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CONTENTS

INTERCONNECTEDNESS OF BIOETHICS AND MEDICAL LAW WITH HUMAN RIGHTS AND INTERNATIONAL LAW
by Amir Aliyev, Vuqar Mammadov 4

RULES FOR THE PROTECTION OF PERSONAL DATA IN THE U.S. LEGAL SYSTEM
by Araz Poladov 11

THE ROLE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF AZERBAIJAN IN THE APPLICATION OF INTERNATIONAL LAW
by Humay Afendiyeva 18

METSAMOR (MEDZAMOR) VIS-À-VIS NUCLEAR TECHNOLOGY, SAFETY AND ENVIRONMENT: "WASCH MIR DEN PELZ, DOCH MACH IHN NICHT NASS"
by Erkan Akdogan 23

CONCEPTUALIZING CORRUPTION IN THE CONTEXT OF AZERBAIJANI ANTI-CORRUPTION POLICIES
by Elnur Musayev 43

INFORMATION OFFENSE OR CYBERCRIME: AN INTERNATIONAL AND NATIONAL-LEGAL APPROACH
by Huseyn Alizadeh 52

HUMAN PROGRESS IN THE WORLD'S ECONOMIC-POLITICAL POLICY, STRENGTHENING HUMAN WELL-BEING AND THE BASIS OF EFFECTIVE SOCIAL PROTECTION ACTIVITIES
by Daghabeyi Allahverdiyev 57

ISSUES OF MIGRANT INTEGRATION IN EUROPE
by Elvin Aliyev 65

INTERNATIONAL STANDARDS AFFECTING THE ENFORCEMENT OF SENTENCES FOR WOMEN SENTENCED TO IMPRISONMENT
by Gunay Hajiyeva 71

INTERCONNECTEDNESS OF BIOETHICS AND MEDICAL LAW WITH HUMAN RIGHTS AND INTERNATIONAL LAW

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Abstract

In modern times, protection of the right to life and right to health is becoming increasingly important, as the state of public relations in the field of health and medical care, which serves to protect them, is becoming more complex, commercialized, which makes this area a very serious research object for legal scholars. Scientific and technical development in the fields of biology and medicine, revolutionary achievements, new technologies, in particular, transplantology, human reproduction, genetic engineering, genomics, resuscitation, etc. led to the emergence of new moral and legal problems in the field. This emergence has started few decades ago from development of bioethics and medical law new scientific directions on the basis of increase of human rights protection reflected in different international legal instruments, which form the basis of international law and international convention framework.

Keywords: *bioethics, medical law, health law, human rights, international law, bioethics legislation, international convention framework, right to life, right to health, medical experimentation, bioethics and medical law, law and bioethics.*

Beginning in the 1960s, new sciences such as medical law and bioethics began to develop in the world's leading countries. Over time, many scholars in other countries, including legal experts, have come to realize that these new sciences are an essential part of the system of social harmony, promotion and protection of human rights. The main purpose of medical law and bioethics is to protect the rights to life and health, both of which are fundamental human rights. These rights, which have existed since the birth of man, are protected by the 1948 Universal Declaration of Human Rights and the constitutions of many countries [31]. Life and health are given to each person once by nature, and are considered the highest blessing and values in all societies. These are irreplaceable, lifelong blessings and values that cannot be restored when lost.

In modern times, the protection of these two rights is becoming increasingly important, as the state of public relations in the field of health and medical care, which serves to protect them, is becoming more complex, commercialized, which makes this area a very serious research object not only for medico/biological scientists but also for legal scholars [1; 2; 22; 23]. Scientific and technical development in the fields of biology and medicine, revolutionary achievements, new technologies, in particular, transplantology, human reproduction, genetic engineering, genomics, resuscitation, etc. led to the emergence of new moral and legal problems in the field [15; 24].

