted for promoting and protecting foreign investments. These treaties grant investors rights against states that harm their projects through actions like breaking agreements, enforcing discriminatory regulations, revoking licenses, or confiscating property. A BIT is established between two states, creating a legal framework for investment flows between them. Claims under a BIT involve an investor from one state (the home state) and the state where the investment occurs [2, p. 2].

To comprehend the significant differences among these dispute resolution institutions, it is essential to analyze their fundamental characteristics. This examination will illuminate the reasons behind the distinctiveness of these systems, even though they aim to address the same core issues. Initially, it is important to highlight that the resolution of trade disputes aims to foster a competitive landscape among member states. This indicates that the trade framework prioritizes collective welfare, efficiency, liberalization, and state-to-state negotiations regarding market access and trade prospects, rather than focusing on individual entitlements. In contrast, the resolution of investment disputes centers on safeguarding individual rights, particularly the interests of investors within host nations. It becomes evident that the essence of trade dispute resolution is rooted in liberalization, which stands in opposition to the traditional investment framework that emphasizes fairness based on established norms for the treatment of foreign entities, rather than efficiency. This framework is concerned with protection rather than liberalization, focusing on individual rights instead of state-to-state market opportunity exchanges [3, p. 54].

Consequently, compliance serves as the solution for trade law, while compensation is the remedy for investment law. This distinction highlights that bilateral investment treaties focus on safeguarding foreign investments already established within host nations. Such investment protection is anticipated to foster investment, stimulate private industrial and financial ventures, and enhance the prosperity of both countries. To clarify further, the trade framework operates as an intergovernmental construct that addresses broad market access and trade opportunities aimed at improving overall welfare. In contrast, the investment framework concentrates on the specific challenges of attracting and safeguarding investments made by individual investors [5, p. 62]. Furthermore, The General Agreement on Tariffs and Trade (hereinafter GATT) national treatment is about competitive opportunities, not actual trade flows. Because trade law's goal is to increase liberalization and market access for imports in the interest of overall welfare, not to guarantee rights or trade flows to individual exporters. GATT national treatment ensures equal competitive opportunities, not actual sales. As the nature of these regimes is different, the subjects who conduct the dispute should be different. Additionally, the principle of national treatment under GATT focuses on providing equal competitive opportunities rather than regulating actual trade volumes. The primary objective of trade law is to promote liberalization and enhance market access for imports to benefit overall societal welfare, rather than to secure specific rights or trade volumes for individual exporters. GATT national treatment guarantees a level playing field in terms of competition, rather than ensuring concrete sales figures. Given the distinct nature of these regulatory frameworks, the entities involved in resolving disputes should also differ. As a result, investment arbitrators possess different professional experiences and incentives compared to World Trade Organization (hereinafter WTO) panelists, members of the Appellate Body, and their associated personnel. For instance,

investment arbitrators typically come from a private commercial background, while WTO adjudicators are predominantly public sector officials. The characteristics of dispute resolution significantly influence the identification of the "judges" involved in conflicts. In the context of trade disputes, diplomats play a central role, whereas in investment disputes, lawyers dominate the proceedings.

2. Differing Goals of Trade and Investment Law

Non-Discrimination notes that trade law aims to foster a competitive landscape between states in order to further collective welfare, efficiency, and state-to-state negotiations regarding market access and trade prospects [5, p. 54]. In contrast, investment law centers on safeguarding the rights of individual investors [5, p. 56]. The essence of trade regime is rooted in liberalization and efficiency, which stands in opposition to the investment regime's emphasis on the protection and fair treatment of foreign entities [5, p. 56]. Consequently, compliance serves as the solution for trade law, while compensation is the remedy for investment law.

3. Legal Analysis

Since trade law is focused on ensuring competitive opportunities, instead of actual trade flows, it is not necessary to prove actual harm. It is sufficient to show that a measure affects competitive opportunities in favor of domestic products, in the abstract. This is linked to the fact that the remedy for a trade violation is an obligation to bring the measure back into conformity with trade law [5, p. 70]. On the other hand, in investment law, actual harm must be proved since the remedy in investment law is compensation [5, p. 70]. If there is no actual harm, there is nothing to compensate for.

Another example of a substantive legal differences between trade and investment law lies in their differing analyses of "likeness". While trade law focuses on competitors, investment law focuses on foreign and domestic investments that raise similar public policy concerns [5, p. 72]. Because trade law prioritizes liberalization and market access, trade law's analysis of national treatment focuses on competitive opportunities. In trade law, "like products" are interpreted as products in a competitive relationship [5, p. 79]. When two competing products are treated differently, there is a presumption that this differential treatment is based on nationality and thus violates national treatment [5, p. 72]. However, competition is not the focus in investment law. Since investment law is focused on security and fairness for individual investors, investment tribunals interpret "likeness" by assessing whether investments are in "like circumstances". In some circumstances, it may be fair to regulate two competing companies differently [5, p. 81]. Investment tribunals must look at the circumstances that would justify governmental regulations that treat foreign and domestic investments differently in order to protect the public interest [5, p. 73].

The object and purpose of investment agreements also greatly influences the test for determining whether a measure treats a foreign investment less favorably than comparable domestic investments. Because the goal is to protect individual investors, national treatment provisions in investment agreements entitle foreign investments to the best treatment afforded to comparable domestic investments. Less favorable treatment is found when there is differential treatment between a foreign investment and any single domestic investment in like circumstances [5, p. 78]. In contrast, trade law evaluates whether a measure has anticompetitive effects upon the entire group of like

foreign products, not upon a single producer [5, p. 82]. This group analysis in trade law is linked to trade law's collective goals of liberalization, efficiency, and market access.

4. Decision-making by Lawyers or Diplomats

The WTO dispute settlement system is considered one of the most effective international judicial mechanisms. Under the DSU, any WTO Member can initiate proceedings against another Member for alleged violations of the 'covered agreements' before a neutral panel. Claims must be based on these agreements, not on external legal sources [1, p. 9].

Investor-State arbitration arises from a network of international investment treaties, especially Bilateral Investment Treaties (BITs) and investment chapters in Free Trade Agreements (FTAs). These treaties provide significant protections for foreign investors, including national treatment, most favored nation (MFN) treatment, fair and equitable treatment, full protection and security, and safeguards against expropriation without compensation [1, p. 11-12].

Rule of Lawyers posits that the different pool of individuals deciding WTO and International Centre for Settlement of Investment Disputes (hereinafter ICSID) disputes helps explain why the trade and investment regimes differ [3, p. 761]. WTO panelists are predominantly diplomats or ex-diplomats, often without law degrees and with little legal experience. On the other hand, investment arbitrators typically have private law backgrounds, with deep legal expertise [3, p. 763].

We theorize that WTO panelists and investment arbitrators possess different professional experiences partly due to the different goals of the two regimes. The WTO engages in activities beyond resolving legal disputes; it serves as a comprehensive platform for negotiations and oversight, facilitating daily interactions among diplomats [3, p. 796]. While trade disputes involve the resolution of legal matters, they also overlap with diplomatic interactions and trade relations. Consequently, the individuals tasked with resolving these disputes, despite addressing legal concerns, need diplomatic experience to ensure the smooth operation of global trade and competitiveness. Similarly, since the nature of trade disputes involve public, national interests, it is fitting that WTO panelists would have backgrounds as technocrats or political appointees operating in large bureaucracies, where teamwork and policy are valued [3, p. 781]. The public and diplomatic nature of the trade regime's goals of collective welfare and liberalization in the high proportion of WTO panelists with public sector experience.

In contrast, the primary objective of investment disputes is not the liberalization of global trade, but the protection of specific foreign investments. The International Centre for Settlement of Investment Disputes (ICSID) functions solely as a framework of arbitration guidelines, managed by a small group of World Bank officials located in Washington, DC [3, p. 797]. This more legal and private nature of investment law is reflected in how investment arbitrators typically have private law backgrounds. Until recently, the ICSDS operated as a largely technical, depoliticized process that filled gaps in legal institutions of less developed countries [3, p. 764]. Thus, it is natural that investment arbitrators would need legal expertise, instead of diplomatic experience. Furthermore, private law practice and legal academia are fields where individual performance, reputation, and legal expertise are key factors in advancement [3, p. 781]. While this individualism may not be a good fit for the more diplomatic and public

nature of trade disputes, it is likely more compatible with the more legal and private nature of investment law.

Similarly, we hypothesize that different remedies for trade and investment disputes also contribute to the different backgrounds of WTO panelists and investment arbitrators. In investment disputes, the key remedy is compensation to address damages that investors experience. Investment disputes thus necessitate legal proceedings and an understanding of liability, making legal knowledge. The complexity of legal processes inherent in investment disputes attracts lawyers to engage in their resolution.

In contrast, the remedy in trade disputes is compliance, not compensation. The ultimate remedy for trade law violations involves the withdrawal or modification of the inconsistent measure, rather than financial reparations for damages. Thus, resolution of trade disputes requires experience in diplomacy and political strategy. The absence of compensation may lower the need for legal representation, as there is no obligation to demonstrate actual harm to establish a violation.

