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CONTENTS

CHARACTERISTICS OF FORENSIC ASSESSMENT FOR PERPETRATORS WHO COMMITTED A NEGLIGENT CRIME AND SUBSEQUENTLY DEVELOPED MENTAL ILLNESS POST-OFFENSE

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Abstract

This scholarly article undertakes a comparative analysis of the court review process and legal complexities surrounding mental illness within the criminal codes of Azerbaijan, Turkey, and Italy. The study delves into the various stages of court proceedings, evaluating the impact of mental health on criminal liability and exploring specific legal measures applicable to individuals with mental disorders. The examination encompasses court decisions and plenums, providing an in-depth discussion and comparison of the degree of mental illnesses and criminal responsibilities developed by perpetrators after committing a crime in the legal systems of all three countries. The overarching theme underscores the significance of considering mental health in criminal proceedings to uphold fairness and justice within the legal systems.

Keywords: *Criminal liability, Mental illness, mental state, preliminary investigation, medical injunctions, trial stages, unreasonableness.*

Introduction

Court review is the central stage of the criminal process, because at this stage both the procedural actions that have taken place before are concluded, and the procedural decisions taken in the previous stages, the investigative actions carried out and other procedural actions carried out are checked for legality and validity, as well as whether there is a crime, which is the main subject of the criminal process, Questions such as whether the person accused of this crime is guilty and whether he should be punished if guilty are also answered. reply. Therefore, the administration of justice involves obtaining an answer to the main question of the criminal case, the question of criminal responsibility of the person for the act for which he is accused. Another feature of the trial stage is that, unlike other stages of criminal proceedings, criminal procedure law may be involved at this stage. all principles find their full manifestation. This feature arises from the exceptional legal status of the court and the unique procedural form of judicial review. The importance of court review in criminal proceedings is, first of all, the full fulfillment of the duties of criminal proceedings thanks to court review. All other stages of the criminal process are aimed either at preparing for the effective implementation of the trial, or at finding and eliminating errors made by the court of first instance when assessing the case on the merits; Secondly, although currently the court examines the case on the basis of the evidence obtained in the preliminary investigation and the conclusions formulated by the criminal prosecution body, judicial review essentially consists in an independent examination of the circumstances of the case by the court. That was the subject of the investigation. It is the evidence investigated and verified during the trial that may form the basis of the final decision in the case; Third, the principles of criminal procedure and the rights and duties of criminal justice subjects are more fully realized in court review. At this stage, direct legal relations may arise between the subjects of criminal proceedings; Fourth, at this

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stage, the only procedural decision made on behalf of the state in the criminal process is the verdict. In addition to specific aspects characterizing the pre-trial phase of special criminal proceedings concerning individuals who have committed a crime or developed mental illness subsequent to the commission of the offense, there exist noteworthy features during the court review of such cases. This is elaborated upon in Article 477 of the Penal Code, which delineates the distinctive attributes of the judicial examination process, as well as in Article 485, which pertains to the application of legal measures specified in Article 95 of the Criminal Code for individuals who committed a crime under circumstances deemed unreasonable. [1]

The Penal Code outlines the procedural nuances observed within the initial court proceedings when addressing cases of individuals afflicted with mental illness after their criminal actions. These distinct elements warrant a detailed examination.

Pursuant to the provisions set forth in Article 477 of the Code of Criminal Procedure, when a case involving an individual who committed a crime under unreasonable conditions comes before the court, the judicial process is inaugurated through the submission of a prosecutor's report. This report explicitly accuses the individual in question of the offense as stipulated in Article 95 of the Penal Code and provides a substantiation of the necessity for implementing legal measures. [3] Subsequent to the submission of the prosecutor's report, the trial proceedings follow a conventional trajectory, whereby the involved parties present their respective evidentiary materials to the court for examination. In instances where evidentiary matters remain obscure, the court may solicit input from the defense counsel, as well as the legal representative of the individual who committed the crime, along with the active participation of the prosecuting authority involved in the case. Ultimately, the court deliberates on the case within a designated chamber to formulate its final decision.

By law, the following questions must be resolved by the court when accepting the final judicial act of the case under consideration:

- Has a socially dangerous act been committed?
- Was this act committed by the person against whom certain criminal proceedings are being carried out?
- Was this act committed by the perpetrator without negligence?
- Did the perpetrator who committed this negligence action remain recklessness/negligence during the trial?
- Is there a need to apply the criminal-legal measures stipulated in Article 95 of the Penal Code to a person who commits a crime with recklessness?
- What kind of criminal-legal measures should be applied to a person who commits a crime negligently?

If the court, following its comprehensive examination, conclusively determines that the individual facing prosecution committed a crime unwittingly, specific legal actions are taken. In addition to absolving the accused from criminal liability and consequent punishment, the court also exercises its authority in accordance with the provisions outlined in Article 95 of the Penal Code. Under these circumstances, the court decides on the imposition of specific categories of criminal-legal measures specified in the article. [2] Alternatively, it is plausible for the court to arrive at the conclusion that while the individual may have committed a criminal act, it is firmly established that they do not pose a societal or legal danger. In such instances, where there is no neces-

sity to apply the measures outlined in Article 95 of the Criminal Code, the court opts to suspend the proceedings. Lastly, in a scenario where the court deems it unequivocally proven that the person under investigation did, in fact, commit a crime unknowingly but subsequently regained their mental faculties during the trial, the court chooses to terminate the proceedings. As elucidated previously, the procedural features pertaining to the judicial aspect of cases involving the application of criminal-legal measures prescribed in Article 95 of the Penal Code for individuals who developed mental illness after committing a crime are stipulated in Article 485 of the Penal Code. As per the provisions of this article, both the defendant's legal counsel and the public prosecutor are mandated to participate in the court review concerning the implementation of criminal-legal measures outlined in Article 95 of the Penal Code for cases involving individuals who initially committed a crime under reasonable circumstances but later experienced a mental health deterioration. While the engagement of an expert during the court review is not obligatory within the scope of the contemplated trial, the law does provide for the option to invite an expert to participate in the court review process. The proceedings for individuals who clearly perpetrated a crime but subsequently suffered from mental illness commence upon the investigator's announcement of their decision to refer the pertinent case to court. Subsequently, the forensic inquiry, encompassing the scrutiny of available evidence, commences. Following the completion of the investigation, the court affords both the prosecutor and the defense attorney the opportunity to present their respective arguments. Subsequent to hearing the prosecutor's statements and the attorney's opinions, the court adjourns to its deliberation chamber to render a final verdict regarding the proceedings.

In order for the court to make an appropriate decision about a person who committed a reasonable crime while in the deliberation room but later became mentally ill, he must answer the following questions in order:

- Did the individual mentioned commit the action?
- Is there a crime in the action referred to the individual?
- Was the action referred to a individual committed by a specific person under investigation?
- Did the perpetrator on trial suffer from mental illness?
- What is the nature of the mental illness experienced by the person on trial?
- When did the person on trial suffer from mental illness?
- Is it necessary to apply the criminal-legal measures provided for in Article 95 of the Penal Code to a individual who became mentally ill after committing a criminal act?
- What kind of criminal-legal measures should be applied to a person who becomes mentally ill after committing a criminal act?

One of the situations that may occur in practice is that a perpetrator commits a crime while sane, remains sane before trial, but becomes mentally ill during trial. In such a case, the court applies the stay of proceedings procedure in the case.

It must be reminded that on November 8, 2012, the General Assembly (Plenum) of the Supreme Court of the Republic of Azerbaijan adopted a Resolution on the implementation of compulsory measures of a medical nature by the Courts, and judicial proceedings are carried out in this Resolution. They have found their own explanations both for the people who commit a crime in an unreasonable situation and people who are diagnosed with mental illness after committing a crime. [5]

Within the framework of the Azerbaijan Code of Criminal Procedure, specific regulations are in place to address individuals who engage in criminal activities without discernible motive. While many of these provisions align with the legal frameworks of other European nations, notable distinctions emerge, particularly in relation to non-civilian entities. The applicability of these regulations extends beyond considerations of an individual's military service utility, encompassing determinations made by the plenum. Noteworthy examples of such articles within the Plenum include Articles 3, 5, 16, 18, and 20, each contributing to a nuanced legal landscape that accounts for the unique considerations associated with non-civilian persons.

According to the 3rd Article of the Plenum;

In instances where the suspect, the accused individual, or the convicted person exhibits a history of diagnosed mental disorders, has received psychiatric assistance, has been institutionalized in a psychiatric hospital, has been deemed unfit for further criminal proceedings, and has been declared unsuitable for military service on account of their mental health, or has attended educational institutions catering to individuals with cognitive limitations, it becomes imperative to consider various factors such as their educational background, history of head trauma, and peculiarities in behavior and expressions indicative of potential mental disorders. In situations where doubts arise regarding the mental state of the individual, it is of paramount importance to adhere to and implement the provisions outlined in Article 140.0.2 of the Criminal Procedure Code, necessitating the appointment and execution of a forensic psychiatric examination.

Turkey's aspect on this base

In the Turkish Penal Code, the issue you are referring to is addressed under the title "Reasons that Remove and Reduce Criminal Liability," a concept referred to as "Fault" within the Turkish legal system. Within this framework, various factors that can impact culpability or fault are considered, such as age, an individual's mental capacity (criminal capacity), and the principle of necessity, among others. Criminal liability denotes an individual's capacity to commit a crime at a specific time and place. [7]

Criminal liability is determined based on the concept of imputation ability, or fault ability. For an individual to bear full criminal liability, both elements of imputation ability must be simultaneously present:

- Perception Ability: This pertains to an individual's capability to perceive, namely, to comprehend and understand the legal significance and consequences of their actions.
- Ability to Direct Behavior (Will): This refers to an individual's capacity, once they have comprehended the legal significance and consequences of their actions, to guide their conduct in accordance with this understanding. In the realm of criminal law, the capacity to guide one's behavior is also termed "willpower."

The impact of mental disorder or cognitive weakness on an individual's criminal capacity is a critical aspect of criminal jurisprudence. When there are indications or suspicions of mental illness or cognitive impairment in an individual facing legal proceedings, it becomes imperative for the court to engage in a comprehensive and scientifically rigorous examination. This examination is undertaken to ascertain whether the defendant indeed possesses any form of mental illness or cognitive vulnerability. Moreover, it seeks to evaluate the influence of such mental conditions or weaknesses on the

defendant's capacity for both perceiving and exercising volitional control over their actions pertaining to the alleged criminal act. [9]

It is essential to recognize that the presence of a mental illness does not automatically entail a direct connection between the illness and the commission of a specific crime. In instances where an individual with a mental illness engages in criminal conduct, it is plausible that the mental illness may not have played a causative role in the commission of the offense. For instance, a person diagnosed with bipolar affective disorder may commit a crime without the influence of this disorder being a determinant factor in their prior criminal history.

In situations where an individual, who was afflicted by mental illness at the time of committing the crime, demonstrates an inability to grasp the legal significance and consequences of their actions (i.e., a diminished capacity to perceive) or exhibits a substantial reduction or total absence of their capacity to exercise volitional control over their conduct in relation to the alleged criminal act (i.e., a compromised capacity to exercise their will), legal provisions come into play. Under such circumstances, it is legally established that the perpetrator cannot be subject to punitive measures for the offense they committed, as stipulated in Article 32/1 of the Turkish Penal Code. Security measures for mentally disordered perpetrators are regulated in Article 57 of the Turkish Penal Code.

This legal framework reflects the fundamental principle that justice must be served with due consideration to the mental and cognitive state of the accused, ensuring that individuals with significant mental impairments are not held criminally responsible when their capacity to perceive the wrongfulness of their actions or to exercise control over them is substantially impaired or entirely absent. In sum, the assessment of the impact of mental illness or cognitive weakness on criminal capacity is an essential facet of the criminal justice system, serving to uphold fairness and justice in legal proceedings.

The procedure in the trial process of the Turkish Penal Code is similar to the trial process in the Azerbaijani Criminal Code system. The court orders the defendant who committed the crime to be examined by the responsible institutions. If the requested criteria are met, then the defendant's criminal liability will be considered. If the perpetrator commits a crime under the influence of drugs and alcohol taken voluntarily, he is considered to have full criminal liability (TPC Article 34). In this case, the perpetrator's loss of perception or willpower is entirely due to his own faulty behavior. In Article 32 of the Turkish Penal Code No. 5237, the effect of mental illness and mental weakness on criminal liability is regulated as follows: [8]

An individual who cannot perceive the legal meaning and consequences of the act he committed due to mental illness or whose ability to direct his behavior in relation to this act is significantly reduced will not be punished. However, security measures are taken against these people (TPC article 32/1).

An individual whose ability to direct his / her behavior has decreased in relation to the act he committed, although not to the degree stated in the first paragraph, is sentenced to twenty-five years instead of aggravated life imprisonment, and twenty years instead of life imprisonment in other cases, the penalty may be reduced by not more than one-sixth. The sentence can also be applied, in whole or in part, as a security measure specific to mentally ill patients, provided that the duration is the same (TPC Article 32/2). In their statements, the defendant and the victims stated that the defendant had received psychiatric treatment and submitted hospital reports. According to

Article 32 of the Turkish Penal Code, as of the date of the crime, "whether he was unable to perceive the legal meaning and consequences of the acts he committed or whether he had a diminished ability to direct his behavior regarding these acts, "due to his mental illness or weakness." Establishing judgments based on a two-person report, without taking into consideration the fact that the legal status of the defendant should be determined according to the result by duly obtaining a medical report on "whether it has decreased significantly or not" is a reason for reversal (Y4CD-K.2020/4258).

32/1 of the Turkish Penal Code No. 5237. Pursuant to the article, punishment cannot be imposed on a defendant whose ability to perceive, and willpower has disappeared due to mental illness. In accordance with Article 223/3-a of the Criminal Procedure Code No. 5271, a verdict of "no punishment" must be given to the defendant. However, even if the defendant is not punished, when it is proven that the crime has been committed, security measures must be taken against the defendant in accordance with Article 57 of the Turkish Penal Code No. 5237. Pursuant to Article 32/2 of the Turkish Penal Code, the court will apply a sentence reduction to a person whose ability to commit crimes has decreased, but the penalty given to the defendant may also be applied partially or completely as a security measure specific to mentally ill patients, if it covers the same period.

If the court decides that "there is no need to impose a sentence" due to mental illness or mental weakness, or a security regime specific to mentally ill people, the defendant only benefits from not executing the sentence or from an advantage related to the manner of execution The deprivations of rights caused by punishment will continue to exist. Because the court decided on a criminal conviction for the defendant but changed the way the sentence was executed.

In accordance with the provisions outlined in the Turkish Code of Criminal Procedure, in cases where an individual has been found to have developed a mental illness subsequent to the commission of a criminal offense, and it has been determined that there exists no foreseeable prospect of their mental health being restored or rehabilitated, a legal decision to dismiss the charges may be rendered.

In accordance with the initial clause of Article 74 in the Turkish Code of Criminal Procedure, a mechanism is established for the assessment of the mental health status of a suspect or defendant, against whom substantial suspicions of committing an offense exist. The primary objective is to ascertain the presence of mental illness, its duration, and its influence on the individual's behavior. This process unfolds through a formal procedure wherein, following the recommendation of a specialized medical practitioner and subsequent deliberations involving the public prosecutor and the defense counsel, a decision may be made. This decision entails the potential placement of the individual under observation within an official healthcare institution, during either the investigative or prosecutorial phases, a determination which is made by the criminal judge of peace in the former phase and by the court in the latter.

Furthermore, regarding the culmination of legal proceedings, specifically pertaining to the conclusion of the trial and the issuance of a verdict, a provision exists for cases involving defendants who fall into distinct categories. These categories encompass minors, individuals afflicted by mental illness, those who are mute, or those whose criminal conduct is attributable to temporary reasons, as delineated in Article 223, 3rd paragraph (a) of the Code of Criminal Procedure. In such instances, a decision may be

rendered wherein the imposition of a penalty is deemed unnecessary due to the absence of culpability on the part of the defendant.

Italy's aspect

In Italian Penal Codes, similar to the Azerbaijani and Turkish Penal Code systems, criminal liability is predicated upon factors such as age range, psychological status, and the individual's capacity to understand and comprehend the implications of their actions. These legal frameworks, governed by the Roman-Germanic legal tradition, share significant similarities, with the Turkish Penal Code notably influenced by the "Zanardelli" principles. Turning to Italian Criminal and Procedural Laws, provisions concerning criminal liability and prosecution are delineated in Articles 85-131, 131-149, and 150-184.

Article 85 of the Italian Criminal Code stipulates that an individual cannot be held criminally liable for an act if, at the time of its commission, they lacked the capacity to comprehend the nature of the act or to exercise their will in its execution. Criminal immutability is ascribed to those individuals possessing both the capacity to understand and the ability to exercise their will. [11]

However, Article 87 introduces an exception to the aforementioned principle, wherein it does not apply to individuals who deliberately place themselves in a state of incapacity to understand or exercise their will in the commission of a crime or in preparation thereof.

- Article 88 deals with total mental incapacity, absolving individuals who, due to illness, were in a mental state at the time of the act that entirely precluded their capacity to understand or exercise their will from criminal liability.
- Article 89 addresses partial mental incapacity, attributing liability to individuals who, due to illness, were in a mental state at the time of the act that significantly diminished, but did not wholly exclude, their capacity to understand or exercise their will. In such cases, the punishment is mitigated.

Emotional or passionate states, as per Article 90, do not negate or diminish immutability. Notably, incapacity to understand, which differs from mental illness, is treated differently in Italian criminal law. For instance, individuals who commit crimes under the influence of alcohol or drugs may face increased penalties under Articles 91-95.

- Article 91 pertains to drunkenness resulting from fortuitous circumstances or force majeure, where individuals who lacked the capacity to understand or exercise their will due to complete drunkenness are not held accountable. If drunkenness was not total but significantly impaired the capacity to understand or exercise will, the punishment is reduced.

Article 92 concerns voluntary, negligent, or premeditated drunkenness, establishing that such drunkenness does not excuse or reduce immutability. If drunkenness was premeditated to facilitate the commission of a crime or to prepare an excuse, the sentence is augmented.