Bioethics and medical law began to develop rapidly due to the need for a deeper and more complete interpretation of them, a comprehensive assessment of their benefits and harms to humanity, and the need to strike a balance between them. In 2010, at the opening of the 18th World Congress of the World Medical Law Association (WAML) in Zagreb, Croatian President,

Professor Ivo Josipovic, Dean of the Faculty of Law at the University of Zagreb, said: "The level of development of medical law in the country is a key indicator of the level of development and democracy of the state". At the legislative level in civilized countries, there are no questions about the legal rights of men and citizen, all of which are almost guaranteed. The science and experience of these countries nowadays are mainly aimed at guaranteeing the protection of violated rights [17].

This is well admitted that today there is no democratic country, where the importance of protection of human rights in all spheres of public life, particularly in health and medicine, medico-biological sciences is not recognized. Rights in this area are closely related to questions of bioethics and are based on well-known bioethical principles. The international community has developed its own standpoint virtually for every basic principle. This standpoint is reflected in all international legal instruments.

Humanity has always recognized the importance of scientific development for the benefit of progress and prosperity, but the science itself has traditionally avoided appealing to the law and been subject to self-regulation by the scientific community. However, is it possible to control researchers? Moreover, it is very hard to be correct and ethical in this field in terms of the fact that the rules for research conduction come from a consensus in a given society. This, of course, is possible if this society reaches a consensus and then the government converts the key provisions into law. However, even in this case, the provisions will be general and further legal norms should be adopted for application of these provisions. In view of these difficulties, ethical norms remain in most cases as common provisions. It should be noted that the legal norms, in particular from the criminal sphere, should be applied when the basic values of the society are threatened. Thus, in many countries, reproductive human cloning is prohibited by law and these countries consider this practice being contrary to human dignity and believe that such a ban is not an ethical question.

Strict legal verification is necessary (which is essentially higher than ethics), since ethical standards are simply "social" sanctions that do not guarantee compliance with the law. However, recourse to the international or national legislation is not always the key to the problem. It is difficult to present a set of legislative rules, which will be valuable for everyone, since values and conceptions of life and death are so different in general bioethics.

The first large-scale discussion on bioethics was held in Nuremberg in 1946. The result was the creation of the first international instrument on bioethics, the so-called Nuremberg Code that regulated the conduct of scientific research and experiments on humans. The principles outlined in the Code were not legal requirements and were not binding; they were moral standards. The Code stated the need to adhere to certain ethical criteria while conducting experiments on humans. These criteria were the voluntary consent of the subject, his or her legal capacity as well as requirements of informing the subject about the aims, methods and possible consequences of the assumed experiment. A ban was superimposed on experiments with presupposed lethal outcome for the subjects. An agreement on the condition that there is a possibility of ending the experiment at the request of the examinee was made [3; 4; 11].

The provisions of the Code contained a list of basic, fundamental ethical principles for medical research on humans. However, as important as the first in the human history, an international code of this kind the Nuremberg Code was, it did not have a material effect on the practice of conduction of medical experiments on humans in peacetime because the principles of the Code were not of applicable character. These principles were also not binding and were not directly relevant to the daily practice of medical research [3; 4; 11].

In 1975, Economic and Social Council of United Nations (UN) adopted Report of the Secretary-General "Resolution on the Protection of the Human Personality and its Physical and Intellectual Integrity in the Light of Advances in Biology, Medicine, and Biochemistry" [26]. The enumeration of similar documents - national and international - can make more than one

volume. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine) was adopted by the Council of Europe in 1996 and has a fundamental value for the social practice of regulation of scientific medical and biological activity [8].

In 1976 the World Medical Association (WMA) adopts the Declaration of Helsinki, based on which the ethical guarantee of medical research becomes a prerequisite for conduction of the research. Under the influence of growth of risk factors in biomedical practice in national health care systems separate social structures – the so-called ethics committee or ethics commissions – are formed. The task for these structures is to regulate biomedical research and medical practice for the purpose of prevention of the effects that are adverse to human life and health [34].

The growing interdependence of scientific and social realis of modern biomedicine has created a unique spiritual and practical situation, which in the 2nd half of the XX century has demanded its theoretical development. The term "bioethics" reflects the concept that includes the entire set of social and ethical problems of modern medicine, among which one of the top problems of social protection of the human right to life.