WTO dispute settlement is a more institutionalized system compared to investment arbitration. Panelists differ significantly from Appellate Body (AB) members, while arbitrators and annulment committee members are more similar. This leads to a clear hierarchy between panels and the AB, but a looser relationship between ICSID tribunals and annulment committees. Firstly, the AB is a permanent body, whereas committees are ad hoc, creating distinct roles for panelists and AB members, unlike the blurred lines in investment arbitration. Secondly, appeals to panel reports are common, while annulments are rare. This means arbitrators have more freedom in their decisions, while panelists must consider previous AB rulings, supported by the AB's permanence. Lastly, investment arbitration lacks functional specialization, as many lawyers serve as both arbitrators and counsel. With 76% of arbitrators being lawyers compared to only 19% among panelists, it's clear that trade panelists and lawyers come from different backgrounds, while investment arbitrators and counsel often overlap [4, p.21].

5. A Common Goal: Legitimacy

Although the trade and investment regimes serve different goals, both need to establish institutional legitimacy. Both the trade and investment regimes strive for legitimacy, but achieve it through different methods.

Despite that fact that WTO panelists frequently lack legal qualifications, the WTO dispute resolution mechanism has developed a complex and esteemed body of jurisprudence. This is partly because the legitimacy of the WTO panelists is rooted in the broader institutional framework of the WTO. A panelist's relative inexperience or lack of status is compensated by the existence of a skilled secretariat and the overall control of WTO members [3, p. 801]. *Rule of Lawyers* notes that the existence of a prestigious and experienced legal secretariat and appellate body and alleviates concerns that panelists have comparatively little legal experience or prestige [3, p. 794-795].

Rule of Lawyers further argues that WTO dispute settlement is successful *because* it run by relatively inexperienced trade diplomats. The fact that panelists are predominantly diplomats or ex-diplomats embedded in the Geneva trade community helps the WTO dispute resolution system maintain a sufficient levels of political support and participation necessary for legitimacy [3, p. 801]. By contrast, there has been much criticism against the individuals adjudicating ISDS cases. Observers argue

that the investment framework is dominated by "private judges" rather than sovereign states. Arbitrators have been criticized for operating in confidentiality, exhibiting bias towards large multinational corporations, disregarding potential conflicts of interest, and rendering inconsistent rulings [3, p. 763].

However, it is crucial for investment arbitrators to have deep legal expertise and high status because ICSID lacks the broader institutional framework to instill legitimacy. The pool of investment arbitrators has been described as a "small group of socially prominent actors", "graduates from elite law schools", and "stars" [3, p. 780]. This high social status of investment arbitrators helps create legitimacy. Similarly, ICSID's lack of an appeals system can partly explain the high proportion of repeat appointments of the same small pool arbitrators [3, p. 794]. Investment arbitrators are far more likely to be re-appointed than WTO panelists. While this practice has been criticized for being closed and elitist, it can be used to enhance the consistency of investment decisions [3, p. 777].

Rule of Lawyers was written before the recent WTO appellate body crisis. Thus, *Rule of Lawyers* cited the existence of a strong appellate body as part of the institutional framework that compensated for panelists' lack of legal expertise or status [3, p. 794]. However, given the current appellate body crisis, that no longer stands true. If a WTO panelist's relative inexperience or lack of status is no longer compensated by the existence of a permanent, more prestigious and experienced appellate body, there may be more interest in having WTO panelists with higher levels of professional prestige and status. Furthermore, some WTO members have set up a multi-party interim appeal arbitration arrangement. If this practice of ad hoc arbitration continues, we wonder if there will be more convergence in the composition of trade arbitrators and investment arbitrators.

6. Conclusion

This paper has synthesized the complementary explanations offered by the two papers by illustrating how the distinct goals of the two regimes leads to differences in the legal analyses and the composition of who resolves disputes.

Since trade law aims to advance efficiency and liberalization, legal analysis tends to be more abstract, focusing on competitive opportunities for groups of competitors. The diplomatic nature of the trade regime's goals of collective welfare and liberalization are also reflected in how most WTO panelists have public sector experience, not deep legal experience. On the other hand, investment dispute resolution focuses on protection of individual rights, not state-to-state exchanges of market opportunities. Thus, legal analysis in investment law does not focus on competition and instead looks at whether there has been actual harm to a single investor. Furthermore, since the investment dispute resolution regime does not also function as a diplomatic forum as the WTO does, investment arbitrators tend to have private law backgrounds.

References:

1. Brooks E.Allen and Tomasso Soave, "Jurisdictional Overlap in WTO Dispute Settlement and Investment Arbitration" Arbitration International (2014), Volume 30, Issue 1.
2. Calvin A. Hamilton and Paula I. Rochwerger, "Trade and Investment: Foreign Direct Investment Through Bilateral and Multilateral Treaties New York", International Law Review (Winter 2005), Vol.18, No.1

3. J. Pauwelyn, "The Rule of Law Without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus", 109 American Journal of International Law 761 (2015).
4. José Augusto Fontoura Costa, 'Comparing WTO Panelists and ICSID Arbitrators: The Creation of International Legal Fields' (2011).
5. N. DiMascio and J. Pauwelyn, "Non-Discrimination in Trade and Investment Treaties: Worlds Apart or Two Sides of the Same Coin?", 102 American Journal of International Law 48 (2008).
6. Siqing Li, "Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses" Chicago Journal of International Law, vol. 19: No. 1, Article 6.

Date of receipt of the article in the Editorial Office
(25.07.2024)

PRODUCTION SHARING AGREEMENTS IN AZERBAIJAN

Nurida Ibrahimova*

Abstract

The article discusses the concept of the Production Sharing Agreement (hereinafter referred to as the PSA), the characteristics of its implementation in Azerbaijan, as well as the advantages the agreement brings to the country. The limited availability of local research and literature on the subject, coupled with the general scarcity of educational resources, has highlighted the need for a more thorough investigation of the topic. The article also examines the methods of implementing PSA agreements by operating companies, the obligations and guarantees designated for them, as well as the preferential features such as tax and other exemptions for contractors and subcontractors. The article discusses the rules for imposing and exempting import and export taxes on goods, works and services provided in connection with hydrocarbon activities in the Republic of Azerbaijan, as well as the procedures to be used in their application, as well as the Customs and Tax regulations related to the export of hydrocarbons based on the Agreements. It also discusses the requirements of local legislation in this area and the procedure for compliance with these requirements by operating companies and their contractors/subcontractors, and the necessity of this.

Keywords: *Production Sharing Agreement, operating companies, contractors, subcontractors, guarantees, main features, advantages, obligations, import and export regulations, exemptions and concessions.*

I. Introduction

A Production Sharing Agreement (hereinafter referred to as the PSA) is a contract concluded between one or more oil companies (contractors) and the government, defining the rights for the exploration, development, and extraction of mineral resources from a specific area for a certain period.

Under the standard terms of a PSA, the government engages the investor(s) as contractors for the exploration, development, and extraction of mineral resources, while retaining overall ownership rights to the resources [6, p. 3-4].

The contractor initially bears the risk of finding hydrocarbons and the financial risk of the venture, and explores, develops, and ultimately produces the field in accordance with the terms of the agreement. If successful, the contractor is permitted to use the proceeds from the sale of the oil produced, after paying the concession fees to the government, to recover capital and operating expenses, known as "profit oil". The remaining money is known as "profit oil" and is divided between the government and the contractor. In some agreements, changes in international oil prices or the rate of production from the field affect the company's share of production.

Typically, the contract period consists of an *Exploration Period and a Development Period*, depending on the time frame and work commitments. The time frames can often be extended depending on the circumstances and government approval. In the event of commercial discovery and subsequent identification of the relevant field, the development and production period can even be extended to 15 years or more.

An example of this is the Agreement between the State Oil Company of the Republic of Azerbaijan and BP Exploration (Azerbaijan) Limited and the Joint Oil Company of the State Oil Company of the Republic of Azerbaijan on the *Exploration,*

* Lawyer, Azerbaijani Bar Association, CSS Consulting Company

Development and Production Sharing of the Shallow Water Area around the Absheron Peninsula in the Azerbaijani Sector of the Caspian Sea in Azerbaijan. The aforementioned agreement was signed on *22 December 2014* and operations under the agreement are currently ongoing

II. Advantages of a Profit-Sharing Agreement

- *Low Risk for the Host Country*
- *Transfer of knowledge/information from foreign oil companies to the host country*
- *Various cost recovery strategies for both parties*

1. Low risk for the host country

Through PSAs, the host country can develop new reserves without incurring risks or significant costs. The host country does not need to make substantial investments in exploration and production activities, as foreign oil companies bear all operational and financial costs and risks.

2. Transfer of knowledge/information from foreign oil companies to the host country

When foreign oil companies enter a host country for exploration activities, they can transfer their expertise to the host country, and the host country can learn important experience from them.

3. Various cost recovery strategies for both parties

When drafting the agreement, both parties should agree on the most effective cost recovery strategy. The biggest differences between the strategies are how the total revenue is divided and how the profits are shared between the two parties.