- Article 93 extends the principles of the previous articles to situations where crimes are committed under the influence of narcotic substances.
- Article 94 addresses habitual drunkenness, increasing sentences when crimes are committed while habitually intoxicated. Habitual drunkenness applies not only to those addicted to alcoholic beverages but also to those frequently intoxicated by narcotic substances.

- Article 95 deals with chronic intoxication due to alcohol or drugs, applying the principles of Articles 88 and 89 to acts committed in a state of chronic intoxication resulting from alcohol or narcotic substances.

Within the realm of Italian procedural laws, it is noteworthy that several provisions within the Italian court legal framework pertain to the mental state of the defendant. Herein, we shall delineate two of these relevant statutes for elucidation and analysis. [12]

- Article 166 Service on the accused person who is declared disabled or mentally ill 1. If the accused person is declared disabled, service is affected according to the above articles and also on his guardian; if the accused is in one of the situations covered by Article 71, paragraph 1, service is effected according to the above articles and on his special guardian.
- Article 286 Precautionary detention in a healthcare centre 1. If the person to be subjected to precautionary detention is in a state of mental illness that hinders or reduces significantly his mental capacity, the court may order, in lieu of precautionary detention in prison, his temporary hospitalization in a suitable hospital department of psychiatry, adopting the necessary measures to prevent the risk of flight. Hospitalization shall be terminated if the accused is no longer mentally ill. 2. The provisions of Article 285, paragraphs 2 and 3, shall apply.

Conclusion

In a nutshell, this scholarly exploration has meticulously examined the court review processes and legal intricacies pertaining to mental illness within the criminal codes of Azerbaijan, Turkey, and Italy. By dissecting the various stages of court proceedings and critically assessing the implications of mental health on criminal liability, this comparative analysis has revealed both commonalities and distinctive features inherent in the legal frameworks of these three nations.

The meticulous examination of court decisions and plenums has opened the nuanced approaches these legal systems adopt in addressing the evolving mental conditions of perpetrators post-crime. Particularly noteworthy are the specific articles within the criminal codes that play a pivotal role in shaping decisions related to mental health in each jurisdiction.

In Azerbaijan, Article 477 and Article 485 of the Penal Code delineate the distinctive characteristics of the judicial examination process and the application of legal measures for individuals who committed a crime under unreasonable circumstances or developed mental illness subsequent to the offense.

In Turkey, the Turkish Penal Code (TPC) Articles 32 and 57 emerge as pivotal components. Article 32 intricately addresses the effect of mental illness and mental weakness on criminal liability, outlining conditions where punishment cannot be imposed, and security measures must be taken. Article 57, on the other hand, regulates security measures for mentally disordered perpetrators. [7]

The Italian Penal Code, rooted in the Roman-Germanic legal tradition, presents Articles 85-95 as crucial components. These articles carefully outline the legal considerations surrounding mental incapacity, emotional states, and the influence of alcohol or drugs on criminal liability.

This comparative study not only sheds light on the importance of considering mental health in criminal proceedings but also emphasizes the significance of understanding the relevant legal articles that form the backbone of these judicial systems. It calls for ongoing international dialogue and collaboration to foster a collective understanding of best practices in handling cases involving mental disorders. As each country uniquely addresses this intersection of mental health and the law, the article underscores the delicate balance required to uphold legal principles, fairness, and evolving notions of mental health in the pursuit of justice.

As evident, the Italian Criminal Codes, both historically and presently, have been regarded as foundational legal texts. Consequently, they offer a comprehensive analysis of an individual's mental state, even delving into the trial processes of individuals. In this regard, one can observe that Italian Criminal Laws encompass detailed descriptions of mental states. Moreover, the legal framework in Italy intertwines criminal laws and procedural laws.

Conversely, the operation of Turkish Criminal Laws differs somewhat. While the Turkish Code of Criminal Procedure does address and examine mental states separately, it is worth noting that, in addition to procedural and criminal laws, decisions handed down by the Supreme Court play a crucial role in shaping the judicial process.

References:

1. Commentary on the Criminal Procedure Code of the Republic of Azerbaijan / ed. C.H. Movsumov, B.C. Karimov, A.H. Huseynov. Baku: Digesta, 2016, p. 1336 (in Azerbaijani)

2. Abbasova F.M. Special procedures in the criminal process. Textbook, Baku: Ecoprint, 2018, 192 p. (in Azerbaijani)

3. Gafarov M.S. Some issues of differentiation of criminal proceedings according to individuals // Scientific and pedagogical news of Odlar Yurdu University. Humanities series, 2013, No. 38, p. 118-130. (in Azerbaijani)

4. Mammadova L.I. Features of proceedings against different categories of persons in the criminal process of the Republic of Azerbaijan. Teaching materials. Baku, 2023, 222 p.5. (in Azerbaijani)

5. Plenum on the Practical Application of Mandatory Medical Measures by Courts – The Courts of Azerbaijan Republic, Baku, 08.11.2012

6. Keçelioğlu Elvan. "Ceza Muhakemesi Hukukunda Gözlem Altına Alma". Ankara Barosu Dergisi, sy. 3 (Mayıs 2015): 221-45. (in Turkish)

7. Nejat Hüseyin Özal, "Tam ve kismi akil hastaliklarinin ceza sorumluluğuna etkisi" T.C. İstanbul üniversitesi adli tip enstitüsü, yüksek lisans tezi 1991 (in Turkish)

8. Taşkin, Ozan Ercan. "Akıl Hastası üzerindeki bakım Ve gözetim yükümlülüğünün Ihlali suçu". Ankara Üniversitesi Hukuk Fakültesi Dergisi 65, sy. 4 (Aralık 2016): 2471-86. (in Turkish)

9. Abidin, Z., Davoren, M., Naughton, L. et al. Susceptibility (risk and protective) factors for in-patient violence and self-harm: prospective study of structured professional judgement instruments Start and Saprof, Dundrum-3 and Dundrum-4 in forensic mental health services. BMC Psychiatry 13, 197 (2013).

10. Albano GD, Guadagnino D, Midiri M, La Spina C, Tullio V, Argo A, Zerbo S. Torture and Maltreatment in Prison: A Medico-Legal Perspective. Healthcare (Basel). 2023 Feb 15;11(4):576. doi: 10.3390/healthcare11040576. PMID: 36833110; PMCID: PMC9956078.

11. Di Mizio G, Bolcato M, Rivellini G, Di Nunzio M, Falvo V, Nuti M, Enrichens F, Lucania L, Di Nunno N, Clerici M. Protection of Prisoners with Mental Health Disorders in Italy: Lights and Shadows after the Abolition of Judicial Psychiatric Hospitals. Int J Environ Res Public Health. 2022 Aug 12;19(16):9984. doi: 10.3390/ijerph19169984. PMID: 36011618; PMCID: PMC9408278.

12. Franco Scarpa "The Italian reform of treatment of people not guilty by reason of insanity: The closure of forensic institutions")

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ARMENIA'S INTERNATIONAL RESPONSIBILITY FROM THE PERSPECTIVE OF THE CONGO CASE

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Abstract

The present article analyses Congo v. Uganda case from the perspective of compensation from Armenia for the damage caused to Azerbaijan for international wrongful acts in Karabakh and surrounding regions. In particular, the article looks at the type of damage, amount of compensation, evidences of the parties, position of various international and regional courts, concept of 'continuing violation', and possible scenarios of claiming damage from Armenia. The article also discusses the application of 'res judicata' principle by ICJ, obligations of an occupying state to prevent human rights violations and humanitarian law, obligations of the parties as to submission of evidences, examples of setting a compensation amount per the violation, importance of environmental damage, etc. The article contains a number of conclusions, including non-exclusion of the responsibility of the state when natural persons are found guilty for the acts committed; responsibility of the state occupying the territories and keeping them under its effective control for the actions of the persons included in its armed forces in those territories; responsibility for the damage caused as a result of the actions of groups and individuals not subject to it; importance of addressing compensation issues in a peace agreement between the parties, etc.

Keywords: *compensation, international wrongful acts, Congo case, responsibility of states, 'continuing violation', human rights, ICJ.*

It is indisputable that the international wrongful acts committed by Armenia against Azerbaijan lead to international responsibility. There are theoretical chances for establishing an ad hoc tribunal or any other international mechanism for Karabakh and from this perspective it deems important to study the experience of similar cases. One of them is the case of the International Court of Justice titled "Democratic Republic of the Congo v. Uganda" [2].

On February 9, 2022, the International Court of Justice ended a 23-year dispute in the Congo case with a final judgment ordering Uganda to pay US$225 million for personal injury, US$40 million for property damage and US$60 million for natural resource damage [5]. At the same time, the Court rejected the request due to the macroeconomic consequences of the invasion of Congo by Uganda.

Considering that the decision on this case is useful in terms of clarifying a number of issues related to evidence and proof, as well as referring to the legal positions of the International Court of Justice expressed in that decision, we consider it necessary to dwell on some points reflected in the judgment. [10]

The court noted in paragraph 71 of the judgment that at the stage of determining the damages, none of the parties can question the "res judicata" nature of the 2005 Decision on the merits of that case. [9] The essence of the principle of res judicata is related to the principle of legal certainty. Legal certainty, being one of the most important principles of the rule of law, implies, among other things, that the final decisions of the court should not raise questions. [8]

Although the principle of res judicata is not directly related to proof and evidence, the essence is that what the Court determined in the 2005 Decision in that case is final for the parties, the parties cannot re-dispute what was determined by that Decision and they should not provide evidence that affect the determination of the facts in that decision.

With regard to the requirement and submission of evidence of damages, the Democratic Republic of Congo's (DRC) position was that Uganda could not require the DRC to provide precise and detailed evidence of damages. Because being the occupying

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state in that circle, it initiated the situation that led to the disappearance of the intended evidence.

This aspect was also manifested in the Armenian-Azerbaijani conflict. Thus, after occupying 20 percent of the territories of Azerbaijan, Armenia turned them into ruins, destroyed all buildings and cultural monuments, and ended the existence of material evidence during the 30-year occupation period.

Uganda, for its part, argued that the DRC must demonstrate a causal relationship between Uganda's failure to comply with its obligations as an occupying power and the harm inflicted on the DRC by individuals or groups, whether supported or not by the defendant in that context (i.e., the DRC - the fact that the damage was inflicted precisely as a result of the support of those forces by Uganda) must be proved by the facts. Referring to the decision of the International Court of Justice on the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) [1], the respondent argued that it must be demonstrated with sufficient degree of certainty that the damage caused by third parties, whose conduct is not attributable to it, would not have occurred had it duly discharged its obligations as an occupying Power (paragraph 77).

Referring to the 2005 Decision, the Court considers that the status of the district of Ituri as an occupied territory has a direct bearing on questions of proof and the requisite causal nexus. As an occupying Power, Uganda had a duty of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account. Given this duty of vigilance, the Court concluded that the Respondent's responsibility was engaged "by its failure... to take measures to... ensure respect for human rights and international humanitarian law in Ituri district" (paragraph 78).

Armenia, as an occupying state, was obliged to prevent the violation of human rights and international humanitarian law by any subject in the occupied territories of Azerbaijan, including the separatist Armenian forces in Karabakh, and is responsible for the wrongful acts committed by them.

Uganda's further argument regarding the determination of damages was that the compensation sought from it should be limited to damages caused by its armed forces and that the burden of proof in this regard should be on the claimant. If the claimant proves that the damage was done precisely as a result of its support, it can demand the damage from them. It is not enough to assert in abstracto that the injury attributable to the rebel groups would not have occurred without Uganda's support (paragraph 81).

The case "Democratic Republic of the Congo v. Uganda" is also characteristic in that the DRC, as a party applying to the court, requests the Court to reduce the burden of proof regarding the damage required in advance, and in relation to its request, the Ugandan side, referring to various normative documents and judicial experience, demanded that this motion be rejected, and that KDR fulfil all its obligations regarding proof. Therefore, the Court discussed and evaluated the motion of the KDR in relation to each specific case. For example, the DRC asked the Court to take into account the context of the case when evaluating the evidence for each issue of harm, i.e. the time since the events occurred, the DRC's lack of resources, the ongoing conflict in its territory, the high number of victims suffering injuries, the low level of education in the country, etc. (paragraph 62).

Regarding the motion of the DRC, Uganda claimed that the DRC cannot refer to the existing difficulties in gathering evidence and put the burden of proof on Uganda. Claims about the difficulty of determining damage caused during an armed conflict are unfounded. The Ugandan side pointed to Iraq's occupation of Kuwait and Eritrea's occupation of its northern part by entering Ethiopia as examples, noting that the existence of the fact of occupation in those territories did not prevent the occupied states from presenting evidence (paragraph 63).

In paragraph 114 of the decision, the Court expressed its attitude to that issue and did not consider it necessary to mention the name of each victim or property of the DRC, to indicate where and when they were harmed, as claimed by Uganda, in order to pay compensation to the DRC. It agreed that in cases where the damage is massive, as in the present case, the information should be made public.

Referring to the evidentiary requirements applicable to mass claims, KDR stated that the Court's practice does not require a precise assessment of damages in such cases. In the context of mass casualties, international law does not require the determination of a specific amount of damages for each victim or group in order to calculate compensation. [3] The DRC thus argues that it will be necessary to mitigate the effects of the general rule that it is for the party that alleges a fact to prove its existence, in order to take account of situations where the respondent is in a better position to provide evidence of the facts at issue. In this regard, the claimant referred to the experience of the European Court on Human Rights (ECtHR) and the Commission on the claims of Eritrea and Ethiopia (paragraph 104).

In contrast to that position, Uganda argued that the Court must demonstrate a high degree of certainty in order to determine damages. KDR must show the affected people and property at a certain place and at a certain time for each claim related to damage. In addition, the occupation of Ituri should not exempt the DRC from the obligation to provide certain evidence.

Regarding the damage caused to the DRC in Ituri district, the Court, taking into account the occupation regime, reminded that Uganda must prove that the damage caused to the DRC in that area was not due to its failure to fulfil its obligations as an occupying state (paragraph 118).

However, as regards damage that occurred on Congolese territory outside Ituri, and although the existence of armed conflict may make it more difficult to establish the facts, the Court is of the view that "[u]ltimately . . . it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved" (para. 119).

The court noted that the evidence presented to it by the DRC was insufficient to determine the amount of compensation to be paid in most cases. However, taking into account the context of the armed conflict in that case, the court considered various other elements related to the research in the case, including reports at the UN.

The Court confirmed that the loss of life as a result of internationally wrongful acts creates an obligation for Uganda to pay full damages. Before proceeding to compensation, the Court must determine the importance and extent of the damage suffered by the claimant, as well as ensure that there is a sufficient direct and definite causal link between it and the internationally wrongful act.

According to the court's opinion, neither the documents submitted by the DRC, nor the reports submitted by the appointed experts, prepared by the UN agencies, can provide accurate or approximate information about the number of dead for which Uganda must pay compensation. The Court considers that the evidence presented to it suggests that the number of deaths for which Uganda owes reparation falls in the range of 10,000 to 15,000 persons (paragraph 162).

The Court did not approve the payment of damages in the amount of 34,000 US dollars for each civilian killed during the armed conflict in the DRC and noted that the amount was excessive (paragraph 163).

Although the court required the plaintiff to provide evidence for the determination of material damage, it did not condition the payment of moral damage with the provision of evidence. Thus, in most cases, moral damage is related to suffering, moral shocks suffered by people as a result of committing an act against international law. Examples of such cases are the shocks suffered by the close relatives of those who died during the armed conflict, and those who became disabled. In most cases, it is impossible to prove these cases with any evidence. The established facts themselves give the court a reason to make a decision on the existence of circumstances requiring payment of moral damages. The court determines moral damage, as a rule, as a result of the gravity of the internationally wrongful act committed and based on its considerations of fairness.

The experience of compensation for damages related to the looting and illegal exploitation of natural resources is important for determining Armenia's responsibility within the framework of the Armenia-Azerbaijan conflict. The peculiarity here is that Armenia exploited the natural resources in the occupied territories of Azerbaijan with the participation of companies from other countries. Exploitation of resources from the territory belonging to Azerbaijan by foreign companies without the consent of Azerbaijan also creates a basis for the responsibility of those companies.

Regarding environmental damage due to deforestation, the court noted that demanding environmental damage is consistent with international law governing the consequences of an internationally wrongful act and the principles of full compensation. Since the DRC did not provide the Court with any evidence of environmental damage, it determined a total of 60,000,000 USD in compensation for the plunder and exploitation of natural resources. And in a 2005 Decision, the Court explained that there was no need to rule on every alleged incident related to the DRC's natural resource claims.

Conclusion

In international law the responsibility issue can be that of a state or individuals. For state's responsibility the ICJ has to look at the case, whereas for individual's responsibility the ICC's jurisdiction is required (with the differences in eligible crimes in mind).

The most realistic compensation mechanism for Armenia's international wrongful acts against Azerbaijan would be ad hoc tribunal within UN or any mechanism to be established as part of the upcoming peace agreement. The evidencing elements as well as criteria for calculation of damage studied in the present article would then be applicable.

Recent ratification of ICC Statute by Armenia does not promise much for Azerbaijan because the latter has not yet ratified this instrument and its jurisdiction (ratione temporis) applies only to crimes committed after the entry into force of the Statute (and can only sue individuals). ICC does not so far recognize the "continuing violation doctrine" which exists in international law and is applied by other regional courts (for example, in

Moiwana Village v. Suriname [4], the Inter-American Court of Human Rights used it to assert jurisdiction over a massacre that took place before Suriname became a party to the American Convention on Human Rights. Similarly, ECtHR recognized this principle in De Becker v. Belgium [3] and since then broadly applied particularly in property rights related cases [6]).

Alternatively, the Security Council may refer a case to ICC but it has to determine that there does indeed exist a threat to the peace, breach of the peace, or act of aggression in accordance with article 39 of the UN Charter and all SC members have to vote for it [7]. At present, this does not seem to be realistic in light of the composition of the Security Council and their attitude to the conflict at question.

Nevertheless, the analysis of Congo case leads to the following conclusions:

1. The Armenian state is responsible for the violation of jus cogens norms of international law, erga omnes obligations, including human rights and international humanitarian law norms during the occupation of Azerbaijani territories and keeping them under occupation for 30 years.

2. The state that commits an internationally illegal act must ensure adequate compensation for the damage caused as a result of that act.