It should be noted that some countries have legislation on bioethics at the national level – the laws on bioethics in France (Bioethics Law), the UK (the Human Fertilization and Embryology Act), Germany (the Embryo Protection Act), as well as at regional level – the Convention on Human Rights and Biomedicine. At present, international principles for medical ethics, including those set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted in 1984 by the UN General Assembly) are functioning [8; 9; 13; 14; 29].

Today we have a universal legal instrument on bioethics adopted by the UNESCO – the Universal Declaration on the Human Genome and Human Rights. The Declaration does not fall into the category of international conventions, nor in the list of recommendations proposed by the constitution of the UNESCO. It is just a declaration of an international organization. However, as opposed to the WHO guidelines, this declaration was adopted at UNESCO's General Conference – incorporating all (186) of the UNESCO member states. At the same time, this declaration has no formal legislative powers and is of a quasi-legislative nature [33].

The Universal Declaration on Human Genome and Human Rights at the moment is the only international instrument containing ethical guidelines for new branches of science. As name implies, the Declaration takes its place in a series of international legal instruments that protect human rights such as the Universal Declaration of Human Rights (1948) whose legal and legislative power is now internationally recognized [31; 33].

A serious problem is the actual mechanisms of the application of the Declaration. Article 24 of the Declaration points out that the International Bioethics Committee (IBC) should contribute to the dissemination of the principles set out in this Declaration and to the further examination of issues raised by their applications and by the evolution of the technologies in question. The Declaration assigns the IBC as a responsible organization for the application of principles. Thus, a serious point in this regard is the implementation of a corresponding mechanism [33].

There was no single legal act regulating the issues of bioethics until October 21, 2005, when on the 33rd session of UNESCO's General Conference the Universal Declaration on Bioethics and Human Rights was adopted. The Declaration addresses ethical issues related to medicine, life sciences and associated technologies as applied to human beings, taking into account their social, legal and environmental dimensions (article 1). The Declaration clearly identifies the main bioethical principles as classic ones – the principle of informed consent, the principle of privacy and confidentiality, the principle of nondiscrimination and non-stigmatization (articles 6, 9 and 11); and new principles such as for example the principle of social responsibility (article 14). The Declaration does not merely proclaim the relevant principles, but focuses on their

practical application and calls for "professionalism, honesty, integrity and transparency in decision-making", as well as the establishment of independent and pluralist ethics committees, which would include representatives of various branches of science and technology [32].

In the field of biomedical research at the international level, there are also a number documents of advisory nature that were developed and adopted by the Council of Europe, the World Health Organization, the World Medical Association, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and other international organizations. These documents relate both to the general issues of biomedical research involving humans, as well as more specific issues, such as research on development of a HIV vaccine, appropriate clinical practice in drug studies, protection of databases on health and human genome [30].

Monitoring the compliance with legal and ethical standards in biomedical research that involves human subjects is also carried out by ethics committees that have in their competence: ethical review of applications for named studies, monitoring of their conduct and settlement of emergent disputes.

Thus, in the USA a special department within the Department of Health and Human Services is responsible for biomedical research involving human subjects, and the Food and Drug Administration (FDA) is responsible for studies of drugs. The Civil Rights Division in the Department of Health and Human Services ensures confidentiality and protection of information. Special rules of confidentiality in research involving human subjects have been also adopted by the National Institutes of Health [12].

In Sweden, the Central Ethical Review Board and the Swedish Research Council are created and operate at the national level. The powers of these organizations are established by the Law № 2003:460 of the Ethical Review of Research Involving Humans. Provisions for the protection of personal information contained in the Law on Personal Data № 1998:204, biomaterial banks are regulated by the Law on Biobanks in Medical Care № 2002:297, and genetic studies are conducted in accordance with the law relating to the use of individual genetic technology in medical screening (1991). Control in the first of the last two areas is vested in the National Board of Health and Welfare and the Swedish Research Council that has adopted Guidelines on Research Ethics for the Use of Biobanks; and the Ministry of Health and Social Affairs and the named National Council are responsible for the genetic studies [6; 25; 28].