However, PSAs have certain drawbacks, such as the complexity of their drafting and preparation. Numerous key factors must be discussed and agreed upon by the parties before the agreement is signed. Work commitments and financial obligations are considered crucial factors in negotiations, as they determine the degree of exploration risk.

III. Main features of Production Sharing Agreements in Azerbaijan

The terms of PSAs are typically defined within the national legislation of each country (in most cases, within the Law on Production Sharing). In PSAs, in addition to certain tax and non-tax payments to the state, a portion of the extracted oil (specifically, "profit oil") is delivered to the state in kind. According to the Constitution of the Republic of Azerbaijan and the *Law of the Republic of Azerbaijan "On Subsoil" dated February 13, 1998* [1], ownership rights over all hydrocarbons naturally existing in subsoil both on land and underwater belong to the state. Based on the official documents listed below, the authority to manage and oversee these hydrocarbons has been entrusted to SOCAR [5, p. 2].

In accordance with the Decree No. 200 of the President of the Republic of Azerbaijan "On the Establishment of the State Oil Company of the Republic of Azerbaijan" dated September 13, 1992 [3] and the Decree No. 844 of the President of the Republic of Azerbaijan "On the Improvement of the Structure of the State Oil Company of the Republic of Azerbaijan" dated January 24, 2003 [4] and the Charter of the said company, SOCAR exercises ownership of all hydrocarbons produced and has been entrusted with all powers in the field of exploration and development of all hydrocarbons in the state. Thus, under the Agreements, SOCAR grants the Contractors the sole and exclusive right to conduct oil and gas operations within the boundaries of

the Contract Area and in connection with that area, based on and in accordance with the terms of the Agreement and for that period. Except for the rights specifically provided for herein, the Agreement does not provide for the rights to engage in any other type of activity other than oil and gas operations in connection with the surface and seabed, subsoil, as well as any other natural resources or water resources. [5, p. 2-3]

In every Agreement, the guarantees and obligations of both the state (SOCAR) and the contractors are explicitly stipulated. Some of the most significant guarantees and obligations are as follows: [5, p. 8-11]

SOCAR's Guarantees:

It has all the powers prescribed by the legislation of the Republic of Azerbaijan to conclude and execute the Agreement, grant rights and benefits to the Contractor in accordance with the terms of the Agreement, and fulfill its obligations under the Agreement.

Obligations:

- SOCAR, within the full scope of its authority and in accordance with the law, shall make all reasonable efforts before the Government and other relevant authorities of Azerbaijan to assist the Contractor in obtaining the following:

- All necessary government permits and other approvals from relevant Azerbaijani authorities, agencies, and/or organizations;

- Customs clearances, visas, residence permits, communication facilities, licenses for the use of land or water, import and export permits, bank account openings, office spaces, and housing for employees necessary for the efficient conduct of oil and gas operations;

- All geological, geophysical, and geochemical data related to the Contract Area that are not under the control or possession of SOCAR.

Guarantees and Rights of the Contractor Parties

- Each Contractor Party declares and guarantees that it has been duly established in accordance with its founding documents, its existence is lawful, and, subject to obtaining the relevant government approvals, it has the authority to establish and maintain the necessary branches and offices within the state and elsewhere to conduct oil and gas operations in accordance with the provisions of this Agreement.

- Each Contractor Party, its joint companies, as well as the Contractor's subcontractors, are hereby authorized to establish branches, permanent representations, permanent offices, and other forms of economic activities within the state's territory to conduct or participate in economic activities and oil and gas operations, including purchasing, leasing, or acquiring any property required for oil and gas operations. This authorization is subject to compliance with the formalities and procedures prescribed in the legislation of the state regarding such representations, acquisitions, leases, or procurements.

- The Contractor Parties shall provide the financial resources required for conducting oil and gas operations in accordance with the provisions and terms set forth in this Agreement.

- The Contractor has both the right and obligation to carry out oil and gas operations under the terms of this Agreement and in compliance with internationally accepted best practices in the oil and gas industry. The project standards and technical specifications for technological facilities and equipment must adhere to the provisions outlined in Appendix 11. Notwithstanding any conflicting terms in this Agreement, if

any action or inaction by any Contractor Party or its ultimate parent company could result in a penalty under the applicable laws of the relevant jurisdiction, no Contractor Party shall be compelled to undertake such action or inaction.

The aforementioned obligations and guarantees are typically drafted in a more detailed and comprehensive manner and may include varying provisions specific to each agreement.

Additionally, the key terms stipulated in the Agreements include the following: (6, Sections i-iv):

- Duration, development plan of the discovery, and future advancements;
- The management committee overseeing the project and annual work programs;
- The operating company, workforce, and professional training;
- Reporting and inspection of oil and gas operations;
- Land use;
- Use of facilities;
- Reimbursement of costs incurred in oil and gas operations and the allocation of produced oil;
- Taxation;
- Determination of the value of hydrocarbons;
- Ownership, use, and disposal of property;
- Measurement and evaluation procedures;
- Environmental protection and occupational safety practices;
- Calculation of shares.

IV. Current Production Sharing Agreements (PSAs) in Azerbaijan

As of now, the following PSAs are in effect in Azerbaijan:

1. Agreement on the Exploration, Development, and Production Sharing of the D230 Prospective Exploration Block
2. Agreement on the Exploration, Development, and Production Sharing of the Ashrafi-Dan Ulduzu-Aypara Area
3. Agreement on the Exploration and Development of the Offshore Block Including the Umid Field and Babek Prospective Structure
4. Agreement on the Exploration, Development, and Production Sharing of the Absheron Offshore Block in the Azerbaijan Sector of the Caspian Sea
5. Agreement on the Exploration, Development, and Production Sharing of the Exploration Block Including the Zafer and Meshel Prospective Structures in the Azerbaijan Sector of the Caspian Sea
6. Agreement on the Rehabilitation, Exploration, Development, and Production Sharing of the Block Including the Binagadi, Girmaki, Chakhnaglar, Sulutepe, Masazir, Fatmayi, Shabandagh, and Sianshor Oil Fields
7. Agreement on the Rehabilitation, Development, and Production Sharing of the Block Including the Zig and Hovsan Fields in the Republic of Azerbaijan
8. Agreement on the Rehabilitation, Development, and Production Sharing of the Surakhani Oil Field Block in Azerbaijan
9. Agreement on the Rehabilitation, Exploration, Development, and Production Sharing of the Block Including the Zig and Hovsan Oil Fields in the Republic of Azerbaijan

10. Agreement on the Joint Development and Production Sharing of the Azeri and Chirag Fields and the Deepwater Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea
11. Agreement on the Exploration, Development, and Production Sharing of the Araz, Alov, and Sharg Prospective Fields in the Azerbaijan Sector of the Caspian Sea
12. Agreement on the Exploration, Development, and Production Sharing of the Inam Prospective Field in the Azerbaijan Sector of the Caspian Sea
13. Agreement on the Exploration, Development, and Production Sharing of the Shah Deniz Prospective Field in the Azerbaijan Sector of the Caspian Sea
14. Agreement on the Rehabilitation, Exploration, Development, and Production Sharing of the Block Including the Kursangi and Garabaghli Oil Fields in the Republic of Azerbaijan
15. Agreement on the Rehabilitation, Exploration, Development, and Production Sharing of the Block Including the Mishovdagh and Kalamaddin Oil Fields

In accordance with legislation, protocols on the *"Taxation of Employees and Individuals," "Import and Export Duties," and "Value Added Tax"* have been signed for each agreement.

The mentioned protocols provide exemptions and concessions regarding taxes, duties, and other mandatory payments for contractors and subcontractors.

Under the protocols on *"Taxation of Employees and Individuals"* [11], each Azerbaijani Employee pays personal income tax in the Republic of Azerbaijan in accordance with Azerbaijani legislation. The Employer of each Azerbaijani Employee is responsible for withholding and remitting the Azerbaijani personal income tax from the income paid to each respective Azerbaijani Employee, in compliance with Azerbaijani legislation.

Each Employer's Foreign Employees who are Tax Residents pay Azerbaijani personal income tax on income earned directly from employment activities carried out in the Republic of Azerbaijan. Foreign Employees who are not Tax Residents are not subject to Azerbaijani personal income tax.

The taxation of employees, determination of taxable income for foreign employees, tax rates, responsibilities for the payment of taxes for Azerbaijani and foreign employees, administrative procedures applicable to Azerbaijani and tax-resident foreign employees, verification of Azerbaijani personal income tax information, administrative agents, withholding and reporting of taxes from Azerbaijani and foreign individuals, contributions to the social security system, similar payments and deductions, and other related matters are comprehensively outlined in the *Protocols on Taxation of Employees and Individuals* [11, pp. 2-4].