3. The criminal liability of individual natural persons for the acts committed does not exclude the responsibility of the state for those acts.

4. The state occupying the territories and keeping them under its effective control bears responsibility for the actions of the persons included in its armed forces in those territories, as well as for the damage caused as a result of the actions of groups and individuals not subject to it.

5. The burden of proving the absence of a causal relationship between the damage caused as a result of an international illegal act and its consequences in the occupied territories rests with the occupying state. Considering the nature and duration of the dispute, it is possible to place the burden of proof on the defendant.

7. The claimant state bears the burden of proof regarding damage and determining its amount as a result of violation of human rights and international humanitarian law norms that occurred in non-occupied territories. In accordance with the principle of "Res judicato", the evidence related to the confirmation of the international wrongful acts of the responsible state should be presented before the case is considered on its merits.

8. The claimant state must provide valid and relevant evidence related to the determination of the number of people killed and injured as a result of the conflict, the amount of the related damage, as well as the damage caused to the citizens and the property of the state. In cases where the violations are of a mass nature, determining the damage in a general manner may be considered permissible.

9. Plundering and illegal exploitation of natural resources in the occupied territories, damage to ecology and economy, confirmed by authoritative international expertise and substantiating documents can create a guarantee for compensation of damage.

10. The most efficient way to compensate for the damage caused to Azerbaijan during the Armenia-Azerbaijan conflict is for the parties to conclude a peace agreement related to the conflict, to resolve the issues related to the damage caused within the framework of that agreement.

References:

1. Application of the Conventionon the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007.

2. Armed activity in the territory of the Democratic Republic of the Congo (Democratic Republic of the Congo against Uganda), ICJ, 2022, at https://www.icj-cij.org/sites/default/files/case-related/116/116-20220209-jud-01-00-en.pdf

3. Commission decision, 1958.

4. In the Court's view, Suriname's failure to investigate the massacre after ratifying the American Convention meant that the massacre was a "continuing violation" that fell within the Court's temporal jurisdiction. See at https://opiniojuris.org/2007/08/06/icc-submissions-and-the-continuing-violation-non-doctrine/

5. Lee J. Armed Activities on the Territory of the Congo (Democratic Republic of the Confo v Uganda). American Journal of International Law. 2023; 117(1):113-121. Doi: 10.1017/ajil.2022.84

6. Loizidou v. Turkey, 1996.

7. Markus Wagner, The ICC and its Jurisdiction – Myths, Misperceptions and Realities, 2003.

8. See also Nicaragua v. United States of America, merits judgment of 27 June 1986, para. 284, at https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf Accessed on 18.01.2024

9. See at https://www.icj-cij.org/sites/default/files/case-related/116/116-20220209-jud-01-00-en.pdf

10. Armed activity on the territory of the Congo, Democratic Republic of the Congo against Uganda - February 9. 2022) https://jusmundi.com/fr/document/decision/fr-activites-armees-sur-le-territoire-du-congo-republique-democratique-du-congo-c-ouganda-arret-reparations-wednesday -9th-february Accessed on: 01/05/2023 (in Russian)

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CRIMINAL LIABILITY OF ARTIFICIAL INTELLIGENCE AND ROBOTICS

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Abstract

The rapid development of artificial intelligence (AI) and robotics technologies has brought new challenges to criminal liability. This article examines the complex legal and ethical issues of who is responsible when AI systems and bots commit malicious or criminal acts. The discussion will focus on the evolving landscape of AI and robotics, including self-driving cars, chatbots and autonomous drones. Drawing on legal precedent and emerging ethical frameworks, this article explores the nuances of attributing criminal liability to various stakeholders in AI and robotics cases. We explore the blurred lines between human behavior and AI decision-making, focusing on issues such as algorithmic bias, levels of autonomy, and intent in AI operations. It also assesses the role of manufacturers, programmers and operators in shaping the behavior and potential responsibilities of these intelligent systems. The document also considers the need to update legislation and international conventions to ensure a harmonized legal framework for criminal liability in the field of artificial intelligence and robotics. Assess the difficulties of enforcing liability, the limitations of existing laws, and the need for ethical AI development practices to prevent future harm..

Keywords: *AI Criminal Liability, Robot Legal Issues, AI and Criminal Law, AI Legal Ethics, Robot Criminal Liability.*

Introduction

Recent years have witnessed great development in the field of artificial intelligence and robotics as a result of advances in technology and feature processing, and this is in light of the development of BIG DATA as a new actor that distinguishes developed countries from others. Among the phenomenon of artificial intelligence is the system programmed to assist in the medical field, smart cars, smart agents, robots and other applications that have become active in developed society, especially the United States, Japan, France and Germany. This new technology represented the transfer of modern technology in the modern era, as it provides color and luxury for humans in accomplishing their lesser social tasks, but at the same time it opened the door to a group of philosophical, ethical, and legal matters. Since ancient times, man has tried to develop himself through his use of the most important faculty granted by God Almighty. Namely, it is the members of this blessing that distinguished it from things, so it stopped thinking, perceiving, learning, deducing, purchasing, and preserving, which has been the source of power since ancient times.

Artificial intelligence is no longer a fantasy or a dream. This is already true, especially in European and Arab countries, with the development of driverless cars that drive on many roads without the need for human intervention and smart robots that have taken human management by combining great power with intelligence. Drone etc. There are also planes that fly without it. Artificial intelligence has now permeated business, commerce, healthcare, education, services, transportation, justice and more. Artificial intelligence is a double-edged sword because it has significant advantages but has achieved high accuracy, but it can be considered that there is a reason for this and therefore a crime has occurred from its actions and will continue to be a crime in the future. Since programmers, manufacturers, sellers, owners or users can send the type from the intelligence center, it reaches the stage of development that gives it the ability to create cooperation with violence or cooperation with violence with freedom. Artificial Intelligence should be a search for changes that can take this knowledge, with the importance of finding out the role and responsibilities of AI organizations, because it is a crime based on facts recognized by law, forcing the criminal to cross the border.

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Signing legal rights; however, there are questions regarding general advice on the use of equipment and technical skills. Take responsibility for the situation. A unique body of knowledge created by and for the benefit of professionals. On the contrary, some members are concerned about this step and demand legal changes in technology and general guidelines that will be valid only with some changes in the law.Artificial intelligence creates new legal problems at different levels; This is where existing laws apply to all legal issues that may arise from AI, such as liability and torts, including the protection of personal data, as well as intellectual property rights, contracts or torts. competition etc. The right to solve problems comes from human rights because it has good value. Many players in the AI space are trying to gain legal attention and should indeed work to move away from the use of traditional rules by creating new laws for AI. With Saudi Arabia starting to grant citizenship to robots, these steps have started to move in this direction, but they are progressing slowly enough to create fear. Sofia In 2017, the European Parliament approved special rules on civil liability for robots and called for them to be authorized under the law. All this divides opponents and supporters.Since liability is legal as a crime recognized by law, it has become mandatory to explain the legal basis of liability when technical problems arise, which are a requirement of technical work. In other words, the person who committed the crime must suffer the punishment of these laws. However, artificial intelligence technology is sometimes considered to have stakeholders, starting from producers, owners, users and beneficiaries of the technology, which will influence the responsibility of this organization and therefore the specific features of artificial intelligence. Technology The emergence of intelligence, like sex, is sometimes an element of crime and sometimes a tool of crime. For this reason, the general provisions of the law need to be created in the light of technology.

Artificial intelligence technology is considered one of the most important technologies of an era that needs to be integrated into society because it helps people in many aspects of their daily lives and helps complete many tasks that are difficult for humans to complete with better human efficiency. . This is still the most advanced technology in the global market. When we talk about smart technologies, we see that they are based on disciplines such as computer science. The main purpose of intelligence is thinking, learning, problem solving, etc. that improve computer functions related to human intelligence such as biology, psychology, linguistics, mathematics and engineering.

Importance of the topic

This study focuses on the importance of its new topic, artificial intelligence and robot crimes. The importance of intellectual skills includes many factors and it is difficult to list them all. We must recognize that AI can conduct better scientific research and play a larger role. discoveries will therefore become important in stimulating innovation in many fields; The most important of these is the field of violence, which is the subject of research and analysis. The importance of this issue is also the necessity of the legal identity of the intelligence agency in order to maintain its responsibility for the crime. As these organizations grow rapidly, artificial intelligence is expected to carry out some crimes on its own, independent of the programmed commands given to it and the control of its owners.

In this case, can intelligence be held responsible and punished? In accordance with the national policy of promoting intellectual property and promoting its widespread

application, we will not be responsible for any crime caused by intellectual property technology. . From this perspective, the importance of this research can be divided into theoretical importance and application importance as follows:

Theoretical importance: it mainly involved learning the concept and importance of artificial intelligence and learning how to benefit from artificial intelligence. intelligence. Smart applications initiate all kinds of business, social, legal and other activities.

Main Ideas: Suggestions proposed by the study that can be used in the field in order to create a basis for the country's dependence on intelligence and to reveal new ideas are evaluated in the process.

Research question

Our topic raises an important question that can be expressed as follows: How do the rules of liability apply in crimes committed by artificial intelligence or robots? This question is divided into the following questions:

•Can the robot be held personally liable by the main culprit, or is it exempt from liability because it is against the law?

• In this case, can the blame be placed on the robot's manufacturer, programmers or users?

•What are the underpinnings and limitations of this role?

•What is the justification for punishing crimes in the field of intellectual intelligence?

•Can the intelligence agency give authority to a legal person?

Research plan

We decided to separate the topic according to binary classification by formulating a research question and identifying its sources; In the first part, we talk about the law of intellectual property rules and crimes related to robot behavior, followed by the first Investigation of artificial intelligence Intellectual property crimes and robot according to the following standards:

1.The first topic includes the legal framework regarding artificial intelligence and cybercrime.

2.The second topic Punishment for Artificial Intelligence and Robot Crimes

1. The first topic includes the legal framework regarding artificial intelligence and cybercrime

The rapid progress of artificial intelligence requires the creation of legislation that will establish the principles and rules regulating the functioning of artificial intelligence. Given the dependence on intelligence technology in many parts of the world, the operation of these systems urgently needs to be legalized, and schools were the first to show interest in the subject. Research studies conducted in the field of artificial intelligence assist legislators by publicizing the ethical process and supporting the continuous development of the law. The order to do so is to influence the two points he expresses in the ethics governing intellectual work, international and Arab, and the legislation regulating intellectual work in international law. Arab countries in general and Arab countries in particular.

To answer these questions, besides the responsibility of artificial intelligence and robots, it is necessary to limit the discussion to certain procedures and talk about most

of them legally and mutually, because the law of intelligence is huge. and cannot be limited, which leads us to limit ourselves to two laws at the beginning of this work. **First**, we will talk about the concept and applications of artificial intelligence, then we will talk about the regulatory process responsible for the behavior of artificial intelligence and robot crimes, and **secondly**, we will talk about the things to do.

1.1 Artificial Intelligence concept and applications

Artificial Intelligence technologies are considered one of the most important technologies of the age that should be integrated into society because they contribute to many things related to people's daily lives and help them be successful. More jobs for people It's hard to do these jobs with better jobs than people. This is also the most advanced technology currently on the market. Artificial intelligence is not limited to computers only, but is also used in many areas such as health, education, entertainment and business. When it comes to technical skills, we see that they are based on the fields represented by computer science, biology, psychology, linguistics, mathematics and engineering. The main purpose of artificial intelligence is to improve computer functions related to human intelligence such as thinking, learning and problem solving. The question we find relevant always concerns the possibility of machines thinking and acting like humans. This has led programmers to create artificial intelligence with the goal of creating human-like intelligence in machines that use artificial intelligence. Therefore, we will talk about the concept of artificial intelligence in the first paragraph. In the second paragraph, we will discuss the areas and areas of application of artificial intelligence.

1.1.1. The concept and goals of intelligence

To understand what intelligence is, we must first understand the concept of human intelligence, because human intelligence is defined as the ability and wisdom to find and develop solutions to diversity problems. Research is the ability to obtain new knowledge and information by drawing on previous experience, leading to the development of certain solutions, differing in levels of expertise and expertise from humans, and is considered responsible for the development of human intelligence and the creativity of different civilizations. Given the importance of human intelligence, people have been and are still investigating the nature of this intelligence and how to measure it and are taking steps to simulate it in computer programs. [9, p.169] For a long time, the study of human intelligence was limited to psychologists, but the rapid progress of many disciplines in the last half century has led to the collaboration and integration of various scientific fields in science. Simulation and development of human intelligence systems. Researchers hope to impart knowledge and experience. People take up computer programming to benefit from many different areas of life that require skills and experience to keep up with business, agriculture and commerce. [15, p.120]

Definition of Artificial Intelligence

Artificial Intelligence can be defined as: "A branch of computer science concerned with how machines can simulate human behavior. When we learn, we learn, when we decide, we decide, we act as we do". [4, p. 34] The definition of artificial intelligence is as follows: " It is a branch of computer science in which computers, following the model of human intelligence, can be designed and built to perform specific tasks on behalf of

humans that require improving ways of thinking, understanding, listening, speaking, and acting."

Its origins lie in traditional post-World War II methods of working, human This may extend to a move into computer engineering, which simulates intelligence and improves problem solving. Some difficulty in gaming, which then leads to large simulated systems." , which then crystallize and artificial intelligence systems. [14, p. 17]

Artificial Intelligence means: "Learning intelligent machines that can understand their environment and take actions that will increase their chances of success and creating" and John McCarthy wrote the term in 1955 defines it as: "The science and engineering of the creation of intelligent machines". [3, p.101]

It is the intelligence found by machines and programs that makes the human brain capable and functional, such as the ability to learn, reason, and react to events that are not programmed into the machine. It is also the name of a field of study concerned with the creation of computers and programs that behave intelligently. [2, p.41]

Artificial Intelligence also means: "The simulation and understanding of the nature of human intelligence by creating computers that can simulate intelligent human behavior. Right now, intelligence is, above all, ubiquitous around us. Automated Driving, drones , translation or investment in software etc. "Many applications in all parts of life". [1, p.43]

1.1.2. Applications and fields of artificial intelligence

Artificial intelligence is the process of simulating human intelligence through computer systems, and it is done by studying human behavior by conducting experiments on their behavior, putting them in certain situations, monitoring their reaction, thinking style, and dealing with these situations, and then trying to simulate the human way of thinking through complex computer systems, and then Then, for a machine or software to be characterized by artificial intelligence, it must be able to learn, collect data, analyze it, and make decisions based on this analysis process, in a way that mimics the way humans think. This is what made the applications of artificial intelligence diversify and branch out according to different fields. The applications of artificial intelligence differ and multiply as an attempt to simulate human intelligence, especially in the field of analyzing audio and image data and determining language, even reaching the fields of deep learning so that artificial intelligence becomes capable of developing its techniques in an autonomous way that may go beyond Sometimes human intelligence.

– Applications of artificial intelligence in the field of data analysis:

The most important artificial intelligence technologies include generating natural language and texts from data, recognizing voice, image, shapes, and virtual agents, "machine learning" platforms, decision management, "deep learning" platforms, biometrics, and other technologies.

The widespread use of these technologies has begun in our daily lives in many different machines, as artificial intelligence technologies are used today in government work and the provision of government services, in industry, automatic control, expert systems, medicine, learning, games, and other machines.

Many countries of the world are witnessing an increasing use of remotely piloted robots, which are one of the important basic stages in the direction of developing completely autonomous "autonomous weapons." The United States, for example, pos-

sesses about 20,000 units of lethal autonomous weapons. These weapons In several roles, including continuous control and monitoring efforts, firing, and protecting forces, in addition to confronting explosive devices, securing roads, and close air support.

The use of robots that have replaced human labor has spread in repetitive tasks that require precision, in dangerous tasks that humans cannot perform, and in medicine, such as diagnosing diseases and performing very precise surgeries such as eye surgeries.

1.2. Systematic Security Management for the Operation of Artificial Intelligence and Robots

Due to technological developments that occur and continue to occur every day, the actions of intellectuals in many places lead to criminal sanctions. Because advanced machine systems using artificial intelligence provide resources that can reach dangerous levels, so much so that these machines can learn and provide their own abilities. It enables him to make decisions without having to influence people in the situations he encounters. The outcome of this decision could be a crime that affects people's judgment and safety. Justice requires authorities to initiate the process when a crime affects public health and safety prosecution, investigation, deficiency is high and the likelihood of the perpetrator being prosecuted and tried is high. The question is: Do the provisions of the Criminal Code apply to crimes of an intelligence nature? We will try to answer this question by splitting this code into two simple statements. In my **first article**, I will talk about crime through the actions of robots and driverless vehicles, and in my **second article**, I will talk about crime through the actions of remote-controlled illuminated drones.

1.2.1. Crimes committed by the actions of robots and driverless vehicles

Robots and driverless cars are one of the most well-known and important human intelligence There is interest and interest in their technologies However, despite the importance, reputation and popularity of these organizations, they harm the country and personal security They may create behavior that could be considered a crime. Before showing the crimes committed by the robot character, we first give general information about robots and their types. There are many definitions of robots. According to the Larus electronic dictionary, a robot is a device that can be used to manipulate objects or operate as a stationary or stationary service. [16, p.113] According to the dictionary definition of the word, a robot is a controlled, multi-purpose, programmable automatic machine that can operate independently to perform many tasks due to the mechanical flexibility of humans, requiring special abilities such as moving muscles. exercise the human body. The primary goal of robotics is to demonstrate how a physical technological system performs a task Humans, but in less time and effort and optimally, as it aims to enter into all areas and aspects of life to support human resources, carry out the production process, and send these machines to work in dangerous environments in which humans cannot work, reaching space and the depths of the sea, as well as using them in the fields of health, defense, and other businesses and services.

First: Some types of robots Workers:

These robots are used in hazardous work and are controlled remotely. These robots are used to search for metal, in explosion-hazardous areas, in mines or in areas where electricity is abundant.