In Azerbaijan, fundamental changes in understanding the law took place in the 1990s after the independence. As a result of changes in the Criminal Code of Azerbaijan the article on sterilization was withdrawn and several new articles were added, including "illegal placement in a psychiatric hospital" (article 126 (2)) and "disclosure of information constituting medical confidentiality" (article 128 (1)). A list of main professional crimes is remained in the new Criminal Code of Azerbaijan, which came into force in 2001. The article on "disclosure of the information constituting a medical secret" is absorbed by the more general wording of the article "violation of privacy". In the section "Crimes against Life and Health" two new articles are introduced: "compulsion to withdrawal for transplantation of body organs or tissues of a person" and "infection with HIV of a person" [10].

In the Constitution of the Republic of Azerbaijan there is also a specific provision on the right of health protection. This article states that:

(1) Everyone has the right for protection of his/her health and for medical care.

(2) The state takes all necessary measures for development of all forms of health services based on various forms of property, guarantees sanitary-epidemiological safety, and creates possibilities for various forms of medical insurance.

(3) Officials concealing facts and cases dangerous for life and health of people will bear legal responsibility [7].

The mentioned principles are reflected in other articles of the Constitution as well: article 16 (Social development and state), article 27 (Right for life), article 39 (Right to live in healthy

environment), article 37 (Right for rest), article 38 (Right for social protection), at alias. It should be noted that some of the above mentioned ethical standards in addition to the Constitution have already found their place in the contemporary national legislation. Prima facie the following legislation acts are at the issue: "Law on the Protection of Public Health" (26 June 1997); "Law on Blood Donorship and Blood Components" (26 September 1996); "Law on Amendments to some Legislative Acts of the Azerbaijan Republic in Connection with the Application of the Law of the Azerbaijan Republic 'On Transplantation of Organs and (or) Tissues'" (20 February 2001); "Law on Psychiatric Care"; "Law on Education (Special Education) of Persons with Disabilities" (05 June 2001); "Law on the State Care of Persons with Diabetes" (23 December 2003), at alias [5;7;16].

In the chapter 4, article 24 "Patients' rights" of the Law of Azerbaijan on Public Health Protection is stated that "in case of violation of a patient's rights, he can complain directly to the manager or other official of the medical and preventive treatment institution, in which the medical care is provided, to respective executive bodies, or to court" [5, 18-21].

Recognizing the importance of judicial protection of patients' rights, special ways of protection at the same time should not be overlooked. Unfortunately, to date, it must be noted that specified in the legislation general and special ways of protection of patients' rights are not adequately spread. This is largely due to the fact that officials of the health care institutions do not pay enough attention to the development and testing of effective mechanisms for the realization of officials' essential function – protection of patients' rights.

Attempts of the modern Azerbaijani law to replace moral regulation, dooms the legislation to the loss of its functions – regulation, observance and protection of the interests of all members of the society. For example, according to the article 36 of Russian Federation' "On the Fundamentals of Protection of the Public Health" Federal Law No323-FZ, "every woman has the right to decide the question of motherhood"[27]. This example can be regarded as a manifestation of a fundamental discrepancy between laws and moral values; differences of law and morality. That is why in many countries of Europe and America, along with detailed legal regulations, there are ethical codes for professional medical associations.

In this regard, it seems urgent to use the world experience in protecting patients' rights, taking into account national specifics of Azerbaijan.

It should be noted that the main obstacle in implementation of the above-mentioned human rights, is clearly insufficient knowledge, primarily by the medical staff, of the content of the patients' rights. At the same time, the importance of this knowledge is understood by the medical professionals in developed countries, where control of human rights in health care has become as stringent as in other areas of human relations.

To conclude few important statements seem to us need to be underlined:

1. As a result of the rapid scientific/technological revolution and globalization in few recent decades, new technologies, approaches, diagnostics and treatment methods have begun to enter the fields of health, medicine and biology. This, in turn, has changed traditional ethical norms and revolutionized the centuries-old relationships in the health sector making it one of the fastest-growing fields of the economy, business and commerce, where there is a great need for legal regulation of these new relationships.

2. Medical law and bioethics are closely related to international law and human rights as modern scientific disciplines. The protection of human life and health is one of the most fundamental, ancient and fundamental human rights, which are the primary responsibilities of medical law and bioethics. Since these human rights and bioethical principles enshrined in international law are closely linked, the formation of medical law and bioethics in the legal science system of Azerbaijan must begin with the platform of international law, human rights.