In accordance with the protocols on "Import and Export Duties" [10], each Contractor Party, its Joint Company, Operating Company, Subcontractors, or their Agents (hereinafter referred to as the "Registered Company") has the right to import into and re-export from the Republic of Azerbaijan, without any Taxes and without any restrictions, the following in their own name: all types of equipment, materials, machinery and tools, vehicles, spare parts, and other items deemed necessary, in the Contractor's justified opinion, for the proper conduct and execution of oil and gas operations (excluding food products, alcoholic beverages, and tobacco products). However, if Azerbaijani suppliers are capable of competing with foreign suppliers in all essential aspects such as price, quality, and availability, the Contractor shall give

preference to Azerbaijani suppliers, provided that the contract price offered by the Azerbaijani supplier does not exceed the contract price of the potential winning foreign supplier by more than ten [10] percent.

The Operating Company's contract committee, adhering to the conditions set out in the Import and Export section of the Agreement and in accordance with the exclusive powers granted in the Agreement, shall execute contracts for goods, works, and services specified in paragraph 1.1 of the protocol based on the Contractor's opinion. In addition, representatives of the State Oil Company of the Republic of Azerbaijan oversee the proper implementation of the terms stipulated in the Import and Export sections of the Agreement.

Notwithstanding the above, the Contractor does not have the right to re-export from the Republic of Azerbaijan any tangible assets acquired for oil and gas operations and whose costs have been included in the oil and gas operations account.

Each Contractor Party, its Joint Company, Operating Company, Subcontractors, or their Agents, as well as all their employees and their family members, have the right to import into and re-export from the Republic of Azerbaijan, at any time, without any Taxes and without any restrictions, all types of furniture, clothing, household appliances, vehicles, spare parts (excluding food products, alcoholic beverages, and tobacco products), and any personal property for the personal use of foreign employees and their family members assigned or traveling to the Republic of Azerbaijan for work purposes.

In cases where goods brought into the Republic of Azerbaijan by the Contractor, its Subcontractors, or their employees are sold to any party for personal use, such goods shall be subject to taxation in accordance with the legislation of the Republic of Azerbaijan.

Each Contractor Party, Operating Company, or their Agents, its customers, and their transportation agents have the right, in accordance with the provisions of the Agreement, to freely export at any time, without paying any duties and Taxes (except for Profit Tax), the Hydrocarbons to which such Contractor Party is entitled and their processed products.

Each Contractor Party, its Joint Company, Operating Company, Subcontractors, or their Agents are exempt from any restrictions imposed on the import and export of goods specified in paragraph 1.1 of the protocol, as well as restrictions related to the producer countries and requirements regarding the prohibition or limitation of the export of Hydrocarbons to which the Contractor is entitled under the Agreement, in accordance with any foreign trade regulations in force in the Republic of Azerbaijan.

The procedures for obtaining the Import and Export Tax Exemption Certificate, management of documentation for Import, Export, and Re-export, transfer and disposal rights, fees for customs services (procedures), payment and reimbursement of taxes, and other related matters are comprehensively outlined in the *Protocols on Import and Export Duties and Taxes* [10, pp. 2-5].

In accordance with the *"Value Added Tax"* protocols, each Contractor Party, the Operating Company, and its Subcontractors are exempt from Value Added Tax (VAT) at a zero percent (0%) rate for activities related to Hydrocarbon operations. This exemption applies to the following [9, pp. 1-2]:

- Goods, works, and services provided to or by any of them;
- The export of Hydrocarbons and all products processed from these Hydrocarbons;

- The import of goods (excluding tobacco, food, and alcoholic beverages), works, and services acquired by them.

Additionally, any supplier providing goods, works, or services related to Hydrocarbon operations to the Contractor Party, Operating Company, or its Subcontractors is deemed exempt from VAT at a zero percent (0%) rate for such goods, works, and services.

Each Contractor Party, Operating Company, and its Subcontractors are issued a *VAT Exemption Certificate* at a zero percent (0%) rate. The procedures for obtaining and using these certificates, transfer and disposal rights granted to VAT-exempt parties, submission of VAT Declarations, reimbursement of paid VAT, and other related matters are detailed in the *Protocols.*

V. Conclusions

Based on the research, the following conclusions can be drawn:

1. There is no existing law in the Republic of Azerbaijan regulating the matters covered by Production Sharing Agreements (PSAs) concerning hydrocarbon reserves, and the selection criteria for potential investors are not defined in the legislation.

2. Negotiations on the preparation of agreements for the development of hydrocarbons are conducted directly with SOCAR, the entity representing the government and holding the authority to manage hydrocarbon reserves on behalf of the government.

These agreements serve as the primary documents regulating the activities of operating companies, contractor parties, and their subcontractors in the fields.

References:

1. *Law on Subsoil* of the Republic of Azerbaijan dated February 13, 1998; URL: https://e-qanun.az/framework/4273 (last access: 15.08.2024).

2. Resolution No. 27S of the Cabinet of Ministers of the Republic of Azerbaijan dated February 26, 2003.

3. *On the Establishment of the State Oil Company of the Republic of Azerbaijan,* Decree No. 200 of the President of the Republic of Azerbaijan dated September 13, 1992; URL: https://frameworks.e-qanun.az/7/f_7785.html (last access: 18.08.2024).

4. *On Improving the Structure of the State Oil Company of the Republic of Azerbaijan,* Decree No. 844 of the President of the Republic of Azerbaijan dated January 24, 2003; URL: https://e-qanun.az/framework/1899 (last access: 01.09.2024).

5. Production Sharing Agreement on the Joint Development and Production of the Azeri, Chirag Fields, and the Deepwater Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea.

6. Production Sharing Agreement on the Exploration, Development, and Production of the D230 Prospective Exploration Block in the Azerbaijan Sector of the Caspian Sea; URL: https://e-qanun.az/framework/39629 (last access: 12.08.2024).

7. Twenty-Fourth Meeting of the IMF Committee on Balance of Payments Statistics, Moscow, Russia, October 24–26, 2011 – Prepared by the Central Bank of Russia; URL: https://www.imf.org/external/pubs/ft/bop/2011/24.htm (last access: 10.08.2024).

8. *Protocols on Production Sharing Agreements in Azerbaijan*; URL: https://www.taxes.gov.az/az/page/hasilatin-pay-bolgusu-haqqinda-sazise-dair-protokollar-psa (last access: 21.08.2024).

9. Protocol on *Value Added Tax* under the Production Sharing Agreement on the Absheron Offshore Block in the Azerbaijan Sector of the Caspian Sea.

10. Protocol on *Import-Export Duties and Taxes* under the Production Sharing Agreement on the Absheron Offshore Block in the Azerbaijan Sector of the Caspian Sea.

11. Protocol on *Taxation of Employees and Individuals* under the Production Sharing Agreement on the Absheron Offshore Block in the Azerbaijan Sector of the Caspian Sea.

Date of receipt of the article in the Editorial Office
(07.09.2024)

Farahim Huseynzade. E-Commerce in Azerbaijan: key indicators and prospects. International Law and Integration Problems, 2024, №2 (69), pp. 65-72. DOI: 10.61638/GGMO7520

E-COMMERCE IN AZERBAIJAN: KEY INDICATORS AND PROSPECTS

Farahim Huseynzade*

Abstract

The article examines the rapid growth of e-commerce within the context of Azerbaijan's ongoing digital transformation. It explores the influence of global digitalization, driven by advancements in internet technologies, mobile devices, and artificial intelligence, on the economic and social landscape of Azerbaijan. The research emphasizes how important legal frameworks have played a crucial role in enabling the growth of e-commerce in the country. Through an analysis of current developments, including the COVID-19 pandemic's effects on consumer behavior, the article provides a comprehensive overview of the existing and probable future states of e-commerce in Azerbaijan. The results highlight how crucial it is to keep funding ICT infrastructure and fostering international cooperation in order to sustain and enhance the growth of Azerbaijan's digital economy.

Keywords*: E-commerce, Digitalization, ICT infrastructure, Azerbaijan, Digital economy, COVID-19 impact.*

I. Introduction

The process of global digitalization, which began several decades ago, continues to develop actively, significantly impacting various aspects of the global economy. This process encompasses a wide range of changes affecting education, healthcare, government administration, commerce (business), and other spheres of public life. The emergence and development of digital technologies such as the internet, mobile devices, cloud computing, big data, and artificial intelligence have fundamentally changed the ways people interact, businesses operate, and governmental institutions function. The internet, for example, has become the primary means of communication and information exchange, providing access to knowledge and resources worldwide. One of the most notable phenomena during this process has been the strengthening of e-commerce. The global e-commerce market has shown steady growth over the past few years and is expected to continue growing, indicating an ongoing transformation of consumer preferences towards online shopping. As a result, traditional retail faces several challenges, including high rental costs, limited assortment, and the need to maintain substantial inventories. In contrast, e-commerce allows for significant reductions in operational costs and expanded geographical reach.

Azerbaijan has not been an exception in the ongoing process of digitalization. The country is undergoing changes as digital technologies are being integrated into all spheres of life, with e-commerce being one of the areas where digitalization has had a noticeable impact. However, in the academic literature, the correlation between the development of information and communication technologies (ICT) and the strengthening of e-commerce positions in Azerbaijan remains insufficiently studied. This article aims to fill this gap in scholarly research. To achieve this goal, the article employs various scientific methods, including the dogmatic (formal-legal) method, which allows for the analysis of existing legal norms and their impact; the comparative-legal method, which helps to trace the evolution of legal regulation; statistical analysis, and others.