Industrial Robots: These robots are used to complete certain tasks more efficiently and faster than humans. They help improve production levels and efficiency through the use of automation processes, thereby reducing the time required to monitor quality and increase output. [23, p.56]

Educational Robots: These robots are used in education, especially to educate children and people with special needs. In California, learning robots are being used to help teachers teach children to sing and speak. [27]

Medical Robotics: The use of robotics in medicine represents a further advancement and creates a job. This technology is widely used in hospitals and approved for guidance in 2000 by the U.S. Food and Drug Administration, where the Service is used. When performing or undergoing surgical procedures. [12, p.65] It has been shown to help reduce pain, inflammation, and blood loss during surgery[1] was also used. Robots for justice and police use: Robots are used in the fight against crime. They help the police and security guards investigate the hideout and arrest the car bomb. They are also used to regulate traffic. [25]

Military: Military robots are used to reduce casualties in warfare. They are used to collect, examine and analyze remote control-related information in demining, survey, surveillance, monitoring and night photography. [34, p.66]

Second: Examples of robot behavior leading to crime. Despite the many advantages and features of robots, they have proven their true potential. They perform actions that can lead to crime, especially lethal autonomy Robot. Although the most serious crime committed by robots is murder, many of the crimes committed by robots Many murders also occurred.

1.2.2. Offenses arising from remote drone operation

Organizations and companies are faced with jobs that provide them with effective equipment to perform their tasks effectively and efficiently. High security with the potential to save lives and money. The concept of drone first emerged for surveillance and investigation purposes in wars and conflicts. [10] Its first test was made in Great Britain in 1917, and its first practical application was in the Vietnam War, where it was used in October 1917. 1973. Despite the benefits of UAVs and the benefits they bring, the risks posed by today's crimes, especially the reliance on drones in the combat capabilities of many countries participating in the war, outweigh the benefits of drones. We said that this includes Yemen, for example, a group could target Aramco with drones deep within Saudi territory, causing major damage, causing the company to go out of business, and its impact on global oil production would decrease by approximately 6% during this development period. It will not happen without directly affecting people, and it may not happen in the future. If it does, it will pose a serious risk to world peace, safety and security. Drone crimes occur not only in war, but also in support of criminals.

[1] One of the latest developments in the medical field at this level is what researchers at the American Chemical Society developed about a finger-sized robot that is characterized by its ability to bend and roll. It has been used in surgical operations with the ability to dispose of it after performing its mission by decomposing itself in the body.

2. Punishment for fraud

The principle of legality of crime is the basis of crime. There is no crime and punishment outside of written law. [11, p. 110] because we cannot commit a crime and we cannot punish a person for his actions unless there is criminal law. Therefore, all laws must be based on intellectual development. This is urgently needed because our research has identified many new types of crimes that require the intervention of the law to criminalize and punish them. Liability for intellectual property infringement is somewhat complicated because there are four parties to such infringement: "the creator, the owner of the intellectual property, the intellectual property itself, or a third party in addition to us." All violations should be carefully investigated. The person actually responsible for the intellectual property crime. When talking about penalties for crimes caused by artificial intelligence, we think it is best to divide the issue into two as what needs to be done. In the first request we will discuss the responsibilities of manufacturers and owners, in the second request we will not discuss intellectual property rights.

2.1. Criminal liability for the factory, the owner, and the artificial intelligence itself

The criminal liability of the artificial intelligence factory is considered the most important thing that arises when the latter commits any behavior that constitutes a crime according to the law. Therefore, discussing the criminal liability of artificial intelligence and robots was an urgent necessity to clarify the extent of its role in criminal liability, as it protects the factory itself through provisions mentioned in the employment agreement, which Signed by the owner, it protects the owner alone from criminal liability for crimes committed through this entity powered by artificial intelligence, and absolves the manufacturer of liability for any crime committed by him. [7] There is no doubt that the current legislative situation does not keep pace with the progressive development in artificial intelligence systems, and this is clear. It is evident in the following hypothesis: Assuming that the robot committed one of the crimes punishable by a penalty of deprivation of liberty, and this is an inevitable assumption, such as the crime of murder, for example, there are many questions that impose themselves, the most important of which is how to investigate the robot, including questioning, interrogating, searching it, and inspecting the scene. The crime, uploading the robot's fingerprints, analyzing them, and obtaining criminal evidence, which is the focus of criminal justice, as well as attending sessions, temporary detention and bail, and the elements of the material element of the crime represented by the criminal behavior of the robot, the criminal result of the robot's action, and the causal relationship between the criminal behavior of the robot and the criminal result. The moral element of the crime, including the will to commit the crime and knowledge of its elements. Can criminal will and knowledge be attributed to a robot? Is he directly responsible or is it someone else's responsibility?

Laws providing for the financing of crime by robots, protection of robots, mitigation and mitigation, amnesty, judicial review and investigation, final search, execution of the sentence, whether the robot is or will be the one executing the sentence, including others. Killed, legal and criminal liability?

Are these questions difficult to answer considering the current law is designed for humans, not robots? [30, p.36] In this study, we will try to determine that the first sentence refers to the violation of the factory, the second sentence refers to the responsi-

bility of the owner, and the third paragraph refers to the violation of the rights of the owner. artificial intelligence itself.

2.1.1. Crimes in Factories

Ask factory owners about crimes caused by faulty robots and artificial intelligence resulting from poor production. For example, a smart device accidentally moves a patient, causing ill health, or a smart manufacturer negligently causes injury or damage. In this model for employees, the operator, users or employees are not questioned because the error is caused by carelessness. [31, p.25] However, crimes may occur due to operational errors of artificial intelligence and robot programmers. Programmers can make mistakes when using smart technology, which can result in liability. [33, p.852]

Therefore, he has criminal liability and must distinguish whether his behavior was intentional or negligent in order to determine whether the crime was intentional or not. Be careful because the punishment is different for everyone. A facility or product must take into account certain criteria; The most important of these is the relationship between safety and security and the benefits and application of our lives. One of the most famous products that use artificial intelligence and are incompatible with the values and traditions of our society is the "sex doll". Therefore, management must be present to determine product specifications and conditions. He is the one who uses technology wisely, opens the door to uncontrolled death, and turns the machine from a blessing to humanity into a disaster that endangers public safety. Standards should be established to prevent commercial fraud by companies and to provide adequate protection for consumers to receive the necessary products and safety standards. Considering the great dangers posed by smart technology based on self-learning, self-determination and success, there is an urgent need for laws that will regulate the rights and responsibilities of companies producing artificial intelligence software and working robots and machines. software. Since the highest and main purpose of a product is to obtain maximum profit, taking into account the quality of the product, without taking into account other dimensions or damages that may arise from not doing business, the effect of the law is to increase the quality of the product, as well as the penalties to be imposed during the act of crime under this law, This product must comply with standards. It is worth noting that it is important to note respect for privacy and intellectual property rights related to the violation of intelligence technology and advertising processes. In my humble opinion, the only way to protect them is to create laws that make them illegal or criminal, starting with AI device technology for example. It is worth noting that the United Arab Emirates, through its Legal Department, has established a law of the government to create a law that regulates, facilitates and expands information technology. [13, p.26]

2.1.2. Crimes of the Owner

The owner or user is considered an important party because of his direct relationship with the intelligence agency, as he cleverly communicates with the agency, loves its technology and benefits from it. Therefore, he must harm himself in order to gain profit, and the crime must be punishable by law. We can understand the consequence of the owner's negligence from the figure below [24]: The consequence of the violation results from the behavior of the owner or user. Without this behavior, crime would not occur. dead. Here the owner will be entirely responsible. For example,

driverless car owners disable their automatic controls and control voice commands. If the machine is instructed to do something special to prevent the accident and the user or owner does not do this, it is considered a liability and the owner's liability is an unethical crime as follows. Crimes arising from the joint action of the owner or user and someone else. For example, users or owners of driverless vehicles modify the operating software in order to commit crimes such as operating and operating factories. Here the owner is responsible for the violation. In this context, we are talking about killers created by technology, which can be considered as new generation weapons in the military arsenal. They are machines capable of selecting targets and destroying them without human intervention. Here the question arises:

Does the military commander bear responsibility if these robots violate laws and customs? The war? Part of the jurisprudence holds that the military commander (the user) is responsible for using these robots, and therefore he is the one who bears responsibility in the event of a serious error on his part, and thus his responsibility arises for an unintentional crime, because he must know the laws of operation and control of the robot that he does not know. Wrong is right, but if he has criminal intent, he will be held responsible for an intentional crime, because saying otherwise and holding the robot responsible.

Killing people due to mistakes or accidents will pave the way for military leaders (users) to fight further over these arguments. [5, p.120] In the interest of justice, take responsibility for the military commander (user) who ordered the robot to be fired at the military target, after which it turned out to be a school, until the military leader continued to violate the law because there is. It can also be said that without criminal sanction [17, pp.93-94], murderers are tried according to the reasons they planned to commit the crime.

2.1.3. The Crime of Artificial Intelligence Itself

Discusses the problem of AI committing crimes without error on its own, and the problem that could be possible by self-improving the skills it is currently working on. The biggest example of this is the murder of a 37-year-old Japanese worker in 1981 because the intelligence officers working with him in a motorcycle factory had mistakenly determined the identity of a robot. Eliminate Cov as the target. Hem's most effective method is to use his powerful hydraulic arms to push him into a nearby machine, where the robot crushes the stunned workers. When you're on the treadmill, turn it off immediately and go about your business without anyone disturbing you. The crime was committed by intelligence itself, without the fault of the manufacturer or the intervention of any party. Modern technology allows smart people to think and make personal decisions, and they are solely responsible for disseminating these decisions. In this case, the responsibility should fall on the mind. So lonely. Here we find ourselves faced with an important question regarding the possibility of sanctions against the intelligence of intelligence agencies. [17, pp.93-94] It is now considered a dream to talk about artificial intelligence doing things on its own without making mistakes, because artificial intelligence works with it and can think and decide, but this will also happen in the future, so this possibility also needs to be taken into account and evaluated. decision has been made. and after that we started developing solutions for it. [6, p.100] Although current intelligence agencies have reached such a development, it can be said that, at least for now, they have not yet reached the stage of making decisions and

taking full responsibility for mistakes resulting from unintentional actions. Not because they do not comply with these requirements, but because crime cannot be conceived without the participation and differing opinions of companies, owners, users or other outsiders. However, looking into the distant future, it is possible for artificial intelligence organizations to achieve this freedom. Your own transgression without the cooperation of others is a common problem with problems in evolutionary theory and science fiction. [32, p.40]

2.2. Penalties for crimes caused by artificial intelligence and robots

In this case, the question arises as to what criminal sanctions can be applied to intelligence agencies. Just like the punishments given to people, or are they punishments in themselves? These questions have been raised when confirming the liability of companies, and the answer is simply to create your own policy, penalties appropriate to their situation, according to the principles of legality of decisions and penalties: text. There is no crime and punishment, so it is not possible to break the law or punish someone because there is no clear text of the crime. Although normal criminal sanctions are not appropriate to the nature of intelligence agencies, the penalties are the same as in other matters. Enact laws regulating the criminalization of intellectual property rights. As smart robots and artificial intelligence are widely used in business, the military, medicine, research, and even gaming and other machines, and are subject to criminal sanctions, potential criminal sanctions against organizations may now be considered and setting rules for the use of intellectual property, such as whether it is an offense for a particular crime at a particular time. In this study, we will try to examine in detail the criminal allegations against artificial intelligence machine and robot programmers in the first paragraph, and then we will try to address the criminal allegations against the owners of intelligent intelligence systems and robots in the second paragraph. Therefore, we should not talk about the criminal allegations against wise people in the third sentence Artificial and robotic.

2.2.1. Criminal liability for the use of artificial intelligence and robots.

Manufacturers or programmers are considered producers of intellectual property and have control over the work, they must comply with certain regulations, ensure safety and protection standards during production and give them complete freedom. related to. There are no controls during production and it is assumed that these controls must be implemented by law. Companies need to build them into AI systems, criminalize breaches of liability, and hold companies or employees guilty when AI companies commit crimes by violating this law. [18, p.95] We believe that it is possible to impose a penalty on the factory if the factory is held responsible for the crime arising from intellectual property behavior due to the non-compliance that the regimes make against the content of the culture. It means. punishment. These rules are included in the Arbitration Law because they are imposed on people, not machines. Penalties such as the death penalty, life imprisonment or suspension of execution, and protections such as imprisonment, fines or confiscation, and imprisonment. [28, p.4] We therefore propose to amend existing laws or create new laws regarding AI-related crimes to punish smart manufacturers who violate designed quality and safety. We want to create the right design as well as the breach of AI-related technologies. Documents must be collected and all abilities and limitations verified before sentencing.

2.2.2. It is proposed to punish the owners of intellectual property and robots.

The owner or user of intellectual property is the person who benefits from it, it can be said that he bears the primary responsibility for the crime. Crimes committed by Intelligence as well as Organizations are likely to occur due to lack of oversight or interference by the owner or user. [19, p.105] If the owner or user does not comply with the safety and security instructions in the AI system, their negligence may lead the AI organization to take actions that result in criminal activities. A crime may be committed if the person affected by the abuse of an intellectual property right owner or user, such as advertising or illegal work, intervenes and commits a crime, or if his behavior is intentional. , with the intention of committing. In all these cases, there is no objection to the decision that is suitable for each case, the decisions are different according to the intervention of the owner or user in order to avoid normal, accidental or negligence, these rules are ours. As we have already mentioned, the penalties for crimes provided for in the Criminal Code will not be different because they have to respond to the human element. [21, p.363] The owner or user of artificial intelligence technologies enjoys the advantages of those technologies, and once ownership is transferred to him, he is responsible for them and for the crimes committed by those technologies, but a distinction must be made between two hypotheses: First: Crimes that occur from artificial intelligence technologies as a result of intervention or negligence by the owner or user. These crimes are the real picture now, as crimes of artificial intelligence technologies often occur as a result of wrong intervention by the owner of those technologies, and because of his lack of knowledge of how to deal with and operate these technologies, so he gives them an order or disables a safety function that exists in them, so his behavior results in a criminal crime, In this case, the owner of this technology must be punished because his behavior was what caused that criminal result, and there was a causal relationship between the behavior and the result. These three elements constitute the material element of the crime, in addition to the moral element, which is examined for each separate case. The ruling differs if the owner commits that behavior. Criminal intent or unintentional error, as the penalty prescribed for both differs. [28, p.4] Second: Crimes that occur autonomously through artificial intelligence technologies and robots without any external interference.

2.2.3. Proposals for criminal sanctions against artificial intelligence entities

The proposal to impose criminal sanctions against the artificial intelligence company assumes that the crimes arise from its actions based on its own development and without human intervention (manufacturer - user - owner) and is intended to make it criminal for them Hold criminally accountable for actions. and recognize its legal personality. However, as I have explained previously, the legal and practical reality is that the artificial intelligence company has not been held liable for criminal liabilitynor has its legal personality been recognized. We have concluded that the maximum liability that can be imposed on the artificial intelligence company is, if possible and on condition that it is recognized as a legal personality and on condition that none of the parties related to it are responsible for it Liability is limited exclusively to involuntary errors, assuming liability for any events of any of the other related parties, so that we do not end up in a state of impunity under the pretext of artificial intelligence, as we have explained above. [29, p.46] Looking to the distant future, the criminal liability of an

artificial intelligence company for crimes arising from its actions should be established, which we have established by recommending that in the event that the conditions described above are met This liability should entail an appropriate punishment given its specificity as a machine and the level of seriousness of the crime committed, which most traditional criminal sanctions may not be appropriate, such as the death penalty or imprisonment. However, this does not prevent the creation of new sanctions consistent with its nature, because sanctions can be further developed.Even traditional criminal sanctions against natural persons went through many phases and took different forms to reach what they are today. The proverb also applies to legal entities, since they went through several stages until their legal personality was recognized and their criminal liability for the crimes committed was established.Therefore, adopt legally precautionary measures or supplementary (consequential or supplementary sanctions) appropriate to its nature, such as: B. the revocation of his license, the cessation of his activities or the publication of the conviction against him. [26, p.133] In this way, the following sanctions, among others, can be imposed against the artificial intelligence company [22, p.373]:

First: Dismissal, conviction or expulsion: This punishment can be said to be equivalent to being sentenced to the death penalty in a criminal case. In this case, if the AI organization gets out of control and becomes a threat to humanity, it will be removed or permanently removed. The penalty of confiscation, that is, the deprivation of the fraudster's property and the increase of his property, is also imposed. State property [20], here it is assumed that the intellectual property company has legal personality and financial responsibility, so this penalty may be directed at a smarter company than its context. However, this penalty will create problems for the owners of AI companies because ultimately their products will be affected and therefore the impact of the sanctions will also affect them.

Second: Financial sanctions In my opinion, financial sanctions include financial sanctions and apply to all legal entities and intelligence agencies. The fine is the amount estimated by the judge in the decision against the AI company and will be paid by the AI company to the state treasury, called independent liability financing[2].

Third: Sanctions that deprive people of their rights Their rights can provide many necessary measures for AI units, one of which is rehabilitation. This measure is considered one of the essentials for the return of intellectual skills to society. Recovery can occur through reprogramming. Examples of measures include driver's license suspension. For driverless vehicles, this will result in the vehicle being unable to operate while the license is suspended. However, this penalty also raises the question of whether the person affected by this measure is the owner or the user of the vehicle, as this can negatively affect him [8].

[2] In this context, we mention that the French legislator stipulated the penalty of dissolution and imposed it on the legal person, and considered this punishment to be the death penalty imposed on the natural person, which is the most serious punishment that can be pronounced against the legal person. It also stipulated that the legal person be punished with a ban. In the general call for savings, and the ban on checks as well, it also stipulated the penalty of prohibition from professional or social activities, and finally it decided to punish the legal entity by publishing the conviction ruling. For more see: Perfumes, Rana Ibrahim, the Criminal Encyclopedia, Explanation of the Federal Penal Code in the UAE United Arab Emirates, M, S, p. 374.