3. Establishment of bioethical norms by themselves cannot be considered sufficient anymore. Clear legal mechanisms need to be developed to ensure real implementation of them.

4. Medical law has become an integral part of modern jurisprudence system. Medical law must have a place in the system of law sciences in democratic states. Azerbaijan should also include medical law in the system of national law sciences, increase work on development of health legislation, strengthening medical law and bioethics education for future lawyers and medical professionals, as well as support medical law and advocacy in health system and court proceedings.

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RULES FOR THE PROTECTION OF PERSONAL DATA IN THE U.S. LEGAL SYSTEM

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Abstract

21st century can be surely called an era of digital and technological innovations. Information technologies have deeply penetrated almost every sphere of our lives. Nowadays, information is one of the most valuable assets the state, organizations or individuals can possess. Because of the importance of data in the hands of businesses, organizations and states, collection, processing, use and retaining of personal data poses certain significant risks. To cope with unauthorized collection of data and to provide a legal framework within which operations on data may be carried out, many jurisdictions enacted comprehensive and detailed data protection acts. Unlike those jurisdictions, the U.S. has no single data protection legislation, and a mix of laws enacted on both federal and state levels serve to protect the personal data of U.S. citizens and other subjects. Also, guarantees offered by these statutes differ from one state to another, while the acts in themselves are sector-specific. Another chunk of data protection norms is based on precedents and case law. This article seeks to track the development of notion of privacy in the U.S., explore the interplay between state and federal statutes, evaluate the scope of protection and offer analysis of case law and its importance in shaping the doctrine of personal privacy.

Keywords: *data protection, personal data, personal information, reasonable expectation of privacy, right to privacy, privacy, information privacy, human rights, international law, GDPR, 14th Amendment, Safe Harbor,*

1. Introduction

The right to privacy strengthened its position in the United States at the end of the 19th century. Although the right to privacy in the United States was initially a British political legacy, court decisions in England were more conservative and cautious than those of American judges.

One of the important features of this right in the Anglo-Saxon legal system is that it was previously established by judicial precedents and legal doctrine. It should be noted that the right to privacy was not among the subjective rights provided for in the American Bill of Rights.

The doctrinal approach, in particular, the famous article "The Right to Privacy" by Samuel D. Warren and Louis D. Brandeis in the issue of Harvard Law Review dated December 15, 1890 played a crucial role in the formation and development of the right to privacy in the United States in the modern sense, and correctly identified the direction of development of the legislation of the United States in terms of privacy. Moreover, it was a major step forward in the further development of this right in both the Anglo-Saxon legal system and the continental legal system. Although the article points out that this right already exists in France and should be recognized in the United States, it draws attention to differences in methodological approaches to this right in countries with continental and common law systems.

There is no specific article in the US Constitution on the inviolability of private life. However, the activity of the courts in this country has revealed the constitutional basis for the protection of private rights in the broadest sense from the interference in certain confidential areas of private life. It is based on the protection of individual liberties from state interference and is enshrined in the Fourth, Fifteenth and Fourteenth Amendments to the US Constitution.

2. Protection of Privacy at a Federal level

In general, there is a sectoral approach to data confidentiality in the United States. There is no specific federal law that guarantees the confidentiality and protection of personal information. Instead, legislation at the federal level primarily protects data in certain sectors. Unlike the General Regulations of the European Union, the United States is based on the existence of federal and state laws, administrative regulations and sectoral rules for self-regulation. Security measures to protect privacy depend on the specific area, and there are a number of legislative acts and court precedents in this regard. These acts apply only to specific areas such as "health, education, communications, protection of children's rights and financial services or data collection on the Internet"[1] . Although at first glance, comparative lawyers have a negative attitude towards the US system on the protection of privacy, the US system of personal data protection is more reliable and sophisticated than the European system.