* PhD candidate in Law, Baku State University

II. Digitalization in Azerbaijan and legal framework

Like many other countries, Azerbaijan has not stayed on the sidelines of the global digitalization process and has actively engaged in this process. Since the early 2000s, significant legal reforms and technical preparations have been carried out to adapt the country to the digital era [1, p. 141-149]. As a major step, laws have been adopted to ensure the use of information technologies and to establish the necessary infrastructure for the development of digital services. The implementation of electronic government and the development of internet services have allowed state bodies to establish significant communication with citizens. Technical modernization in sectors such as education, healthcare, and finance, along with economic growth, has also contributed to increased efficiency and transparency. The commercial sector has not remained outside this digitalization process, and all necessary measures have been taken to develop electronic commerce and ensure the required factors.

The legal measures implemented in this regard include the Law of the Republic of Azerbaijan "On electronic signature and electronic document" adopted on 09.03.2004 [8]. This law has played an important role in the digitalization process by regulating the use of electronic signatures and electronic documents in the territory of the Republic of Azerbaijan. This law defines the legal power of electronic documents and electronic signatures and ensures their security and legal force, thus laying the foundation for the development of electronic commerce and digital services. The law defines the conditions for the use of electronic signatures, stipulates the requirements for their certification, and regulates the activities of relevant state bodies, administrative organizations, and other entities engaged in this activity. This law has greatly simplified and accelerated administrative and commercial processes, reduced paperwork, and increased trust in electronic services. The adoption of this law has contributed to the creation of modern information infrastructure in Azerbaijan and the improvement of relations between state bodies, businesses, and citizens through the development of digital economy.

In the context of the digitalization process and as we mentioned above, the transition of most enterprises to the internet has resulted in the adjustment of the state's economic policy and the implementation of significant legal measures to regulate these processes. Among these measures is the Law of the Republic of Azerbaijan "On electronic commerce" adopted on 10.05.2005 [7]. This law has played an important role in the legal regulation of electronic commerce in the country. Article 1 of this law defines the basic concepts of electronic commerce:

1) *Electronic commerce* - activities carried out using information systems for the purchase and sale of goods, provision of services, and performance of works (including through the Internet network), such as electronic books, music, audio-video materials, graphic images, virtual games, software downloads, placement of advertisements, and other similar works and services;

2) *Participants in electronic commerce* - legal and physical persons who participate in electronic commerce, including sellers (suppliers), buyers (customers), and electronic document circulation intermediaries;

3) *Seller (supplier)* - a participant in electronic commerce who sells goods (provides services, performs works);

4) *Buyer (customer)* - a participant in electronic commerce who buys goods (orders services, orders works);

5) *Electronic document circulation intermediary* - a physical or legal person who provides electronic document circulation services between the sender and the recipient of the electronic document.

This Law, which regulates e-commerce rules in the territory of the Republic of Azerbaijan and in trade relations with other countries, consists of 5 chapters and 14 articles in total. However, since its adoption, the Law has been regularly amended due to the continuous development of information technologies, payment services, and communication systems, resulting in new opportunities and tools. The latest such amendments were adopted on December 16, 2016, and came into force on January 1, 2017. The various directions of economic and commercial activities covered by the "Law on Electronic Commerce" of the Republic of Azerbaijan include the following [4, p. 42]:

- Any operation for the provision of goods (commodities) or services;
- Distribution agreements;
- Entrepreneurship and agency relations;
- Factoring;
- Leasing;
- Construction of industrial facilities;
- Providing consulting services;
- Engineering;
- Acquisition/sale of licenses;
- Investment;
- Financing;
- Banking services;
- Insurance;
- Operation and concession agreements;
- Joint ventures or other forms of industrial and commercial cooperation.

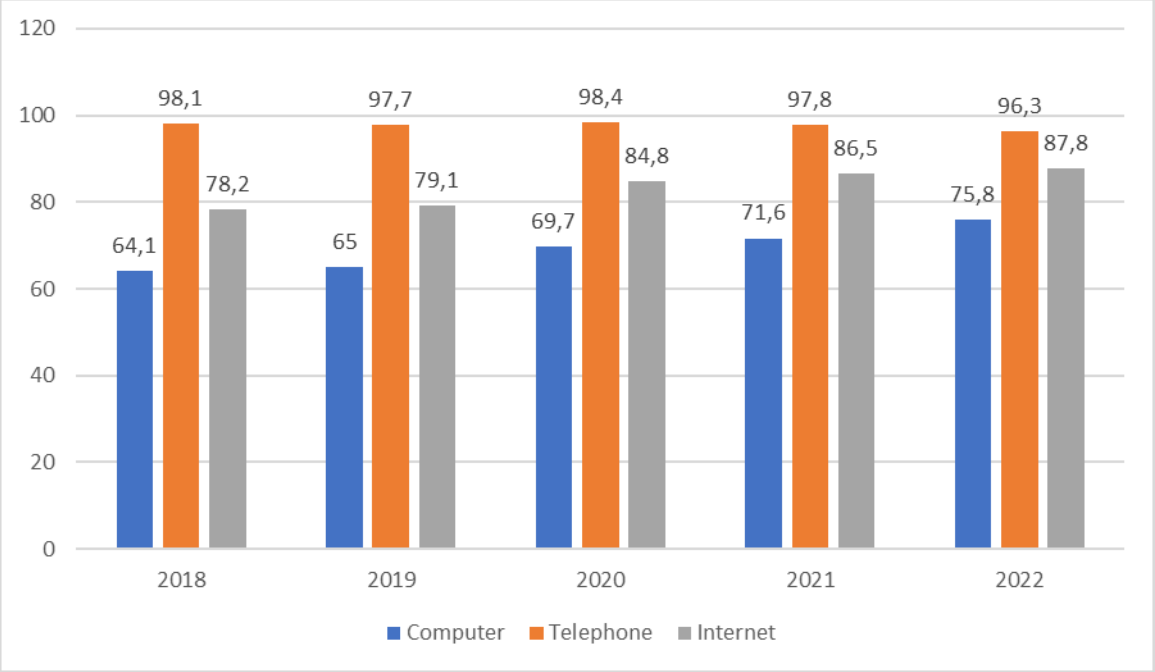
III. Current indicators of e-commerce development

In addition to the legal measures taken, the provision of necessary technical equipment and tools for the development and expansion of e-commerce for enterprises engaging in various forms of economic activity has also been an important part of state policy. Detailed information about this can be found in the statistical compendium prepared and presented by the State Statistics Committee of the Republic of Azerbaijan. According to the compendium titled "Provision and Use of ICT in Enterprises," the number of enterprises with internet access and the number of computers connected to the internet have increased approximately 17 times, and the number of employees using the internet has increased approximately 15 times over the past 10 years (2013-2023) [11]. According to the compendium titled "Provision and Use of Computers in Enterprises," the number of computers available in enterprises has increased approximately 13 times, the number of enterprises using computers has increased approximately 14 times, and the number of employees using computers has increased approximately 12 times [12]. On December 2, 2008, "SilverKey Azerbaijan" company established the first online payment system called "GoldenPay" in Azerbaijan [13, p. 41].

As seen from Diagram 1, significant development in the field of information and communication technologies (ICT) has been observed in Azerbaijan during the years 2018-2022. According to the State Statistics Committee, the percentage of computer users increased from 64.1% in 2018 to 75.8% in 2022. This increase indicates that the use

of digital devices in daily life, especially in work, education, and entertainment, has risen. The number of mobile phone users has remained consistently high, decreasing slightly from 98.1% in 2018 to 96.3% in 2022. Mobile phones continue to be the primary means of communication and internet access for most citizens. Internet access increased from 78.2% in 2018 to 87.8% in 2022, indicating improvements in internet infrastructure and accessibility, making internet access easier for the wider population. Despite this overall development, a difference in access to the digital world between urban and rural areas remains. High-speed internet and modern digital devices are more widely available in urban areas due to better infrastructure, education levels, and economic opportunities. In rural areas, there are challenges such as limited access to quality internet services, limited resources for purchasing and maintaining digital devices, and digital illiteracy. Efforts to bridge this gap include expanding broadband internet coverage, increasing digital literacy, and developing ICT infrastructure in remote areas, undertaken by the government and representatives of the private sector. These measures aim to ensure equal access to technology and its benefits, including improved education, healthcare, and economic opportunities.

Diagram 1. Percentage of access to and use of computers, phones, and the internet in Azerbaijan [9]



Additionally, to determine the success of the digitalization process, the **ICT Development Index (IDI)** created by the **International Telecommunication Union (ITU)** is used to assess the level of ICT development in various countries. This index consists of three main components: 1) ICT access; 2) ICT use; 3) ICT skills. The first component, ICT access, covers infrastructure and availability of access opportunities such as fixed telephone lines, mobile subscribers, and internet access. The second component, ICT use, evaluates the actual use of technologies, including the internet and mobile devices. The third component, skills, measures the population's education level and digital literacy, which are crucial for the effective use of technologies. Starting from 2020, ITU has begun developing a new index related to the **Sustainable Development Goals (SDGs)**. This new index includes updated indicators and calculation methods to provide a more comprehensive assessment of digital development and its impact on

society. This transition aims to better understand how digital technologies contribute to sustainable development and improve the quality of life. For the year 2023, Azerbaijan's IDI score was determined to be 79.0 [2]. This index indicates steady progress in ICT development in Azerbaijan, although there is still potential for improvement in increasing digital literacy and expanding internet access in remote areas.