Conclusion

When the virtual world reaches the level of legalization, it will turn from a blessing to a curse, because people's interests will be associated with the virtual world, which will create more difficult problems than now. Things got even more complicated when Saudi Arabia started introducing the robot Sophia. Although this situation may seem like criticism by the majority, it represents a reality that the minority fears and remains in the hearts and minds of the majority. Artificial intelligence is not science fiction or a distant dream, it has become reality. In particular, we see that it has applications in all areas of life, that it has advantages and disadvantages, and that its use leads to behaviors that lead to crimes that must be taken into consideration. We conclude that these AI actions involve multiple parties. There are producers, programmers, owners and users. This connection may create a connection with other third parties and lead to a violation by one of these parties through an intelligence operation. According to the Criminal Code, these crimes may be committed intentionally, may result from an act or omission, or may occur as a result of negligence, causing a person to punish crimes through intelligence work. Therefore, we conclude that intellectual property infringement does not fall under the category of user conduct, which may be intentional or unintentional, as well as user conduct. Such behavior may occur intentionally or accidentally due to manufacturer's or programmer's error or defects or omissions in control. Be careful in the organization of production and programming or the actions of third parties. It has been stated that robots or automatic lawyers have emerged recently, and many countries have started to use artificial intelligence in cases to ensure justice quickly and efficiently in meetings. This will lead to competition with people in many places in the near future and will lead to many correct behaviors. This is considered a crime and does not require accountability.

References:

1. Abd al-Razzaq al-Salmi, Information Systems and Artificial Intelligence, Dar al-Manhaj for Publishing and Distribution, Amman, 1999, p. 43.

2. Abdel Hamid Bassiouni, Artificial Intelligence and the Intelligent Agent, Al-Bitash Center for Publishing and Distribution, Alexandria, 2005, p. 41.

3. Adel Abdel Nour, Basics of Artificial Intelligence, Mawaqif Publications, Beirut, 2017, p. 101.

4. Ahmed Ibrahim Muhammad Ibrahim, Criminal Liability Resulting from Artificial Intelligence Errors in UAE Legislation (A Comparative Study), a thesis submitted for a doctoral degree, Ain Shams University, Egypt, academic year 2019/2020, p. 34.

5. Al-Dahshan, Yahya Ibrahim, Criminal Liability for Artificial Intelligence Crimes, Sharia and Law Journal, College of Law, UAE University, Issue 82, 2020, p. 120.

6. Bin Odeh Hasker Murad, The Problem of Applying Criminal Liability Provisions to Artificial Intelligence Crimes, Journal of Law and Human Sciences, Volume 15, Issue 01/2022, p. 100.

7. Chapter Three of the Criminal Code stipulates that "it is not permissible to hold anyone accountable for an act that is not explicitly considered a crime by law, nor to punish him with penalties not established by law."

8. European legislation has approved an independent financial liability to cover civil liability for damages while authorizing insurance thereof

9. Fayez Al-Najjar, Management Information Systems, An Administrative Perspective, Dar Al-Hamid for Publishing and Distribution, Jordan, 2010, fourth edition, p. 169.

10.For more see: https://ar.m.wikipedia.org/wiki/%D8%B7%D8%A7%D8%A6%D8%B1%D8%A9_%D8%AF%D9%88%D9%86_%D8%B7 %D9 %8A%D8%A7%D8%B1

11. Hadid Hassan Muhammad Saleh, The drone is a means of transportation in law, Tikrit University Journal of Legal Sciences, Iraq, Issue 25, 2015, p. 110.

12. Kabibhan John, Advanced Robotic Technology and Its Use in the Field of Health, Qatar University Research Journal, Issue 6, November, 2015, p. 65.

13. Muhammad Al-Awadi, Producer Liability for Industrial Products, Civil Law Journal, No. 1, Moroccan Center for Legal Studies, Consultations and Dispute Resolution, 2014, p. 26.

14. Muhammad Deeb Hamoud Al-Otaibi, Detecting illegal access to the main root using artificial intelligence, Imam Muhammad bin Saud Islamic University, Riyadh, 2005, p. 17.

15. Muhammad Irfan Al-Khatib, Civil Liability, Artificial Intelligence, and the Possibility of Accountability, an in-depth analytical study of the rules of civil liability in French civil law, Kuwait International Law College Journal, eighth year, first issue, 2020, p. 120.

16. Omar Muhammad Munib Idlibi, Criminal Liability Resulting from the Acts of Artificial Intelligence, M, S, p. 113.

17. Omar Muhammad Munib Idlibi, Criminal Liability Resulting from the Acts of Artificial Intelligence, thesis for a Master's Diploma in Public Law, Qatar University College of Law, academic year 2022/2023, pp. 93/94.

18. Omar Muhammad Munib Idlibi, Criminal Liability Resulting from the Acts of Artificial Intelligence, M, S, p. 95

19. Omar Muhammad Munib Idlibi, Criminal Liability Resulting from the Acts of Artificial Intelligence, M, S, p. 105.

20. Proposal for a Regulation Of The European Parliament And Of The Council Laying Down Harmonised Rules On Artificial Intelligence Act (Artificial Intelligence Act) And Amending Certain Union Legislative Acts.

21. Punishing Artificial Intelligence: Legal Fiction or Science Fiction Ryan, Copyright © 2019 Bayan Abhout and Alex Sarch Ryan Abbots, Professor of Law and Health Sciences, University of Surrey, p363

22. Rana Ibrahim, The Criminal Encyclopedia, Explanation of the Federal Penal Code in the United Arab Emirates, General Section, A Comparative Study with Jordanian Law and the New French Law, issued by the Ministry of Justice, Institute of Training and Judicial Studies, United Arab Emirates, p. 373.

23. Saqr, Wafa Abu Al-Maati, Criminal Liability for Artificial Intelligence Crimes, Spirit of Laws Magazine, Issue 96, October, 2021, p. 56.

24. The official website of the Regulations Lab in the United Arab Emirates www.regulationslab.gov.ae///:https: My father is considered the largest legislative laboratory to proactively design the future by developing mechanisms and legislation for future technologies.

25. The United Arab Emirates officially appointed the first police robot, which it called (Promot), after subjecting it to tests. It is a robot equipped with facial recognition technology and reporting persons wanted for arrest. It also broadcasts live videos to the Abu Dhabi Police Control Center. See : A robot in the Abu Dhabi Police... that speaks two languages and is able to carry out unique tasks, July 16, 2021, an article published on the website: https://alsyaaq.com/Abu-Dhabi-Police-Robot, accessed 03/25/2023 , at 15:34.

26. Wafa Saqr Abu Al-Maati, Criminal Liability for Artificial Intelligence Crimes, Spirit of Laws Magazine, Issue, October 96, 2021, p. 133.

27. www.Sciencing.com

28. Yahya Ibrahim Al-Dahshan, Criminal Liability for Artificial Intelligence Crimes, M, S, p. 4

29. Yahya Ibrahim Al-Dahshan, Criminal Liability for Artificial Intelligence Crimes, M, S, p. 46.

30. Yahya Ibrahim Dahshan, Criminal Liability for Artificial Intelligence Crimes, Sharia and Law Journal, College of Law, UAE University, issue 06/30/2019, year 2019, p. 36.

31. Yahya Ibrahim Dahshan, Criminal Liability for Artificial Intelligence Crimes, M, S, p. 25.

32. Yahya Ibrahim Dahshan, Criminal Liability for Artificial Intelligence Crimes, M, S, p. 40.

33. Yasser Muhammad Al-Lamai, Criminal Liability for Artificial Intelligence Acts: Between Reality and Expectations, A Prospective Analytical Study, Research Presented to a Conference, Faculty of Law, Mansoura University, May 23/24, 2021, p. 852.

34. Zahran Sahar Jamal Abdel Salam, International Legal Aspects of the Crime of Cyber Terrorism, Journal of the College of Politics and Economics, Fourth Issue, October, 2019, p. 66.

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LEGAL STATUS OF NON-GOVERNMENTAL ORGANIZATIONS IN THE LEGISLATION OF THE REPUBLIC OF AZERBAIJAN

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Abstract

In the article, the issues of the legal status of non-governmental organizations in the legislation of the Republic of Azerbaijan are widely analyzed based on the diversity of opinions in the legal literature and international practice. A detailed analysis of the mentioned directions fully reveals the main features of national legislations related to international non-governmental organizations. These characteristics differ from state to state, and the main differences are determined according to international law. Most studies agree that NGOs are voluntary, non-profit, self-governing institutions independent of the state, created to achieve common goals for all participants. This concept is a common character for the legislation of the Republic of Azerbaijan and other democratic, legal states.

Keywords*: non-governmental organizations, legal status, national legislation, international legal norms, human rights, right to association.*

The analysis of issues related to international non-governmental organizations requires the review of national legislation in this sphere, which also determines a number of issues: the characteristics of international legal norms (their "hard" and "soft" legal character); the characteristics and directions of national legal realization; the current state of national legislation in this sphere; comparative analysis of national legislations of different states; the main features of the activities of international non-governmental organizations.

A detailed analysis of the mentioned directions fully reveals the main features of national legislations related to international non-governmental organizations. These characteristics differ from state to state, and the main differences are defined according to international law. During the analysis of issues related to the legal status of non-governmental organizations in the Republic of Azerbaijan, first of all, a number of important terms should be explained. Thus, different terms and expressions are used in the legislation of the states regarding the name of non-governmental organizations. For example, in the US legislation "non-government", "non-profit" organizations, in Great Britain the expression "non-profit organizations" is used more often [1], and in the legislation of the Republic of Azerbaijan, the expressions "public associations", "funds" are used.

Article 58 of the Constitution of the Republic of Azerbaijan forms the legal basis for the activity of non-governmental organizations in our republic. Thus, Article 58 of the Constitution of the Republic of Azerbaijan guarantees the rights of citizens to form public associations and freedom of action. In that article, it is mentioned that everyone has the right to unite with others. Everyone has the right to form or join any association, including a political party, trade union and other public association. Free activity of all associations is guaranteed. [2] In addition, the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations) regulates the relations related to the creation and operation of branches and representative offices of public associations and foundations, as well as foreign non-governmental organizations, and here the relevant norms related to the regulation of those relations exist. [3]

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It should be noted that the right to association mentioned in Article 58 of the Constitution of the Republic of Azerbaijan, including Article 25, which prohibits discrimination, fully corresponds to the right to freedom of association stipulated in the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms. The mentioned article of the Constitution also found its international determination in the 20th article of the Universal Declaration of Human Rights dated 1948 (4), which provides for the right to peaceful assembly and association.

Taking into account world experience, the state has no right to limit the goals and tasks of non-governmental organizations and interfere in their internal affairs. Non-governmental organizations are created without the prior permission of state bodies, they adopt their charters independently, and accordingly define the goals and tasks of their activities. The state's participation in the formation of non-governmental organizations, the task of verifying the legality of the goals and tasks of the non-governmental organizations of the charter arises from the moment of registration in the Ministry of Justice of the Republic of Azerbaijan. Fiscal authorities of the state carry out the audit of financial activities.

A non-governmental organization can be dissolved only on the basis of a court decision. According to the Constitution and laws of the Republic of Azerbaijan, it is prohibited to create or operate organizations that serve the purposes of violently changing the constitutional structure of the country, violating the territorial integrity of the country, undermining the security of the state, creating armed groups, inciting social, racial, national and religious hatred. According to Article 2.3 of the Law of the Republic of Azerbaijan dated June 13, 2000 on Non-Governmental Organizations (Public Unions and Foundations), the creation and activity of non-governmental organizations the purpose or activity of which is to violently change the constitutional structure and secular character of the Republic of Azerbaijan, violate territorial integrity, promote war, violence and cruelty, incitement of racial, national and religious enmity is not allowed. [5] In addition, according to Article 47.2 of the Civil Code of the Republic of Azerbaijan, the charter of a non-commercial legal entity defines the subject and goals of its activity. In the charters of non-governmental organizations, it is not allowed to usurp the powers of state and local self-government bodies, as well as to provide for state control and inspection functions. [6]

The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Unions and Foundations) regulates almost in detail the relations arising in connection with the exercise of the right of citizens to unite or form public association. At the same time, this Law applies not only to citizens of the Republic of Azerbaijan, but also to foreigners and stateless persons. According to the aforementioned Law, foreigners and stateless persons have equal rights with the citizens of the Republic of Azerbaijan in the field of relations regulated by the aforementioned Law, except for cases determined by law and international agreements.

This Law, which confirms the rights of the Republic of Azerbaijan and foreign citizens to associate, legitimizes the activity of structural divisions, branches or branches and representative offices of non-commercial associations of foreign countries on the territory of the Republic of Azerbaijan. This provision of the law has a very progressive character and contributes to the activation and development of the cooperation of non-governmental organizations of the Republic of Azerbaijan with foreign non-governmental organizations, and at the same time has a constructive effect on the development

of the non-governmental organization institution as a whole. The mentioned provision is fully consistent with the practice of developed countries.

Non-governmental organizations are not specifically defined in the law. However, the Law defines the terms "public association" and "foundation", defines the organizational and legal forms of creating organizations that can be considered non-governmental organizations according to their nature and activity, defines the principles of their creation, and also sets certain restrictions on the activities of these organizations. Specifically, Article 2.1 of the Law states that a public association is a voluntary, self-governing entity created on the initiative of several physical persons and (or) legal entities united on the basis of common interests with the goals defined in the founding documents, with income as the main goal of its activity. It is a non-governmental organization that does not collect and does not divide the obtained income among its members. A foundation is a non-governmental organization without members, founded by one or more individuals and (or) legal entities on the basis of property rights, and having social, charitable, cultural, educational or other socially beneficial goals (Article 2.2) [7].

At the same time, international non-governmental organizations are defined in this Law and it is noted that international non-governmental organizations are public associations whose sphere of activity covers the territories of the Republic of Azerbaijan and at least one other foreign state (Article 6.3). [8] Some studies note that NGOs are independent from governments and can be defined as two types: advocacy NGOs that aim to influence governments with a specific goal, and operational NGOs that provide services. [9]

Definitions of non-governmental organizations (public associations and foundations) defined in the Law include a number of criteria specific to non-governmental organizations, in particular, the association of citizens based on common interests, the non-profit nature of the organization, and the existence of common statutory goals. According to the Law, public organizations can be established in any organizational and legal form. Non-governmental organizations can be established on a permanent basis or to achieve specific goals (Article 5). The general norm in the civil legislation regarding the organizational legal forms of non-governmental organizations is that legal entities that are non-commercial organizations can be created in the form of public associations, foundations, unions of legal entities, as well as in other forms provided for by legislation. Non-commercial legal entities may create or participate in economic societies. [10] In order to democratize and facilitate the registration procedure of non-governmental organizations, the latter have the right not to register by the judicial authorities. However, in this case, it is determined that such non-governmental organizations do not have the status of a legal entity and therefore do not have legal capacity. The decision on state registration of local or international non-governmental organizations is made by the judiciary. In this regard, it is noted in the researches that the registration of non-governmental organizations is essentially a national process. A group can be established as a legal entity – a non-governmental organization only within the country in which it is located. National NGO laws typically designate local government departments or agencies for this process, as opposed to entities that are required to obtain a license to operate. [11]

The legislation of the Republic of Azerbaijan defines the principles of creation and operation of public associations. Public associations of all organizational and legal forms are equal before the law and their activity must be based on the principles of voluntarism, equality, self-management and legality. The activities of public associa-

tions should be open, information about their founding and program documents should be open to the public. Interference of state bodies and their officials in the activities of public associations, as well as interference of public associations in the activities of state authorities and their officials, is prohibited.

In order to implement the goals of the charter, public associations are given many rights and duties, the main ones of which can be distinguished. So, in this case, the right to freely disseminate information about their activities; holding meetings; to represent and defend their rights and legal interests in state bodies, local self-government bodies, public associations; to put forward initiatives related to various issues of public life, to make proposals to government bodies, etc. can be distinguished. Non-governmental organizations operating within the territory of our Republic have duties to comply with the legislation of the Republic of Azerbaijan, to publish reports on their activities, to submit to the authority that made a decision to register information on their financial activities, etc. The possibility of representatives of the registration body to participate in meetings held by public associations is not excluded.

The fact that non-governmental organizations have different rights is also the main component of international and national legislation. One of the main rights of non-governmental organizations established by law is to enter into international public relations by obtaining and taking obligations according to international status, to maintain direct international relations and communication with various organizations, and to conclude agreements with foreign non-profit organizations, if provided for in the charter. In addition, local public associations may establish their own organizations, branches or departments in foreign countries based on the generally recognized principles and norms of international law, international agreements of the Republic of Azerbaijan and the legislation of these countries. According to the essence of this provision, any non-governmental organization can be international and participate in the system of international relations on equal terms with other international non-governmental organizations.

In accordance with Articles 6 (6.3) and 7 (7.2. and 7.5) of that Law, a public association established in the territory of the Republic of Azerbaijan is recognized as an international organization if at least one of its structural units is established and operates in foreign countries in accordance with its charter. [12]

Thus, by analyzing the provisions of the mentioned normative act, it can be concluded that a favorable regulatory framework has been created for the organization and activity of both local non-governmental organizations and international non-governmental organizations with equal rights and obligations in the territory of the Republic of Azerbaijan. National legislation allows local non-governmental organizations to acquire international status. In our opinion, the most important direction of the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations) regarding the determination of the status of non-governmental organizations in general is that the legislator distinguishes local, foreign and international non-governmental organizations. This provision shows that the aforementioned Law does not consider non-governmental organizations as international organizations, but defines their status as national non-governmental organizations that open a representative office or branch in the territory of other states. At the same time, it defines a foreign non-governmental organization as an organization established in the territory of another state and having a branch or representative office in the territory of the Republic of Azerbaijan.

In our opinion, this provision is incorrect and does not correspond to the current situation regarding the recognition of international non-governmental organizations as subjects (or special subjects) of international relations and, in particular, of international law. The current situation refers to international legal acts and other international documents and judicial practice currently in force regarding the legal status of international non-governmental organizations. It is rightly noted in the literature that international organizations must have international legal subjectivity in some degree in order to fulfill their statutory goals and tasks. [13]

The term "non-commercial" organizations is widely used in the legislation of the Republic of Azerbaijan. First of all, let's note that according to Article 43.5 and 6 of the Civil Code of the Republic of Azerbaijan, legal entities whose main purpose of activity is not profit-making and distributing the profit among their participants are non-commercial legal entities. Non-commercial legal entities can engage in entrepreneurial activity only in cases where this activity serves to achieve the goals set at the time of their creation and corresponds to these goals. In order to carry out entrepreneurial activities, non-commercial legal entities can create or participate in economic societies. [14]

In general, paragraph 3 of Chapter IV, which covers Articles 114-119 of the Civil Code of the Republic of Azerbaijan, is called "Non-commercial organizations". As it can be seen, in the civil legislation of the Republic of Azerbaijan, the concept of non-commercial organizations was mainly used from the terminological point of view regarding the legal regulation of the activities of non-governmental organizations. The nature of the legal entity's activity must be indicated in the name of the non-commercial organization. Non-commercial organizations can create alliances for the purpose of coordinating their activities, as well as representing and defending their common interests.