There is no single comprehensive data protection act in the United States. In the United States, data protection laws are inconsistent. They usually apply to government agencies, not private ones. There are some laws that regulate individual institutions, but they are very specific, that is, they apply only to a certain area or area of application. In addition to the laws, there are some precedents that comment on constitutional protection, which are also close to defining the right to protection of personal data.[2]

At the federal level, the most important laws are the Privacy Act of 1974 and the Freedom of Information Act 2000. However, they only apply to federal agencies.

The Privacy Act of 1974 defines the procedure for the processing of personal data - the procedures for the collection, storage, use and dissemination of personal data stored in the databases of federal authorities. At the same time, citizens are given the opportunity to obtain information about themselves stored in the databases of these agencies, and it is prohibited to correct, add or disclose this information without the written consent of the person.

The Freedom of Information Act sets standards for government electronic resources for the circulation of personal data. The Act allows anyone to gain access to records kept by federal agencies, with a few exceptions. Two of the exceptions provide some degree of data protection. First, access to personnel and medical records and open documents and similar documents that may openly and unjustifiably infringe on personal information, and second, access to records or information compiled for law enforcement purposes is not permitted.

Similar provisions are enshrined in the Privacy Act of 1974, although most of the data protection principles set out in the OECD Guidelines and EU directives are met, and this Act only applies to records kept by federal agencies. The Privacy Act (a) restricts the disclosure of records without the consent of one person; (b) requires that most records be kept; (c) provide the right of access and the right to make notes, and (d) allow agencies to (1) maintain records, "only collect such information about the person concerned and necessary to achieve the purpose of the agency" (2) "collect information from the entity as directly as possible"; (3) the person requesting the information, (i) the authority to inform, encourage, (ii) the purpose and (iii) the usual methods of using the information, and (4) the accuracy, relevance, and timeliness of the “name of the official and official address" (5) "to the extent necessary to ensure fairness to a person" and (6) to establish appropriate technical and administrative procedures to ensure the security and confidentiality of records and to protect against threats to security or integrity;[3] .

The protection of personal data has always been the focus of the commercial and financial sectors. Legislation in this area is constantly improving. The first and most important of these laws is the Fair Credit Reporting Act of 1970. This Act extensively regulates the collection and disclosure of information protected by credit institutions. Under the Act, credit institutions must apply "reasonable procedures to ensure the highest possible accuracy" of the information held in them, as well as provide a wide disclosure procedure for those who wish to challenge the

completeness or accuracy of any information. Disclosure of any credit report to other individuals or legal entities is prohibited.

In general, the Federal Trade Commission, an independent law enforcement agency in the United States that has become a privacy agency, plays an important role in protecting personal information. In addition, the main legal functions of the Federal Trade Commission derive from Section 5 of the Federal Trade Commission Act (1914). The jurisdiction of the Federal Trade Commission consists of identifying and prosecuting breaches of confidentiality by organizations whose information practices are considered "fraudulent" or "unfair"[4] . In this sense, the Federal Trade Commission is a broad consumer protection system used to prohibit dishonest or misleading actions related to disclosure and protection procedures for the protection of personal data.

In addition to its authority to crack down on fraudulent or unfair trade practices, Congress authorizes the Federal Trade Commission to enforce a number of sectoral laws, including the Children's Online Privacy Protection Act (1998), the Equal Credit Opportunity Act (1974), and the Fair Credit Reporting Act (1970), Fair Debt Collection Practices Act (1977) and Telemarketing and Consumer Fraud and Abuse Prevention Act (1994) should be mentioned. Several other Acts give the Federal Trade Commission, a centralized grievance and consumer protection institution, broad powers.

In addition to the legislation under the jurisdiction of the Federal Trade Commission, there are a number of other important laws in the field of sectoral legislation at the federal level, including the following in terms of protection of personal data:

• Financial Services Modernization Act (Gramm–Leach–Bliley Act (GLBA) (15 USC §§6801-6827));

• Health Insurance Portability and Accountability Act (HIPAA) (42 US, § 1301 et seq.);

• Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act);

• Electronic Communications Privacy Act (US 18 § 2510);

• Computer Fraud and Abuse Act (18 US. §1030).

Now let's interpret these laws through the prism of personal data protection. First of all, let's start with Financial Services Modernization Act (Gramm–Leach–Bliley Act (GLBA).