As observed, since the beginning of the 2010s, a positive trend in business digitalization has been observed in Azerbaijan. This process is accompanied by the provision of necessary technical equipment for the development of e-commerce and access to the global digital economy. Modern technologies and infrastructure enable entrepreneurs and enterprises to use digital tools to connect the domestic market with foreign markets, integrate into international markets, and increase competitiveness. To stimulate this process, Azerbaijan has also hosted international events dedicated to the future of e-commerce and its development trends. For example, on September 24-25, the "Baku E-Trade Forum" was held for the first time in Azerbaijan, initiated by the Ministry of Transport, Communications, and High Technologies of the Republic of Azerbaijan (renamed Ministry of Digital Development and Transport in 2021) with the support of the European Union and the United Nations Conference on Trade and Development. This forum brought together representatives of small and medium-sized enterprises, startups providing services in e-commerce, electronic payments, and logistics, as well as representatives of state bodies and international agencies involved in the development of various aspects of e-commerce [3].

As seen in Diagram 2, the volume of e-commerce turnover in Azerbaijan increased approximately 29 times between 2012-2017, clearly demonstrating the high efficiency of active implementation of ICT support and new technologies with state support. In 2012, 46 physical and legal entities engaged in economic activities used electronic payment tools for trade, with firms and companies accounting for 799% of sales in consumer goods electronic commerce, 201% by citizens, and 933% of e-commerce turnover constituted by non-food products [16].

Diagram 2. Growth of e-commerce turnover in Azerbaijan in million AZN (Qasimzade, 2021, p. 43)

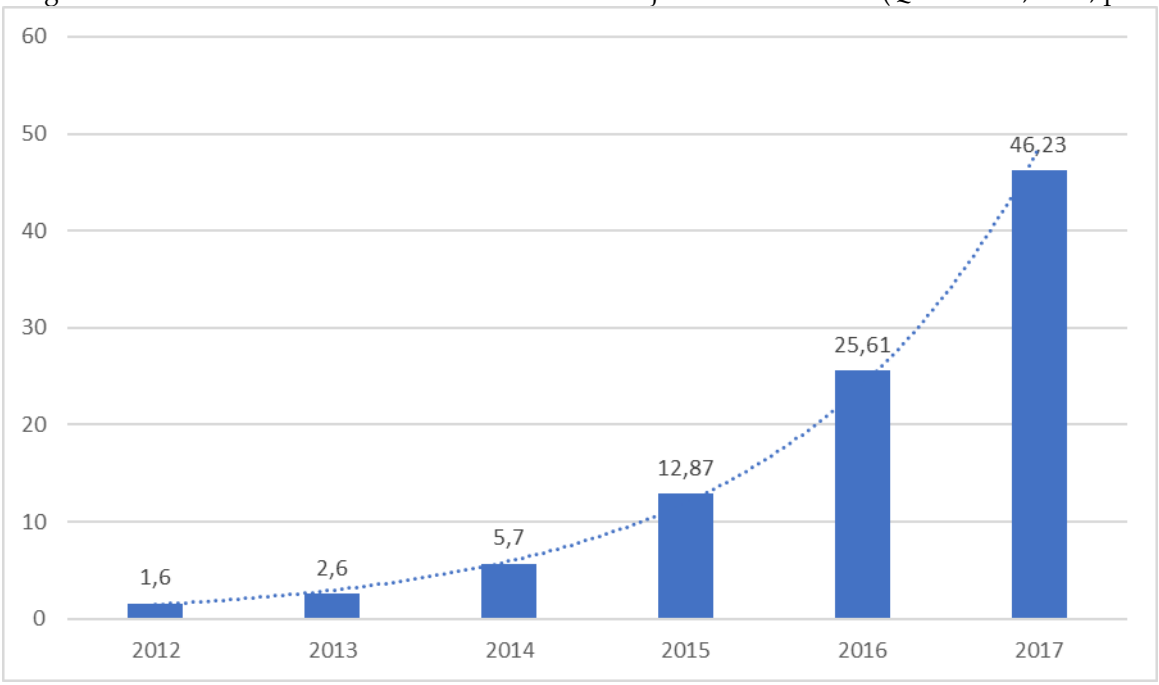
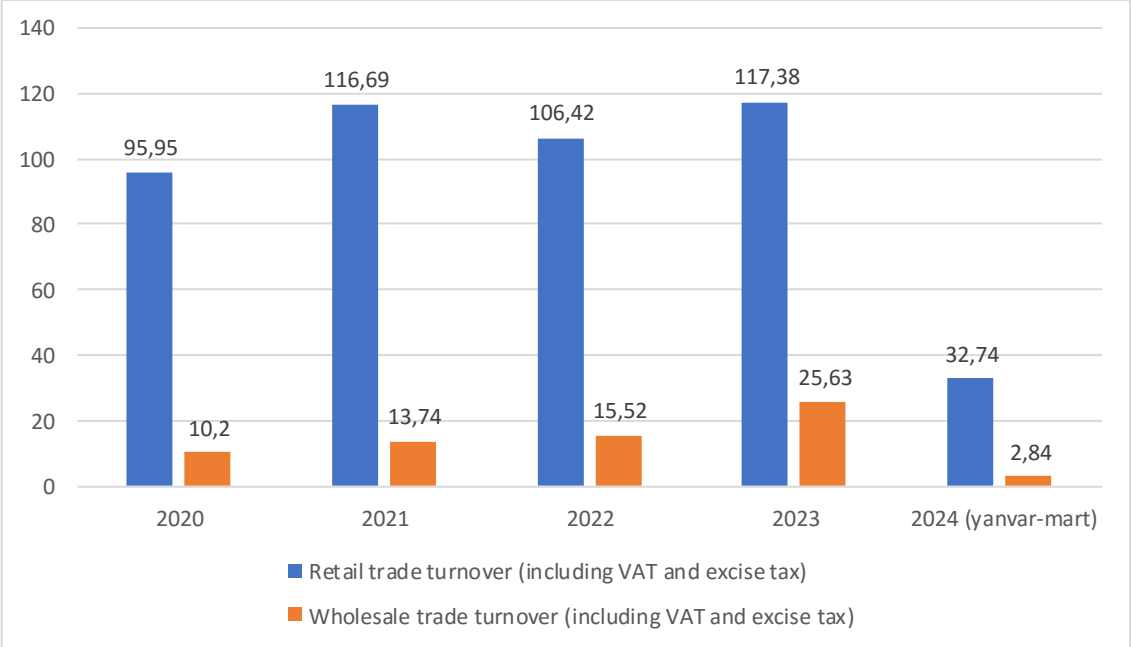


Diagram 2 shows the main indicators of trade enterprises in e-commerce for the years 2020-2024 (for legal entities), and it can be seen that the share of e-commerce turnover increased during the period coinciding with the COVID-19 pandemic [6, p. 123-128]. During the pandemic, customers increasingly preferred online shopping due to safety concerns. The pace of online buying and selling increased, and some researchers recommended investing in new technologies to attract more customers to both traditional and online stores [15, p. 47-68]. After the lockdown and social isolation were implemented, the activity of internet users and the number of active and new users of online and mobile applications increased significantly. This growth was already observed in March 2020. A similar trend can be seen in online-mobile applications. Applications offering food delivery services and other services began to form a large part of the new and active audience of online-mobile applications. The increase in demand from online consumers shows that e-commerce was already expanding rapidly before the COVID-19 pandemic. However, with the pandemic, more consumers turned away from traditional commerce and towards online shopping. The global consumer survey, *Pulse Survey*, indicates that people initially leaned towards online shopping due to quarantine restrictions and later because of the ability to work from home. Among the additional trends of this shift to "digital consumption" are online shoppers looking for better deals and choosing healthier alternatives [5].

Diagram 3. Main indicators of trade enterprises in e-commerce in Azerbaijan (for legal entities) [10].



According to the information presented by the *United Nations Conference on Trade and Development (UNCTAD),* the e-commerce sector showed a significant increase in the share of total retail sales during the pandemic. The "B2C E-commerce Index" presented by UNCTAD in 2020 ranks countries based on their ability to support online shopping, corresponding to their economic power. In this index, Azerbaijan ranked 65th out of 152 countries and was shown as a "transition economy" in the table displaying the highest-rated economies in each region. The table also presented the share of the population using the internet (81%), the share of the population over 15 with personal accounts (29%), the index indicator for secure internet servers (49), and the index indicator for postal reliability (82) [14, p. 7-15].