As we have already mentioned, issues related to the creation of non-governmental organizations are implemented by the Ministry of Justice of the Republic of Azerbaijan. In this sphere, the decisions of the Ministry of Justice of the Republic of Azerbaijan are also of great importance. Among those decisions, dated March 19, 2012 on the Approval of the Rules for State Registration of Non-Commercial Institutions and decisions dated August 29, 2013 on the Approval of the Administrative Regulation on the Registration Procedure of Non-Commercial Legal Entities should be especially noted. [15] The Rules dated March 19, 2012 on the Approval of the Rules for State Registration of Non-Commercial Institutions determines legal and organizational basis of state registry of representative offices and branches of non-commercial institutions (except religious institutions), foreign non-commercial legal entities, and the state registry of non-commercial institutions. [16]

In addition to the above-mentioned laws and other acts, Law on Public Participation, on Voluntary Activity, on Obtaining Information, on Electronic Signatures and Electronic Documents, on Grants, on Copyright and Related Rights, and other laws of the Republic of Azerbaijan legally regulates the activities of non-governmental organizations. A comparative analysis of the listed laws makes it possible to note that non-governmental organizations (public associations and foundations) are institutions of civil society [17], and at the same time, they can ensure the organization and implementation of voluntary activities [18].

One of the issues of particular importance is related to the financing of non-governmental organizations. The main legal regulator in this matter is the Law of the Republic of Azerbaijan on Non-Governmental Organizations (public associations and foundations), as well as the Law of the Republic of Azerbaijan on Grants dated April 17, 1998. According to the Law of the Republic of Azerbaijan on Grants, non-governmental

organizations operating in the Republic of Azerbaijan, including branches and representative offices of non-governmental organizations of foreign countries, cannot receive assistance in the form of financial resources and (or) other material forms without a grant agreement (decision). However, some organizations support the activities of non-governmental organizations at the local and international level. Here too, it is necessary to follow the requirements of the national legislation unconditionally. For example, USAID provides a Package of Grants for NGO-led development trends, health, market systems, food security, education, governance, human rights, climate action, and science and technology. [19]

State-registered branches and representative offices of foreign legal entities in the Republic of Azerbaijan (branches or representative offices of non-governmental organizations of foreign countries that have concluded the agreement provided for in the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations)) after obtaining the right to issue grants in the territory of the Republic of Azerbaijan can act as a donor. [20]

Thus, sufficient democratic conditions have been provided for the creation and operation of non-governmental organizations in our Republic, and the possibility of registration and operation of international non-governmental organizations has been ensured from a legal point of view. In the Republic of Azerbaijan, there is no separate normative-legal act regulating the activities of international non-governmental organizations. Accordingly, this situation is also typical for the legal status of foreign non-governmental organizations. Nevertheless, it can be considered that if a national normative-legal act (in the form of a law) is adopted that will regulate the activities of international non-governmental organizations and take into account the experience of developed countries, including the provisions of international documents, this will be positive for the development of international non-governmental organizations and will affect the implementation of their goals and tasks, and in general, by bringing the various directions of their activities into the framework of certain standards, it can increase the benefits that can be given to the civil society in terms of quantity and quality, and it can lead to the development of other legislations of the state in this field.

A number of features can be noted as general provisions of the currently existing legal norms that determine the legal status of non-governmental organizations in the Republic of Azerbaijan. First of all, it should be noted that the legal independence of non-governmental organizations, especially their independence from the government, is ensured by law, and non-governmental organizations are created freely, without obstacles, without interference. After registration, the relevant non-governmental organization receives the special legal status of a legal entity, on the basis of which all subsequent activities are based. The state affects the activities of non-governmental organizations by limiting their activities, as well as establishing a certain control mechanism in their work, which mainly interferes with legal regulation.

Unfortunately, at present, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations has not been ratified by the Republic of Azerbaijan, which makes it difficult for national non-governmental organizations to be recognized abroad, at the same time, does not allow to fully reveal potential of international non-governmental organizations operating in the Republic of Azerbaijan and opportunities to fully benefit from the system of international

non-governmental organizations are almost reduced. At the same time, the lack of national legislation in this area harms unanimity and completeness in this area.

Thus, most studies agree that non-governmental organizations are voluntary, non-profit-making, self-governing organizations created to achieve common goals for all of their participants, independent of the state. This concept is a common character for the legislation of the Republic of Azerbaijan and other democratic, legal states. Factors such as subject composition of non-governmental organizations, specific goals of their activity, level of activity are additional features that allow determining what type a certain non-governmental organization should be classified as.

As for the legal essence, this, in our opinion, originates from the concept itself, and it is of particular importance that its founder is not the state, but other subjects. The activities of non-governmental organizations can sometimes coincide with the work of state-oriented bodies in solving certain issues, but these organizations are completely different. For example, if we compare non-governmental human rights organizations with ombudsmen, it is clear that although they have similar goals, their functions are of a different nature. Ombudsmen are created as or under state bodies, exercise control over the latter's activities and depend on them to some extent, while non-governmental organizations are public institutions that are not part of the state apparatus and operate completely independently. Although there is independence in making decisions, ombudsmen show the existence of these relationships by presenting certain reports, while non-governmental organizations do not have any mutual obligations in this sphere. If the creation of non-governmental organizations is done by individuals on the basis of applications to state bodies, then in the case of the ombudsman institution, decisions on the creation of such institutions come directly from the state in the form of state bodies.

References:

1. Khizhnyak, V.S. The concept of "non-governmental organization" in the constitutional law of the Russian Federation and the Republic of Kazakhstan // Yurist-Pravoved, 2019, No. 2 (89), p. 39 (in Russian).
2. Non-governmental organizations such as civil society institutions. What does the Azerbaijani legislation say about this? // 525th newspaper, 2014, March 4, p. 6 (in Azerbaijani).
3. https://e-qanun.az/framework/511)
4.https://www.coe.int/az/web/compass/the-universal-declaration-of-human-rights-full-version-
5. http://lawreform.az/?module=news&name=view&id=1454&lang=az
6. Registration issues of non-governmental organizations. Baku: "Learning Democracy" Public Union, 2019, p. 6 (in Azerbaijani).
7. http://www.e-qanun.az/framework/511
8. http://www.e-qanun.az/framework/511
9. https://guides.library.duke.edu/c.php?g=289595&p=1930435
10. Mammadli, A. Your Right to Union. Baku: "NAT" LLC, 2011, p. 24 (in Azerbaijani).
11. https://www.gdrc.org/ngo/registration-ngo.html
12. http://www.e-qanun.az/framework/511
13. Huseynov L.H. International law. Textbook, Baku, "Qanun" 2012, p. 47 (in Azerbaijani).
14. https://e-qanun.az/framework/46944
15. https://e-qanun.az/framework/26613
16. http://e-qanun.az/framework/23445
17. http://e-qanun.az/framework/26879
18. http://e-qanun.az/framework/18159
19. https://www2.fundsforngos.org/premium-resources/usaid-grants-collection-for-ngo-led-development-projects/
20. http://e-qanun.az/framework/3527

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HOW THE RIGHT TO A DECENT LIFE TURNED AMERICA INTO A WELFARE STATE

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Abstract

The welfare state, which we often find in legal literature, includes a complex system of relations. This activity aimed at ensuring human satisfaction and happiness is the highest goal of most developed countries in modern times. It seems possible to achieve this goal by raising the standard of decent living and ensuring the everyday rights included in the system of decent life rights. However, it should be taken into account that the right to a decent life is a system of norms that does not have a single consensus and has a relative character. That is why the analysis of this right by individual regions is considered necessary.

The right to a decent life, which was extensively analyzed by the author in previous research materials, is examined this time in the regional context - in the American region, where the foundations of the formation of the welfare state are determined. Increase of the role of the state in the regulation of the socio-economic sphere and the formation of strong state control is especially emphasized as the most important reason for the transformation of the Americas into a land of prosperity which is considered a characteristic feature of the last decades. In the article, the acts determining the standard of decent living in the American region were examined, the organizational mechanisms in this field were analyzed, a comparative analysis was made from the aspect of decent life among the countries located on the continent, and suggestions were made.

Keywords: *right to a decent life, decent standard of living, adequate standards, international agreement, social reforms, welfare state.*

Introduction

Studies show that the right to a decent life, which has its own specific place in the human rights system, has a relative character. We can conclude that its relativity has a significant impact on regional legal systems. So, when examining this specific right, we witness that the decent standard of living is manifested in different forms, carrying an individual character for each region. Forming a subgroup within the group of social rights, these rights are mainly aimed at the implementation of social protection of the population in order to eliminate social tension in society. [1, p.119]

When this right, which is not defined by a single consensus, is also affected by relativity, we see that different adequate standards are adopted for each region. The highest indicator of ensuring the right to a decent life is observed in the Euroregion. This region has a priority to ensure adequate standards at the highest level from a human rights perspective. Employment and healthcare opportunities are realized here at the maximum level compared to other regions. The level of well-being of the population in the American region, which competes with Europe in every way, is highly valued. In this region, the issue of guaranteeing the right to a decent life is characterized by the guarantee of separate rights included in this context.

According to most researchers, the most important reason for the transformation of the American region into a welfare zone is the increasing role of the state in the regulation of the socio-economic sphere and the formation of strong state control, as a characteristic feature of the last decades. [9]

However, it should be noted that despite the hegemony of this region in the international arena, we are witnessing the existence of certain gaps in the field of ensuring a decent standard of living. Thus, the imperativeness of the social state is not recognized at the constitutional level in most of the states located in the American region. However,

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the legislation makes maximum use of all its possibilities to ensure a decent standard of living of the population. [12, p.4-5]

The first attempts to create a welfare state

Measures to raise the decent standard of living in the American region have been started since the 60s of the 20th century. Thus, in the 20th century, the Economic Opportunity Act of 1964, the Civil Rights Act of 1964, and the Personal Responsibility and Work Opportunity Acts of 1996 were adopted in this region. Although these acts mainly addressed other areas, aspects of the right to a decent life were found in their text, albeit implicitly.

The American Declaration of the Rights and Duties of 1948, which aims to achieve moral and material progress and happiness, also includes important provisions in the field of realization of the right to a decent life. Thus, this document was the first international human rights document of a general nature. Article 7 of the Declaration enshrines the right of all women and children to special protection, care and assistance during pregnancy and nursing period, Article 9 - the right of every person to the inviolability of his home, Article 10 - the right of everyone to the inviolability and transmission of their correspondence, Article 11 - the right to the presservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources, Article 12 - the right to an education, which should be based on the principles of freedom, morality and human solidarity, Article 14 - the right to work, under proper conditions as far as the existing working conditions permit, Article 15 - the right to leisure time, to effectively use free time, and to the opportunity for use of his free time to his spiritual, cultural and physical interests, Article 16 - the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control, Article 17 - the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights, Article 24 - the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon. The right to education enshrined in the Declaration includes the right of every person to receive an education that prepares him to lead a decent life, improve his standard of living and become a useful member of society. It is valued in each case as a right to equal opportunities according to natural talents, merit and willingness to use the resources that the state or society can provide. The right to work establishes the right of every working person to receive remuneration that will ensure an adequate standard of living for himself and his family, according to his abilities and skills. Article 35 of the second chapter of the Declaration, which is called duties, is called duties related to social security and welfare, where it is indicated that it is the duty of every person to cooperate with the state and the community according to his ability and existing circumstances related to social security and welfare, as if the guarantee of the right to a decent life of the person A is burdened on B, C and other persons as a duty. [4]

The 1978 Inter-American Convention on Human Rights (San Jose Pact) (ACHR) includes only the right to property, which is reflected in Article 21, among the rights included in the system of the right to a decent life, where everyone has the right to use his property. The law also mentions the provision of subordinating such use to the interests of the society in appropriate cases. Although the ACHR at the level of the Ameri-

can region deals primarily with civil and political rights, Article 26 of the act includes a general provision on economic, social and cultural rights. In this article, while referring to the obligation of the States Parties to adopt measures to "ensure the full implementation of the rights envisaged in the economic, social, educational, scientific, and cultural standards", the right to a decent standard of living is actually indirectly provided for. According to the same article, participating states are obliged to take appropriate measures through both domestic and international cooperation to achieve the full realization of a decent standard of living through legislation or other appropriate means. [5]

In a number of cases, the Inter-American Commission has jurisdiction to hear complaints about violations of economic, social, and cultural rights set forth in the ACHR Declaration and denounced by individual claims. In the case of Amilcar Menendez v. Argentina, the Inter-American Commission (IACHR) considered the mentioned petitions by combining them in accordance with Article 40, paragraph 2 of its Rules of Procedure. [13] Economic, social and cultural rights were also examined in the case of CarlosTorres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernandez, Reymer Bartra Vásquez and Maximiliano Gamarra Ferreira v. Peru, and the Inter-American Court's jurisdiction to apply Article 26 of the ACHR in judicial proceedings was determined indirectly. This dispute has created a broad ground for claims of future violations of this right to a decent life. [14]

The San Salvador Protocol of November 16, 1999, adopted as an Additional Protocol to the American Convention on Human Rights in the field of economic, social and cultural rights, occupies an important place in the system of guaranteeing the right to a decent life. The rights included in the system of the right to a decent life are interpreted in the Protocol as follows:

- In Article 1, States that are parties to the Additional Protocol, to the extent that the available resources allow and taking into account the degree of their development, undertake to implement especially economic and technical measures for the full observance of the rights recognized in this Protocol within the country and through international cooperation.

- Article 12 of the Protocol envisages the right to food included in the system of decent life. This article states that everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. In order to promote the realization of this right and to eradicate malnutrition, States Parties to the Convention undertake to improve their methods of food production, supply and distribution, and agree to facilitate wider international cooperation in support of relevant national policies.

- In Article 6, states are required to take measures to ensure the right of people to decent work and to achieve full employment.

- Article 7 provides for fair and satisfactory working conditions. In this article, decent living conditions for workers and their family members; equal wages for workers; change workplace; promotion at work, taking into account the qualification, competence, merit and seniority of employees; in cases of unjustified dismissal, the employee's rights to receive compensation, reinstatement, receive other benefits provided for by domestic legislation; safety and hygiene at the workplace; prohibition of night work, unhealthy, immoral and dangerous working conditions for persons under the age of 18; work regime not to hinder attendance at school and not create restrictions on benefiting from education; reasonable limitation of daily and weekly working hours;

shortening of days in dangerous, unhealthy and night work; rest, leisure time, paid vacations, as well as payments for national holidays, etc. cases were intended.

- The right to social security provided for in Article 9 included appropriate benefits for old age, disability and maternity.

- In Article 10 right to decent health considers universal immunization; prevention and treatment of disease; implementation of education in the field of health care; the provision of primary medical care to high-risk groups and the poor at the expense of the state by states.

- The right to a healthy environment contained in Article 11 includes the right of everyone to live in a healthy environment and to use basic public services; it also combined the responsibilities of the participating states in the field of environmental protection and improvement.

- Article 12 is called the right to food, and it states that everyone has the right to adequate nutrition that ensures their physical, emotional and intellectual development. To promote the realization of this right and to eliminate malnutrition, States Parties undertake to improve methods of food production, supply and distribution, and agree to promote international cooperation in support of national policies.

- Article 13 provided for the right to decent education. Here the right to education; direction of education to the comprehensive development of human personality and human dignity; the importance of strengthening respect for human rights, ideological pluralism, fundamental freedoms, justice and peace were emphasized. Establishment of institutions in the field of free compulsory primary education, accessible secondary and higher education and providing the needs of the population in the field of education are required from States Parties. The most important idea contained in the article was: education should enable everyone to participate effectively in a democratic and pluralistic society, to achieve a decent existence, to promote understanding, tolerance and friendship among all nations, racial, ethnic and religious groups, to encourage activities to promote peace.

- Article 15 is called the right to establish and protect families, where it is stated that everyone has the right to establish a family and that it is implemented in accordance with the provisions of the relevant domestic legislation, and that the participating states also ensure adequate protection of the family unit; to provide special care and assistance to mothers before and during a reasonable period after childbirth; to ensure adequate nutrition of babies; they undertook to take special measures for the physical, mental and moral protection of teenagers. This article also defined the formation of families, the right to marriage, the protection of the mother's health, the adequate nutrition of the child, the development of adolescents, the implementation of family support measures, the protection of children, the protection of their parents and the right to education.

- In Article 17 decent standard of living of the elderly; their right to special protection; provision of appropriate housing, care, work, food, specialized medical services and allowances are envisaged.

- In order to ensure a decent standard of living for disabled persons in Article 18, implementation of programs aimed at providing them with the necessary resources and environment for the participating states; conducting special trainings for the disabled; consideration of solutions to specific requirements arising from the needs of this group;

considering their comfort as a priority component of urban development plans, etc. tasks were defined. [2]

However, it should be noted that the Protocol of San Salvador had many shortcomings. Thus, the Protocol - 1) did not include any provisions on the right to adequate housing, clothing, and water; 2) the right to education is restricted in accordance with Article 13 of the Protocol; 3) the individual complaint procedure was limited, instead it was defined as the obligation to join in trade unions. [2]

In the case of the Yakye Axa Indigenous Community v. Paraguay, the Inter-American Commission on Human Rights alleged that the Paraguayan government had violated the rights of the Yakye Axa Indigenous Community to food, water and health services and the right to life under Article 4 of the Convention by failing to respect their ancestral property rights. The Court also found that the refusal to grant legal status to the Commonwealth against Paraguay was a violation of its rights. The court thus ordered Paraguay to grant the Community – "especially children, the elderly and pregnant women" reparations, including compensation, food and water, sanitation, access to medical care and legal title to their traditional territory – i.e. the right to a decent standard of living. [6]

The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities of September 14, 2001 was adopted by the OAS General Assembly at its 29th regular session in Guatemala City. The goals of this document are to prevent all forms of discrimination against persons with disabilities, as well as to promote the full integration of these persons into society and to achieve a decent standard of living for them. The Committee on the Elimination of All Forms of Discrimination against Persons with Disabilities, consisting of one representative appointed by each state party, was also established to monitor compliance with the obligations under the Convention. [15]

Elements of the right to a decent life in the Americas can also be found in the Declarations of the Inter-American Commission.