Conclusion

The process of digitalization in Azerbaijan is advancing quickly and changing many facets of the social and economic landscape. Still, in spite of this overall rapid progress, Azerbaijan's e-commerce development is not keeping up with the rate of other countries. The COVID-19 epidemic acted as a catalyst, speeding up the shift to digital and greatly increasing e-commerce. Even so, there are still issues facing the industry that prevent it from reaching its full potential. To encourage and maintain the growth of e-commerce, fundamental changes and tailored public policy incentives are still crucially needed. By tackling these issues, Azerbaijan can make sure that its e-commerce industry strengthens and contributes more significantly to the country's economy while also maximizing the advantages of digitalization.

References:

1. Amir Aliyev, Gulnur Rzayeva, Aytekin Ibrahimova, Behruz Maharramov, Shahin Mammadrazali, "Information Law". Baku State University, 2019 *(in Azerbaijani / Əmir Əliyev, Gülnur Rzayeva, Aytəkin İbrahimova, Bəhruz Məhərrəmov, Şahin Məmmədrzalı, "İnformasiya hüququ". Bakı Dövlət Universiteti, 2019).*

2. ITU publications, Measuring digital development: The ICT Development Index 2023. https://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-ICT_MDD-2023-2-R1-PDF-E.pdf (last access: 17.08.2024).

3. Ministry of Digital Development and Transport of the Republic of Azerbaijan, "Baku to host International E-Trade Forum", 6 September 2018. https://mincom.gov.az/en/media-en/news/baku-to-host-international-e-trade-forum373 (last access: 09.08.2024).

4. Qasimzade Ramiz, "E-Commerce in Azerbaijan: Current Situation and Development Directions." Azerbaijan State University of Economics, Master's Thesis (2021) *(in Azerbaijani / Qasımzadə Ramiz, "Azərbaycanda e-ticarət: müasir vəziyyəti və inkişaf istiqamətləri". ADİU, Magistr dissertasiyası (2021)).*

5. Rafael Villa and Andrés Monzón, "Mobility Restrictions and E-Commerce: Holistic Balance in Madrid Centre during COVID-19 Lockdown". Economies (9, 2021)

6. Sahana Dinesh and Dr. Y. MuniRaju, "Scalability of e-commerce in the COVID-19 era". Int J Res. (9, 2021)

7. The Law of the Republic of Azerbaijan "On Electronic Commerce," May 10, 2005 *(in Azerbaijani / "Elektron ticarət haqqında" Azərbaycan Respublikasının Qanunu, 10 may 2005).* https://e-qanun.az/framework/10406 (last access: 14.07.2024).

8. The Law of the Republic of Azerbaijan "On Electronic Signature and Electronic Document," March 9, 2004 *(in Azerbaijani / "Elektron imza və elektron sənəd haqqında" Azərbaycan Respublikasının Qanunu, 9 mart 2004).* https://e-qanun.az/framework/5916 (last access: 26.08.2024).

9. The State Statistical Committee of the Republic of Azerbaijan, "Access to and Use of Computers," "Access to and Use of the Internet," and "Access to and Use of Telephones," Statistical Bulletins *(in Azerbaijani / Azərbaycan Respublikasının Dövlət Statistika Komitəsi, "Kompüterə çıxış və istifadə", "İnternetə çıxış və istifadə" və "Telefona çıxış və istifadə" statistik bülletenləri).* https://www.stat.gov.az/source/information_society/ (last access: 05.08.2024).

10. The State Statistical Committee of the Republic of Azerbaijan, "Key Indicators of Trade Enterprises (For Legal Entities)," Statistical Bulletin, 2020-2024 *(in Azerbaijani /*

Azərbaycan Respublikasının Dövlət Statistika Komitəsi, "Ticarət müəssisələrinin əsas göstəriciləri (hüquqi şəxslər üzrə)" statistik bülleteni, 2020-2024-cü illər).

https://www.stat.gov.az/source/trade/(last access: 19.07.2024).

11. The State Statistical Committee of the Republic of Azerbaijan, "Provision of Enterprises with ICT and Their Usage," Statistical Bulletin *(in Azerbaijani / Azərbaycan Respublikasının Dövlət Statistika Komitəsi, "Müəssisələrin İKT ilə təminatı və onlardan istifadə" statistik bülleteni).*

https://www.stat.gov.az/source/trade/az/004_14.xls (last access: 04.08.2024).

12. The State Statistical Committee of the Republic of Azerbaijan, "Provision of Enterprises with Computers and Their Usage," Statistical Bulletin *(in Azerbaijani / Azərbaycan Respublikasının Dövlət Statistika Komitəsi, "Müəssisələrin kompüterlərlə təminatı və onlardan istifadə" statistik bülleteni).*

https://www.stat.gov.az/source/trade/az/004_13.xls (last access: 16.08.2024).

13. The State Tax Service, "Electronic Commerce," 2015 *(in Azerbaijani / Dövlət Vergi Xidməti, "Elektron ticarət", 2015).*

https://taxes.gov.az/uploads/beynelxalq/2015/_b3.pdf (last access: 15.08.2024).

14. The UNCTAD B2C E-commerce Index 2020, Spotlight on Latin America and the Caribbean.

https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf, (last access: 18.07.2024).

15. Thuy Dam Luong Hoang, Huy Khanh Nguyen and Ha Thu Nguyen, "Towards an economic recovery after the COVID-19 pandemic: empirical study on electronic commerce adoption of small and medium enterprises in Vietnam". Manag Mark (16, 2021)

16. What is the Reason for the Underdevelopment of Electronic Commerce? March 7, 2013 *(in Azerbaijani / "Elektron ticarətin zəif inkişafının səbəbi nədir?", 07.03.2013).*

https://xeberler.az/new/details/elektron-ticaretin-zeif-inkisafinin-sebebi-nedir--6955.htm (last access: 21.08.2024).

Date of receipt of the article in the Editorial Office
(25.09.2024)

Corresponding Member of the Azerbaijan National Academy of Sciences, Doctor of Legal Sciences, Professor Masuma Malikova - 95

Masuma Fazil Malikova, a corresponding member of the Azerbaijan National Academy of Sciences, Doctor of Legal Sciences, Professor, who has made significant contributions to the development of law and education in Azerbaijan, has turned 95.

Masuma Malikova made invaluable contributions to the establishment and development of law and education at Baku State University, which was the only institution providing legal education in Azerbaijan during Soviet period, and now it is one of the fundamental universities in this field.

M.F.Malikova was the first to strengthen and further develop the ideas of Azerbaijanism in jurisprudence. M.F.Malikova began her scientific and pedagogical activity at the Faculty of Law of Baku State University in 1952. Even during the Soviet era, a detailed study of the political and legal history of Azerbaijan shows how strong the ideas of Azerbaijanism were in Masuma Malikova. Thus, in 1958, M.F.Malikova successfully defended her PhD dissertation on the topic "Socio-political views of Mirza Fatali Akhundov" at the Moscow State University named after M.V.Lomonosov and in 1973 her doctoral dissertation on the topic "Political and legal views of Azerbaijani *enlighteners* in the second half of the 19th century - the beginning of the 20th century". The fact that "History of law of Azerbaijan" is widely taught in the list of main modules, both in the Soviet and post-Soviet period, is precisely Masuma Malikova's academic services. This experience has become an example for the former Soviet republics.

M.F.Malikova received the academic title of professor in 1974 and was elected a corresponding member of the Azerbaijan National Academy of Sciences in 1989. Currently, she is the only corresponding member of the Azerbaijan National Academy of Sciences in the field of law.

M.F.Malikova was the founder of the science of the history of national political and legal theories in Azerbaijan, and created a fundamental school. Since 1968, Masuma Malikova has successfully served as the Head of the Department of Theory and History of State and Law at the Faculty of Law of Baku State University.

Since the end of the 1960s, associate professors A.H.Aliyev, I.Tariqpeyma, V.Hajiyev, Y.Rahimzade, M.M.Altman, E.R.Bayramov have worked in the department. Gradually, through the efforts of Masuma khanum, the department was enriched with new specialists with a great interest in science and pedagogical activity, and the inclusion of Sh.M.Aliyev, S.A.Mirzayev, D.M.Mammadova, L.H.Huseynov, X.J.Ismayilov, E.G.Nabiyev, M.N.Samadov, K.V.Talibova, T.Z.Aliyev, E.R.Guliyev, F.A.Seyidov and others in its composition led to an increase in the scientific potential of the department.

The scientific ideas and research of M.F.Malikova are directly at the basis of the establishment and development of the scientific potential of the department. The main features of the department's scientific weight are the teaching of a number of leading subjects in law. The department teaches subjects such as "Theory of Law", "History of Law of Azerbaijan", "History of Law of Foreign Countries", "History and theory of law and state", " History and theory of law and state of Azerbaijan", "Law and Politics", "Problems of Theory of State and Law", "Constitutional Development of the Republic of Azerbaijan", "State and Law of the Azerbaijan Democratic Republic", "Philosophy of Law", "Fundamentals of Muslim Law", "Comparative Jurisprudence", "Legislative Technique" and others at the LL.B. and LL.M. degrees.

M.F.Malikova's scientific research laid the foundation for important directions in the development of legal science. The scientific research of the law school headed by Masuma Malikova laid to foundation for the development of a new direction in legal science in our country, and an important basis was created for the first inclusion of the subjects "History of Political and Legal Theories in Azerbaijan", "History of State and Law of Azerbaijan", "Fundamentals of Muslim Law" in the modules of law.

Monographs, textbooks and teaching aids have been prepared and published in Azerbaijani by the staff of the department on all subjects taught at the department: for the first time in Azerbaijani, “Theory of State and Law” (in Azerbaijani) in 2 editions (M.F.Malikova), “Theory of Law” (in Azerbaijani) in 3 editions (M.F.Malikova), “History of Political and Legal Theories of Azerbaijan” (in Azerbaijani) (M.F.Malikova, E.R.Bayramov); three volumes of the monograph “History of Political and Legal Theories” (in russian) published in Moscow with a collective of authors (M.F.Malikova, in 1985, 1986, 1989) and the textbooks “History of Political Theories” (in 1965 and 1971, 1991) (author of several sections is M.F.Malikova); 2 editions of “History of State and Law of Foreign Countries” (in Azerbaijani) (M.F.Malikova, E.G.Nabiyev); “History of the modern state and law” (in Azerbaijani) (M.F.Malikova, E.G.Nabiyev); “The state and law of Azerbaijan in Ancient period and the early Middle Ages” (in Azerbaijani) (M.F.Malikova, Kh.J.Ismayilov); Anthology of legal monuments of Azerbaijan. Volumes 17, 18 and 19 (in russian) (M.F.Malikova, Kh.J.Ismayilov, T.K.Zeynalova, Z.N.Azimov); “History of the state and law of Azerbaijan” (in Azerbaijani) (Kh.J.Ismayilov); “Organization and activity of judicial bodies in Azerbaijan in the 19th century” (in russian) (Kh.J.Ismayilov); “Normative legal foundations of local self-government in Azerbaijan” (in Azerbaijani) (genesis and evolution) (K.C.Ismayilov); “Implementation of international legal norms within the jurisdiction of the state” (in russian)

(M.N.Samadov); "History of political and legal teachings" (in Azerbaijani) (translation from O.E. Leist - T.K.Zeynalova); "Socio-political and legal ideas of J.Mammadguluzade" (in Azerbaijani) (T.K.Zeynalova); "History of political and legal theories in Azerbaijan at the beginning of the 20th century" (in Azerbaijani) (T.K.Zeynalova); "Codification of legislation in Azerbaijan: historical and theoretical aspects" (in Azerbaijani) (E.R. Guliyev), etc.

M.F.Malikova's scientific research played an important role in the practical application of law in various areas. Masuma Malikova led the team of authors as the editor-in-chief of the "Encyclopedic Dictionary of Law" (in Azerbaijani), which was first published in our republic in 1991, and more than 85 of her articles were published in the dictionary. Along with this, it should be noted that one of the main directions of M.F.Malikova's activities was the compilation of curricula and teaching-methodical materials for all taught modules, and the important direction for the publication of the works of the department's lecturers outside the republic.

During her 72 years of pedagogical activity, M.F.Malikova's scientific activity, which made a worthy and practical contribution to the enrichment of the scientific base of the legal education process, was devoted to the study of two important areas of jurisprudence - the history of political and legal teachings and the current problems of the theory of state and law. The scientific school created by M.F.Malikova in these areas is also based on these directions, and currently the department continues its activities successfully in these scientific directions. M.F.Malikova is the author of more than 200 scientific works, including monographs, textbooks and scientific articles.

M.F.Malikova has made invaluable contributions to the training of a new generation of legal scholars. Since the 1960s, the scientific school founded by M.F.Malikova has created an opportunity to conduct extensive research in relevant fields. Masuma Malikova, who has close ties with scientific circles in various countries, has made a worthy contribution to the training of high-quality legal personnel and to conducting in-depth and substantiated research, and is still doing so at a high level. Thus, under the scientific guidance of M.F.Malikova, more than 30 dissertations, including 5 doctoral dissertations, have been defended, and scientific personnel have been specialized for Syria, Jordan, Palestine, Vietnam, etc. countries.

M.F.Malikova, who delivered numerous scientific reports at international scientific and practical conferences held in our country and beyond its borders (England, Scotland, Canada, USA, Russian Federation, Ukraine, Georgia, etc.), also adequately represented national legal science and promoted Azerbaijani legal science at a high level.

M.F.Malikova's scientific and practical activities have gained great importance due to their state-social nature. The members of the department headed by Masuma Malikova have been actively involved in the state and social life of the republic for a long time, and this process is still being continued. During the period of state-legal construction of Azerbaijan, intensive formation and development of the country's legislation, the members of the department did not remain outside this historical process. Thus, Masuma Malikova was one of the drafters of the Constitutional Law of September 23, 1989 "On the Sovereignty of Azerbaijan", and was a member of the Commission for the preparation of the Constitution of the Azerbaijan SSR of 1978 and the Constitution of the Republic of Azerbaijan of 1995, headed by the National Leader Heydar Aliyev.

During the Soviet period, M.F.Malikova was a member of the Executive Committee of the Soviet Political Science Association, the educational and methodological councils on legal sciences of the Ministries of Education of the USSR and the Azerbaijan SSR, the scientific secretary of the scientific and methodological council of the Ministry of Education of the Azerbaijan SSR, the chairman of the Problem Council on economic, philosophical and legal sciences and a member of the Plenum of the Higher Attestation Commission of the Republic of Azerbaijan from the day it was established until 1998, a member of the Presidential Council of the Azerbaijan SSR (1990), the chairman of the Expert Council on Legal Sciences under the Azerbaijan National Academy of Sciences, a member of the bureau of the humanitarian and social sciences section of the Azerbaijan National Academy of Sciences and the jurisprudence section of the Terminology Commission under the Presidium of the Azerbaijan National Academy of Sciences, the Scientific Advisory Council under the Republican Prosecutor's Office and the Scientific Advisory Council of the Supreme Court of the Republic, the chairman of the dissertation councils on law operating under Baku State University, and currently a member of the FD 2.44 Dissertation Council.

M.F.Malikova is a member of the editorial board of many scientific journals in our Republic and beyond its borders - "History of the State and Law" published in the Russian Federation, the joint Azerbaijani-Russian "International Law and Comparative Law", the history and legal sciences series of the "News of ANAS" journal, the "M.F. Akhundzade Encyclopedia" at ANAS, a member of the editorial boards of the "Legal State and Law", "State and Law", "Law + Youth" journals, for more than 30 years she has been the editor of the socio-political sciences series of the "News of Baku University" journal, a member of the editorial boards of "International Law and Integration Problems", "Scientific News of the Police Academy" and other journals.

M.F.Malikova's scientific and pedagogical activities have always been deservedly appreciated by our state. Masuma Malikova has been awarded numerous awards by state bodies and public organizations. Thus, M.F.Malikova was awarded the honorary title of "Honored Lawyer of the Republic of Azerbaijan" (1969), the "Badge of Honor" Order (1976), the "Glory" Order (2000), the "Honorary Diploma of the President of the Republic of Azerbaijan" (2019), the "100th Anniversary of Heydar Aliyev (1923-2023)" Jubilee Medal (2024), the badge of the Ministry of Education of the Republic of Azerbaijan for distinction; the 100th Anniversary of Baku State University (1919-2019) Jubilee Medal (2019); the "Veteran of Labor" Medal of the Supreme Soviet of the Azerbaijan SSR on behalf of the Presidium of the Supreme Soviet of the USSR (1985); She was awarded the "Medal of the Veterans' Council" of the United Veterans' Council of the Academy of Sciences of the Azerbaijan SSR (1997), the "Memorial" medal on the occasion of the 75th anniversary of Baku State University (1994), the "Memorial" medal of the State Committee for Family, Women and Children's Issues of the Azerbaijan Republic (2009); the "For Distinction" badge of the Ministry of Education of the Azerbaijan Republic (2009), numerous honorary decrees by scientific and state bodies (Azerbaijan National Academy of Sciences, Baku State University, Ministry of Internal Affairs of the Azerbaijan Republic, etc.). She was repeatedly awarded the honorary title of "Scientist of the Year" by the decision of the Scientific Council of Baku State University for her scientific and educational achievements. M.F. Malikova was awarded

a personal pension of the President of the Azerbaijan Republic by the 2009 Decree of the President of the Azerbaijan Republic.

Masuma Malikova is currently successfully heading the Department of Theory and History of State and Law at the Faculty of Law of Baku State University and the scientific schools she created. Azerbaijani lawyers are always proud of M.F.Malikova. As a true Azerbaijani woman, M.F.Malikova's entire life and activity served the development of Azerbaijani legal science and education. The results of this activity will live on for a long time and will play a basic role in the development of legal science and education.

We sincerely congratulate professor Masuma Malikova, corresponding Member of the Azerbaijan National Academy of Sciences, Doctor of Legal Sciences, on her 95th birthday, and wish her good health, family joy, happiness and new achievements.

Amir Aliyev,
Doctor of Legal Sciences, Professor.

Turgay Huseynov,
Doctor of Legal Sciences.