The NAFTA Agreement of 1994, which had a limited impact on improving business conditions in the Americas, gained a higher profile after being enriched with important aspects included in the SDG development goals. NAFTA is essentially an intergovernmental trade agreement based on an intergovernmental logic that depends on consensus among the governments of the three member countries located in the region - the United States, Mexico, and Canada. However, we must note that ratification by the United States Congress was possible only after the inclusion of two complementary agreements to NAFTA: 1) Each NAALC Agreement, which stipulates obligations for the three governments to help improve labor, living and working conditions, as well as to ensure compliance with labor laws, 2) North American Agreement on Environmental Cooperation – NAAEC. [6]

The main goal of NAFTA's adoption was to improve existing structural rules for solving labor issues, including promoting the ratification of International Labor Organization (ILO) Conventions, guaranteeing aspects consistent with the concept of decent work. Admittedly, over 25 years of implementation, NAFTA has effectively created a strong interdependence between the economies of the three countries. [6]

Organizational Mechanisms for the right to a decent life in the Americas

The Organization of American States (OAS) operates in order to effectively organize existing interstate coordination in the American region. The main legal document of the organization is the American Convention on Human Rights of 1969.

As the principal and autonomous human rights body of the OAS, the Inter-American Commission on Human Rights was established to uphold and promote human rights in the Americas. Its Statute was approved on May 25, 1960, and its first members were elected by the OAS on June 29, 1960. In 1961, the IACHR began to visit a number of countries to observe the human rights situation on the spot. In 1965, the IACHR was empowered to investigate complaints or petitions regarding specific human rights violations. Thus, the IACHR was established as the principal organ of the OAS with the adoption of the Buenos Aires Protocol signed in 1967, the first reform of the OAS Statute [15]. With more than fifty years of involvement in the protection and promotion of human rights in the Americas, the Commission covers the continent's thirty-five independent countries and covers a wide range of human rights issues facing them.

In the American region, the Inter-American Court of Human Rights was established in accordance with the American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978. The functions and procedures of the court are determined by the OAS. Functions include the following:

- At the request of OAS Member States, the Court has the power to issue advisory opinions on the interpretation of the ACHR and other treaties on the protection of human rights in the Americas, as well as on any matter within the jurisdiction of OAS bodies;
- Has jurisdiction to hear disputes over alleged violations of the ACHR;
- Monitors States' implementation of the Convention;
- If the court determines that a right or freedom protected by the ACHR has been violated, it issues a decision on "ensuring the injured party's use" of the violated right or freedom;
- Compensation can be paid to the injured party by court decisions. International human rights mechanisms rarely provide such an opportunity. [16]

Various programs and reforms have been implemented in order to ensure decent life rights in the continent. Welfare reform was among the steps taken in the right direction by President Clinton's reforms aimed at restoring welfare, dignity and decent opportunities for the vulnerable population. He believed that the main factors affecting poverty in the region are mental illness, drug and psychotropic substances, alcohol abuse, and limited educational opportunities. [7, p.29]

U.S. District Court Judge Clyde Atkins ordered the creation of two "safe zones" in the city, citing that Miami's homeless have a constitutional right to eat, sleep and bathe on public property. As part of this activity, homeless people in America were offered food and shelter. There are many speeches of Reagan in the field of providing a decent life for the homeless.

A comprehensive study conducted by Tufts University's Center for Hunger, Poverty, and Nutrition Policy in late 1992, among the studies on the right to a decent life in the Americas, found that approximately 30 million Americans are undernourished, 6 million people living in poverty do not receive food stamps, and 10 million people living in poverty and receiving food stamps often go hungry, additional federal

programs do not meet the nutritional needs of these people, and these programs do not reach people who do not live a decent life.

The problem of drug addiction, which is legal in the relevant places of the region, is approached here from the aspect of public health law [8, p.131-132]. However, research materials also note that there are inmates who may be allowed and encouraged to use substances under certain conditions and restrictions and under medical prescriptions to protect the right to health [8, p.137-138]. In order to combat this health problem, measures to dignify and humanize punishments for persons deprived of liberty, which is the goal of the reform of Article 18 of the 2008 Constitution, have been initiated. Section 16 of Article 33 of the aforementioned Law (LNEP) states that a currently non-existent protocol on "drug addiction treatment" should be adopted. This, of course, should begin with procedures for systematically exposing human rights violations for people who have been deprived of their freedom.

Conclusion

Issues such as adequate work, health, education, protection, inequality and economic growth, which are included in the rights to a decent life, are the main topics of discussion in national-political agendas, but in regional discussions, especially in America, this activity has a marginal impact. The problems of most modern states consists in eliminating the consequences of globalization in the social and labor spheres. Global economic processes lead to a weakening of state control over the national economy, and these states face the risk that the market economy will grow to dangerous levels that will lead to social inequality. [11, p.7]

However, most researchers believe that a few of the countries included in the American region - especially the United States - are almost completely consistent with the legal category of the welfare state. In our opinion, it is not about socio-economic rights of citizens, individual opportunities obtained depending on their social status, but independent, official recognition of them as inalienable rights. However, it should be noted that this goal is not yet among the priorities of the American government. However, in this region, the activities of reforming education and health systems are being carried out, fighting the consequences of cuts due to absolute unemployment and the crisis in the economy. In general, we can say that the idea of creating a welfare state in America has become a priority area of social policy. Of course, in this direction, both America and the other regions that we are researching, should be aimed at solving the social, economic, demographic and other problems of raising a decent standard of living.

References:

1. A. Aliyev. Human rights. Textbook. Baku: Nurlar publishing house, 2019. 352 p. (in Azerbaijani)

2. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" https://cidh.oas.org/basicos/french/e.sansalvador.htm

3. Alvarez-Ijaza, Emilio. "Inter-American system and challenges for its future". American University International Law Review 29. 5 (2014): 989-1001. https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1828&context=auilr

4. American Declaration of the Rights and Duties of Man ttps://www.oas.org/en/iachr/mandate/Basics/declaration.asp

5. American Convention on Human Rights, 22 November 1969, Costa Ricahttps://cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm

6. Case of the Yakye Axa Indigenous Community v. Paraguayhttps://www.law.cornell.edu/women-and-justice/resource/case_of_the_yakye_axa_indigenous_community_v_paraguay

7. Dority, Barbara. Humanist. May/Jun 1993, Vol. 53 Issue 3, p. 28-30. 3p. Reading Level (Lexile): 1260. , Database: MasterFILE Premier

8. Drug addiction is an obstacle to strengthening the social reintegration of people deprived of their freedom and protecting human health. Uncontrolled responsibility of the state. Mexico Case. An CIMEXUS Magazine, Volume XVIII, No. 1, 2023 Cimexus. Jan-Jun2023, Vol. 18 Issue 1, p129-145. 17p. DOI: https://doi.org/10.33110/cimexus180108

9. Prosperity for American Families. The Gore-Lieberman Economic Plan. September 2000. Nashville (Tenn.), 2000.

10. Regionalism and Agenda 2030: Inequality and Decent Work in Mexico 2 Rev. Bras. Polit. Int., 66(2): e016, 2023 Mariano; Menezes; Franzoni. 04 October, 2023

11. Dorenko K.S. Social policy of the USA, EU countries and Russia and at the present stage: priorities, principles, legal support / K.S. Dorenko // Law and management. XXI Century. - 2012. 12 c. https://mgimo.ru/upload/iblock/dcc/dcc270cf8bddba4d22a377ead4d7ccc0.pdf?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com (in Russian)

12. Lebedeva L.F. USA: public and social policy / L.F. Lebedeva; Institute of Russian Academy of Sciences of the USA and Canada. - M.: Nauka, 2007. 269 p. (in Russian)

13. Amilcar Ménendez *et al* v. Argentina, Case 11.670, Report No. 3/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 95 (2000).http://hrlibrary.umn.edu/cases/3-01.html

14. http://hrlibrary.umn.edu/cases/1999/Speru89-99.html

15. https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/intro.asp

16. https://guide-humanitarian-law.org/content/article/3/inter-american-court-of-and-commission-on-human-rights/

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OVERCOMING CONFLICTS OF JURISDICTION IN VIRTUAL SPACE: AN ANALYSIS BASED ON CASE LAW AND LEGAL REGULATION

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Abstract

Since the virtual space is a borderless space and the established rules are based on the principles of territorial sovereignty, the existing rules and principles must either be changed or new jurisdictional principles need to be created for this space. At present, a number of national courts use principles established by taking into account the interests of their territories or citizens. If any criminal behavior of an individual in the virtual space affects the citizens of many states, there is no universal international source for proportionately compensating the loss. Therefore, there is a need for international cooperation and harmonization of national legal regulations to solve jurisdictional problems in virtual space. Also, the development of common standards around the world may be of particular importance to overcome the limitations of traditional jurisdiction and ensure adequate jurisdiction in cyberspace. The issues mentioned in the article have been studied in detail, and practical suggestions for solving the jurisdictional problem in the virtual space have been presented based on court experience.

Keywords: *virtual space, cyberspace, Internet, jurisdiction, predictability requirement, human rights, international regulation.*

1.1. Introduction

As a result of the development of information technologies, today the world is experiencing a rapid digital transformation in all areas, and virtual environments have invaded our lives. Today, the use of web technologies has reached such a level that the Internet is widely used not only for information acquisition, but also for information exchange and virtual collaboration. Since 2010, thanks to the transition to Web 3.0 technology, virtual environments have been formed with the introduction of content control software. These virtual environments provide individuals with opportunities for work, education, and socialization. The virtual world, which is the most relevant topic of the era, can be considered as an environment where people are represented by avatars, where there are many users and interactions, and which simulate the physical world we live in three-dimensionally with virtual reality. In the virtual world, which enters our lives as a digital twin of the physical world, real people can present themselves in any gender and shape they want. In this case, digital identities are formed in the virtual world, where many things that can be done in the physical universe, such as shopping, education, socializing, entertainment, activities, travel, can be done in three dimensions. At the same time, the "participation" of individuals in such worlds in the desired form allows any violation of law to be committed anonymously, which is one of the dangerous problems of virtual worlds. Therefore, when virtual worlds are formed both technologically and legally, a complex human-centered approach should be guided.

The formation of virtual space is not analyzed in a positive way. In the digital age, serious changes are observed in the nature of crimes through the opportunities provided by new technologies. Violations, which are no longer on the physical plane, but on the virtual plane, cause serious concerns for the modern world population.

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1.2. Virtual space, cyberspace and the Internet: different and similar features

The concept of virtual can be applied to any situation that can happen online. [1] Virtual worlds are currently understood as animated three-dimensional environments created by computer software. [2]

Virtual worlds aim to make the user feel like they belong to that world in the huge environments they offer, both in terms of space and population, and that the experience is as good as the real world. The reality technologies that we will mention below are developed to improve the experience of the virtual world by feeling the movements and feelings simulated in these environments by the user with the five senses, and the control of the user's perception of reality is carried out through these technologies.

The Internet encompasses all networks created by electronic devices at an international level. Data is transferred between networks by programs installed on computers and other smart devices, which contain files consisting of various elements, especially graphics, images and texts. The Internet acts as the largest mass communication tool, being the largest and most personalized resource among the resources that can satisfy the need for information and socialization with modern technology. [3]

The European Court of Human Rights also noted in the Times Newspaper Ltd v. United Kingdom case that websites greatly contribute to providing access to current affairs and facilitating the general exchange of information through their ability to store and publish large amounts of information and their accessibility. [4]

The Internet, which began to be widely used in the 1990s, is characterized by dynamic development. If we analyze in chronological order, the development of technology today allows us to exchange information with the whole world through Web 1.0, Web 2.0, Web 3.0 and Web 4.0. When Web 1.0 was released, people for the first time observed data being transferred from one point to another through a network. But this technology enabled one-way communication by only allowing people to read.

After the 2000s, with the development of Web 2.0 technology, the possibility of sharing and a common space was created for Internet users. With the development of new technology, people began to use blogs and social media effectively, which ultimately led to the formation of the virtual world. But in addition to its positive aspects, this technology brought with it many problems. Thus, the mutual exchange of information led to the spread of any information in the virtual space within seconds, so that the scattered state of the available information resulted in the "drowning" of people in the information ecology and the inability of users to find what they were looking for. Considering that all information is stored on the Internet without any selection, over time, outdated information was made available to people as a result of search, creating serious difficulties in their information selection and the use of the Internet as a whole. The development of Web 3.0 technology played an important role in preventing these problems. So, with the application of this technology, data is no longer stored on single servers, but distributed among users. Necessary computing moves from data centers to user's laptops, smartphones and smart gadgets. Most importantly, this technology supports artificial intelligence and machine learning. Smart algorithms are very useful in helping users find the content they need. At the same time, the application of the authorization method in Internet use continues to change towards a single level, which will be the key to all resources on the network. For example, almost any website can be accessed using a Google or Facebook account. More specifically, with Web 3.0 technology, the working mechanism of the Internet has become more intelligent.

W. Lambert Gardiner writes that hypermedia can perform two functions: the function of a window to the objective world and the function of a mirror of the subjective world. If the first function expresses the virtual reality and reflects the accurately perceived world, the second function covers the cyberspace and defines the exact conceptual basis of that world. [5]

It is considered that the term cyberspace is used in connection with legal issues, and the concept of virtual space is used only in connection with technical and social issues. However, this approach is likely to change in the near future with the dynamic development of virtual worlds. The development of new technologies has led to the virtualization of people, and this process is accelerating day by day.

1.3. Resolution of the issue of jurisdiction in case of violation of rights in virtual space: ways to overcome contradictions in legal regulation

In most legal systems, the law of the place where the damage occurred (lex loci delicti) applies. In many cases, the law of the place where the action is taken is preferred. Both options have negative consequences for the plaintiff and the defendant. If the place of action is taken as the basis, if the damage occurs in countries other than the place of action, the claimant will not be compensated for all the damages. Similarly, if the law of the place where the damage occurred applies, the defendant will not be able to foresee the law that will apply to the dispute. Therefore, in both cases, one of the parties cannot foresee the law that will apply to the dispute. In terms of balancing the interests of both parties, such an approach has been put forward that in order to apply the law of the place where the damage is inflicted, the defendant must foresee that the damage may occur in that place. [6]

But content uploaded or sent in virtual space can reach users in multiple countries within seconds. In this regard, it is very difficult to predict the damage caused by such content in advance, that is, the subject distributing the content cannot control in advance in which countries this content will be used. Social media platforms and search engines, in particular, bear an enormous responsibility in this regard. Thiede, Thomas and McGrath, Colm P. call this the chilling effect, stating that such an expanded burden of liability doubles down on legal certainty. [7] Therefore, the requirement of foreseeability should not be applied as is, but should be limited to the criterion of the purpose of delivery of the broadcast (especially in relation to the person who broadcasts the content). Accordingly, for an entity to be liable for content uploaded to the Internet, it must have intentionally distributed it. [8] This means that, most importantly, the purpose of distributing the content is investigated, and if the intent to distribute is proven, liability is established. When analyzing the demand for predictability, attention should also be paid to the victim's social connections. Because in most cases, the content is distributed in the territory of the state where it is more popular.

Lex fori is a binding point defended by the fact that the law best known and applied by the judge is his own law. Accordingly, the dispute must be resolved in accordance with the law of the court where the case is conducted. According to this opinion, the beneficiary's nationality, habitual residence and the place where his personal right was harmed are not important. If the dispute between freedom of expression and other rights affects the public sphere of a particular state, the substantive law of the state must be applied to the dispute within the sovereignty of the state in question. Lex fori practice is effective because the judge applies the law he already knows, and in this

regard, it is possible to conclude the court proceedings in a short time. Also, thanks to this mandatory rule, the requirement that the person causing the damage should have foreseen the damage is eliminated. In fact, the lex fori is not very successful in dealing with violations that occur in virtual space. This criterion is given less place in Continental European law than in Anglo-Saxon law. [9]

Let us refer to a few court cases on the jurisdictional issue. The first case is related to the company "CompuServe", which was reviewed in 1996 in Germany. In the case, the German court demanded that the US company CompuServe close access to pornographic materials. The company had to remove such material from its US central server to comply with German law. As a result, even in countries where pornographic materials are not prohibited by law (including the United States), citizens were deprived of using these materials. "CompuServe" company had to obey the strictest norms in this field. This work has created such a trend that the Internet will be subject to the most restrictive norms. [10]

In another case known as the Dow Jones Case, a company (Dow Jones & Company) published Wall Street and Barrons Magazine. The magazine was uploaded to servers located in the US state of New Jersey and contained material allegedly defamatory of the defendant, Joseph Gutnick, a resident of Victoria, Australia. The most important question raised in this case was the question of the court's jurisdiction. The court said the material was uploaded in Victoria. As such, a Victorian court has jurisdiction and Victorian law governs the rights and obligations of the parties. [11]

In 2001, in the case related to the company "Yahoo!", the issue of violation of the French legislation prohibiting the distribution of materials promoting Nazism was raised. French law prohibits citizens from accessing the site of Yahoo!, which promotes Nazism. Although that site operates in the United States, it is legal to post such material in that country. [12]

As can be seen, different jurisdictions have been established for different cases. This once again proves that gaps in international regulations require states to resolve disputes in virtual space by following their domestic legislation. But here we should especially mention that there are serious differences regarding criminal and civil jurisdiction. We should mention the Cybercrime Convention on criminal jurisdiction. According to Article 22 of the Convention, the question of which state's norms will be applied is resolved in four paragraphs. As can be seen, the Convention is based on territorial and personal jurisdiction. Thus, if the cybercrime is committed on the territory of the state, on a ship sailing under its flag, as well as on an aircraft registered in accordance with the laws of that state, this state has the opportunity to take measures to determine the jurisdiction in relation to the act. In addition, if the act is committed in the territory of another state that has ratified the Convention, but the subject is a citizen of a specific state, then the jurisdiction of that state can also be applied. However, in this case, the crime must be criminalized in the state where it was committed. In addition, the Convention establishes that if the criminal act falls under the jurisdiction of several states, then the states can hold consultations in order to choose the most appropriate jurisdiction to carry out the criminal prosecution (Article 22) [13].

As for civil jurisdiction, first of all, we should mention the Law on International Private Law, which can be applied to those norms in case of legal violations occurring in the virtual space. However, if the dispute is of an international nature, reference is

made to the international agreements that Azerbaijan is a supporter of. This rule is reflected in all legislative acts in the field of information.

1.4. Conclusion

Traditional international law does not oblige a person to obey the laws of another state as long as he does not enter the territory of another state and does not directly affect the territory of that state. But does this rule apply to the Internet age? - Currently, it is difficult to observe how many countries are directly or indirectly affected by any violation of rights in the virtual space. In order to deal with the problems caused by cyberspace in such a mixed situation, there is a need to create an international organization and formulate unified material and procedural legal norms. For this, cyberspace must first be declared res extra commercium (that is, an area not subject to national ownership, such as the high seas). The international organization that will be created should operate on the basis of material and procedural norms. It is true that currently a number of international regulations reflect material norms. However, procedural deficiencies and lack of procedural rules make it difficult to apply those material norms. This is especially evident in relation to crimes committed in virtual space. For example, when investigating complaints made at the domestic level in cases of fraudulent online theft of funds and illegal interference with private life, which norm will be applied is determined, but the procedural issues related to the application remain unresolved. If the person who illegally withdrew money from a person's card account is located in a country that is too far away and has different regulations, the protection of the person whose rights have been violated and the restoration of their rights are called into question. Therefore, there should be perfectly integrated national networks operating under the supervision of an international organization created for the purpose of implementing procedural norms. All this will lead to the following successful results:

- thanks to the international cooperation of states, it will be easy to prevent violations caused by using virtual space;
- the arbitrary domination of technologically powerful states over other states will end.

References:

1. Ralph Schroeder. Defining Virtual Worlds and Virtual Environments / Journal of Virtual Worlds Research, 2008, Vol. 1. No. 1. file:///C:/Users/User/Downloads/tdladmin,+Schroeder_ready_nc.pdf

2. Peter J.Quinn. A click too far: the difficulty in using adhesive American law license agreements to govern global virtual worlds // Wisconsin International Law Journal, 2010, Vol. 27, No. 4, p. 760.

3. Akgül, A. A New Right in the Protection of Personal Data: "The Right to be Forgotten" and the "Google Decision" of the EU Court of Justice. TBB Magazine, 2016, p. 26 (in Turkish).

4. Times Newspaper Ltd v. the United Kingdom, Application no. 64367/14, 13 November 2018. https://globalfreedomofexpression.columbia.edu/cases/times-newspapers-ltd-v-united-kingdom/

5. W. Lambert Gardiner. Virtual Reality/Cyberspace: Challenges to Communication Studies. // Canadian Journal of Communication, 1993, Vol 18 (3),http://www.cjc-online.ca/index.php/journal/article/view/762/668

6. Foreseeability and the Rule of Law in Data Protection after the PNR judgment // The Future of the European Security Architecture: A Debate Series, 10 May 2023. https://verfassungsblog.de/foreseeability-pnr/

7. Thiede, Thomas and McGrath, Colm P., Mass Media, Personality Rights and European Conflict of Laws (March 27, 2011), 22 p. p. 15. https://ssrn.com/abstract=1964506 or http://dx.doi.org/10.2139/ssrn.1964506

8. Thiede, Thomas and McGrath, Colm P., Mass Media, Personality Rights and European Conflict of Laws (March 27, 2011), p.16. https://ssrn.com/abstract=1964506 or http://dx.doi.org/10.2139/ssrn.1964506

9. Tekinalp, Gülören, International Private Law Binding and Procedural Law Rules, Vedat Kitapçılık, 13th Edition, Istanbul, 2020, p. 35 (in Turkish).

10. Aliyev, A.I., Rzayeva, G.A., Ibrahimova, A.N., Maharramov, B.A., Mammadrzali, Sh.S. Right to information. Textbook. Baku, Nurlar, p. 383.

11. Shelke, Atmaram and Gurpur, Shashikala, Problem of Jurisdiction in Cyberspace and its Impact on International and Domestic Laws (December 7, 2019), p. 18. SSRN: https://ssrn.com/abstract=3500049 or http://dx.doi.org/10.2139/ssrn.3500049

12. Aliyev, A.I., Rzayeva, G.A., Ibrahimova, A.N., Maharramov, B.A., Mammadrzali, Sh.S. Right to information. Textbook. Baku, Nurlar, p. 383.

13. Convention on Cybercrime, Budapest, 23 November 2001. https://e-qanun.az/framework/18619

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TRADEMARKS AND CELEBRITY NAMES: RIGHTS, BRANDING AND LEGAL ISSUES

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Abstract

As celebrities become more famous, their names become more important as a brand. In this article, the reader will learn about how famous people turn their names into brands and profit from it. First of all, the article deals with the relationship that exists between the names of celebrities and trademarks. In addition, this paper addresses predicate trademark offenses as well as complexities related to international intellectual property law. Name similarity and problems with registering common names as trademarks are important issues. This article also looks at some of the important court cases on the subject and their outcomes.The article ends with tips for celebrities who want to protect their brands and names under trademark laws. The article discusses the complexity of deciding between personal rights protection and commercial interests when it comes to celebrity branding.

Keywords: *trademark, brand, commercial branding, celebrity, similar celebrity names, commercial interests.*

Celebrity culture has changed significantly over the past ten years and is becoming an increasingly important part of today's society. Media has turned celebrities not only into entertainers, but also into powerful brands with huge commercial power through the proliferation of online resources, social networks and 24/7 entertainment channels. [14] Celebrity images and names are important resources for building and promoting brands, as today's society puts a lot of emphasis on individuality and personal branding. [9, p.148]

Due to the active introduction of the Internet, social networks, as well as the development and popularization of personal brands, many celebrities and journalists began to use their first and last names, pseudonyms and fictitious names. It is not only a means of self-identification, but also an object of commercial activity. So, singers, actors, and bloggers start selling clothes, and athletes sell sports nutrition and equipment and more that are released under their own names. At the same time, they, as a rule, have no direct relation to commodity production. However, using their name will increase sales and get fans of those people interested in a product. The huge demand has led to attempts by unscrupulous entrepreneurs to counterfeit such products and to use someone else's name and pseudonym without the owner's consent.

Subsequent events emphasized the importance of preserving the name and image of the individual, as they blurred the lines between celebrity and merchandise. In such circumstances, intellectual property rights, in particular trademark rights, come to the fore. Trademarks help to highlight and protect the commercial identity of a product or service. Celebrities use these rights to protect their brand and prevent their names and likeness from being used without their permission. This study examines the legal, ethical and commercial aspects of using celebrity names as trademarks.

The idea that celebrities are more than just entertainers has been reinforced by the development of celebrity culture. Celebrities also use their names as brands, just as companies use trademarks to distinguish and differentiate their products or services in the marketplace. This branding process includes the identification of a person, their values, spirit and traits. A great example is the Oprah Winfrey brand, which is closely associated with her name. He is connected not only to her TV show, but also to her media empire, which includes a magazine, TV channel and more. Likewise, Michael Jordan's name transcends his basketball career. Since the inception of the Nike Air

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Jordan brand, its name and image has become a symbol of billion-dollar footwear and sportswear. [5] Such examples show how a popular name can be a valuable commercial asset.

The economic value associated with celebrity names is clear. Celebrity names have financial value. Counting on the recognition and influence of the name of a celebrity on the motivation of customers, brands are willing to pay huge amounts for advertising contracts. According to a study [2, p.158], celebrity engagement increased brand sales by an average of $10 million per year. Thus, the brand value of a celebrity can have a significant impact on the market, and both celebrities and companies seek to capitalize on this and protect their interests. When celebrities become brands, they inevitably face a lot of legal challenges to protect their names. The main issue here is trademarks, a legal tool designed to prevent unauthorized use and protect commercial identities. Case Studies: LeBron James and Taylor Swift are prime examples of celebrities who struggle with trademarks James attempted to register phrases like "Taco Tuesday", sparking a trademark controversy. [10] Likewise, Taylor Swift actively trademarks her lyrics and album titles, demonstrating the lengths celebrities can go to protect their brand rights. [3] Unauthorized use of a celebrity's name can lead to legal disputes, especially in commercial cases. For example, a company may be required to pay damages if it uses a celebrity's name to advertise or sell a product without permission. The celebrity must prove that such use misinforms consumers or reduces brand value. [1]

The Right of Publicity and trademarks: A person's identity and brand are protected in different ways by the right of publicity and trademark rights, two different but frequently linked areas of law. While both can be used by celebrities to preserve their public image, they have different purposes and provide different levels of security. The inherent right of an individual to manage the commercial exploitation of their name, likeness, and other recognisable characteristics of their persona is the subject of the right of publicity. The primary purpose of this right, according to J.Thomas McCarthy's book "The Rights of Publicity and Privacy," is to acknowledge the potential economic worth that an individual may place on their identity and to give them the ability to manage its commercial exploitation.

Trademark law protect symbols, names, and slogans used in commerce to identify the source of goods or services. A trademark provides defense against competitors who attempt to utilize a mark in a manner that can confuse customers. The names, logos, and other unique marks that celebrities utilize throughout their careers are frequently trademarked. The basic goals of trademark law are to avoid consumer confusion and maintain a mark's goodwill, whereas the right of publicity typically addresses improper utilization. For instance, a celebrity might use the law on trademarks to stop another business from using their name to sell goods, but the same celebrity might use the right of publicity to stop an unlicensed biography that has their likeness on the cover. [12] McCarthy's book elaborates on real-world cases like the "Estate of Presley v. Russen" case to help show this intersection. Both legal concepts can be instruments in a celebrity's legal toolbox, as shown in this instance when the estate of Elvis Presley utilized both the right of publicity and trademark law to halt a live musical concert that featured an Elvis impersonator.

In conclusion, these rights provide important safeguards for public figures, but their fundamental goals are distinct, and their effective implementation necessitates different legal approaches.

Parody and free speech: While intellectual property laws are designed to protect the rights of owners, they are not absolute. There is a delicate balance in the field of free speech, especially in parody. Shows like Saturday Night Live often use celebrity names for satire rather than infringement. Courts, recognizing the social value of parody, often defend such works on the basis of free speech doctrines, although the details vary between jurisdictions. [7]

International Perspective: There are unique issues with trademarking a celebrity name around the world. Trademark laws differ in each country. Something that is protected in one jurisdiction may not be protected in another. Celebrities should be aware of different legal systems, cultural backgrounds, and when their names are trademarked by others. This makes protecting a celebrity brand around the world a difficult task.

Similar Celebrity Names: One possible problem can arise when two celebrities have similar or identical names. For example, actors Chris Evans (famous for his roles in Marvel films) and Chris Evans (famous British TV presenter) may run into problems if one of them tries to trademark his name for certain services or products in the same market. In such circumstances, legal disputes may arise in which courts and patent offices must decide on the notoriety, duration of use of the name, and the likelihood of confusion. [7]

Trademarks for Common Names: Another difficult problem arises when celebrity names are also common given names or surnames, such as "Emma Roberts". Although actress Emma Roberts is recognizable in the entertainment industry, another person named Emma Roberts may have reason to use the name in a different commercial context. To prevent monopolization of common names, trademark law is often cautious in this matter. [4]

Personal rights versus commercial interests: At the center of these dilemmas is the conflict between personal rights and commercial interests. While celebrities have a legal right to use their fame, it is also in the public interest that personal names, especially common ones, remain available for legitimate use by others. Finding a balance requires a subtle understanding of both individual rights to a commercial identity and the public interest in competition and freedom of expression [8]. The rapidly evolving relationship between celebrity culture and intellectual property requires celebrities to think strategically to protect their personal brand. Here are some recommenddations and best practices:

Things to consider before registering a name as a brand: Before registering their name, celebrities should conduct thorough market research to understand the potential of their name as a brand. It is important to determine how the target audience perceives the name, how unique it is, and whether it can expand to other markets. It is also useful to learn about the existing rights to the name, even if they belong to people from other realms. [3]

Importance of Legal Advice: Intellectual property laws are complex and vary from country to country. Because of these complexities, celebrities should turn to professional lawyers. They will help develop the right legal strategy, warn against mistakes and help you through the registration process. Early communication with lawyers will also help celebrities protect their image rights. [4]

Balance between personal rights and business opportunities: Although comercialization provides a lucrative prospect, celebrities need to be careful. Celebrities should be care-

ful though commercialization can be beneficial. If you advertise your name too much, you risk losing its authenticity and alienating your fans. Celebrities need to be critical when choosing promotional deals to match their brand. [11, p.112]

Here are some court cases that are must be considered.

Kylie Jenner vs. Kylie Minogue: The American reality TV actress and businesswoman Kylie Jenner applied to trademark the term "Kylie" in the US for advertising and endorsement services in 2014. Kylie Minogue, an Australian singer, challenged the application on the grounds that she already had "Kylie" trademarks and that Jenner's trademark would weaken her reputation. Jenner's application was finally turned down as a result of Minogue's effective resistance. The dispute received a lot of media coverage and served as an example of the difficulties that might occur when two popular figures compete for the same trademark. Since Minogue had been using the name professionally for years, she could more easily claim that Jenner's use could confuse consumers and weaken her brand. [15]

50 Cent vs. Taco Bell: In 2008, the rapper 50 Cent (Curtis Jackson) filed a lawsuit against Taco Bell, alleging that the restaurant business had improperly utilized his name in a marketing effort. To match the cost of some of their items, Taco Bell had offered 50 Cent to adopt the names 79 Cent, 89 Cent, or 99 Cent. For an undisclosed sum, the issue was resolved outside of court. This agreement emphasizes how crucial it is for companies to obtain official endorsement or consent before using a celebrity's name for marketing purposes. [16]

Trump vs. iTrump: The Trump Organization filed a lawsuit against the creators of the iPhone app "iTrump," claiming that the name of the program violated the trademark for Donald Trump's last name. A U.S. court decided that "Trump" is a generic name when used in the context of trumpet simulation apps, siding with the app creators. The situation offers as an illustration of how the type of good or service in question might have an impact on a trademark dispute. [17]

Michael Jordan vs. Qiaodan Sports: NBA star Michael Jordan launched a lawsuit against Chinese business Qiaodan Sports, alleging that the latter was utilizing his famous jersey number 23, coupled with his Chinese name, Qiaodan, to market sportswear and footwear. The Supreme People's Court of China found in favor of Jordan in 2016 after a protracted legal dispute, finding that Qiaodan Sports had misled customers about its affiliation with the basketball legend. The decision also highlighted the difficulties that foreign businesses and individuals run with when attempting to protect their trademarks in China. [18]

*Lindsay Lohan vs. E*TRADE:* In 2010, the actress Lindsay Lohan sued E*TRADE for a Super Bowl commercial that showed a baby named Lindsay who was a "milkaholic" and sought $100 million in damages. She asserted that the use of her name violated her civil rights as protected by New York state law. The lawsuit was resolved outside of court for an unknown sum. [19]

In the 21st century, celebrity culture is turning into a complex maze where personal identities merge with commercial branding. Celebrities aren't just performing as entertainers these days; they are also becoming powerful brands that have significant social and economic impact. Our research has shown how difficult intellectual property law affects celebrities. Laws originally created for goods are now trying to adapt to intangible things like fame and personal branding. With these laws constantly changing, the challenge is to strike a balance between human rights and the public interest.

However, much remains to be explored. The globalization of celebrity culture, the complex mix of personal and digital identities, and new technologies such as "deep-fakes" (an AI-based image synthesis technique) require additional attention. These topics are of interest to scientists, lawyers and industry professionals. What we can say with certainty is that the relationship between celebrities and brands is only just beginning. This topic will continue to evolve and we are all interested in watching it, researching and understanding how to keep the vibrancy of celebrity culture within intellectual property laws.

References:

1. Aplin, T., Cornish, W., & Llewelyn, D. (2013). Intellectual Property: Patents, Copyrights, Trademarks, and Allied Rights. Sweet & Maxwell.

2. Elberse, A., & Verleun, J. (2012). The Economic Value of Celebrity Advertising. Journal of Advertising Research, 52(2), 149-165.

3. Fisher, W. W. (2017). Intellectual Property Law. Aspen Publishers.

4. Fromer, J. C., & Lemley, M. A. (2019). Intellectual Property Law: Practical Materials. Semaphore Press.

5. Gandhi, D. S. (2012). Shifting Locations of the Law on Geographical Indications. Cambridge Intellectual Property and Information Law.

6. Keller, K. L. (2008). Strategic Brand Management: Creating, Measuring, and Managing Brand Equity. 3rd ed. Upper Saddle River: Prentice Hall.

7. Lastovka, G. (2015). Demons of the Trademark. The Future of the Internet and How to Stop It.

8. Lemley, M. A. (2008). Property, Intellectual Property, and Free Use. Texas Law Review, 83, 1031.

9. Marwick, A. E., & boyd, d. (2011). To See and Be Seen: Celebrity Practice on Twitter. Convergence, 17(2), 139-158.

10. McCarthy, J. T. (2019). McCarthy on Trademarks and Unfair Competition. Thomson West.

11. Thomson, M. (2006). Human Brands: An Investigation into Consumers' Strong Attachment to Celebrities. Journal of Marketing, 70(3), 104-119.

12. Stacey Dogan, What the Right of Publicity Can Learn from Trademark Law , in 58 Stanford Law Review 1161 (2006).

13. Turner, G. (2004). Understanding Celebrity. Sage.

14. Wang, S. (2015). Taylor Swift's Efforts to Register Lyrics Highlight the Power Game of a Pop Star. Billboard.

15. https://www.bbc.com/news/world-australia-38877658

16. https://www.findlaw.com/legalblogs/celebrity-justice

17. https://www.forbes.com/sites/mattdrange/2017/08/16/inside-donald-trumps-failed-trademark-battle-over-an-iphone-app-called-itrump

18. https://bleacherreport.com/articles/2885926-michael-jordan-wins-trademark-lawsuit-appeal-against-chinas-qiaodan-sports

19. https://www.cbsnews.com/news/lindsay-lohan-e-trade-milkaholic-lawsuit-settled/

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