This Act protects the "non-public" personal data of consumers when used by financial institutions. According to the Act, "Personal data" or "Non-public personal data" means personal financial information provided by a consumer to a financial institution; information obtained as a result of a transaction with a consumer or service provided to a consumer or information obtained by another financial institution. In any case, sensitive personal information is protected. Personal information open to the public is not protected.

According to the Act, during the processing of personal data, financial institutions may, if necessary, transfer information to individual companies for the provision of financial services. Necessary personal information may be provided to credit reporting authorities or financial regulators on a legal basis.

According to the Act, a commercial organization does not have the right to transfer the buyer's personal information to third parties if the transaction is carried out legally. Compulsory measures related to the transfer of personal data are possible in case of violation of the Act. The Federal Trade Commission is responsible for enforcing consumer protection legislation, but its activities have been widely criticized.

Proponents of the Act argue that the policy of regulating personal data should include a description of the terms of use of the service in a language that is clear and understandable to the user, specify that user data is stored accurately, who stored it and for what purpose. Critics argue that the effectiveness of personal data protection depends on the ability to evade the requirements of the Act, and to increase it, it is necessary to develop methods to inform the user

about the legal consequences, as well as a comprehensive understanding of how the data will be used.[5]

The Health Insurance Portability and Accountability Act of 1996 defines personal data as follows: "protected health information" means health information that can be identified individually, except as provided in paragraph 2 of this definition, i.e.: (i) electronic media transmitted by; (ii) information stored in electronic media or (iii) transmitted or stored in any other form or medium.

Regarding the processing of personal data, the Act states that the Safety Rules set minimum requirements for all health facilities and contractors that require administrative, physical and technical security measures to protect the confidentiality, integrity and availability of data from all information processors, as well as information on safety incidents. also requires.[6]

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, initiated by Senators Conrad Burns and Ron Wyden, regulates the collection and use of email addresses. The Act covers all e-mail communications, the main purpose of which is to advertise or promote a commercial product or service, including all commercial communications defined as e-mail promoting content on commercial sites.

The Act applies to any legal or natural person who sends and sends commercial messages by e-mail. Critically, this Act gives commercial email recipients the right to require marketers not to continue to send them emails.[7] The main purpose of the Act is to cover all commercial communications designated as any e-mail message intended to trade or promote a commercial product or service. This includes all emails that promote the product on commercial sites.

The Act does not exclude e-mails between businesses, as messages sent to former customers announcing new products must also comply with the Act. It is important to note that the CAN-SPAM Act does not create the right of individual action for consumers, on the contrary, the main responsibility for the implementation of the Act lies with the Federal Trade Commission. Many federal and state agencies, along with Internet service providers, have the opportunity to apply the provisions of this Act.[8]

The Electronic Communications Privacy Act of 1986 prohibits the eavesdropping of the personal data of other persons without the prior consent of one of the parties and without the permission of the court. Prohibits the use or disclosure of any information obtained as a result of illegal eavesdropping or electronic surveillance

The Computer Fraud and Abuse Act aims to prevent and punish hacking activities, which it defines as "unauthorized access" to secure computers. In addition, the Act prohibits individuals or legal entities from leaving the "permitted" area.

The Fair and Accurate Credit Transactions Act was adopted in 2003 as a key piece of legislation designed to protect personal information related to remote services. This Act is specifically designed to protect consumers from theft and to ensure that consumer credit information is accurate. The Act requires three major credit reporting agencies in the United States to provide free credit reports to consumers once a year. To increase the security of information related to plastic cards, the Act requires retailers that print payment card receipts to use PAN truncation (personal account number truncation) so that transaction receipts do not include the full consumer account number.[9] The Act also provides for a provision that allows consumers to place fraud warnings on credit documents so that they can track certain types of purchases to protect them from fraud.

We noted earlier that the protection of children's rights in the United States is a matter of special concern and always relevant. The main normative legal act in this area is the 1998 Act on the protection of children's privacy on the Internet.

This Act regulates the collection and use of information obtained from children under 13 years of age through Internet sites and mobile applications. Congress designated the Federal

Trade Commission as the primary body responsible for enforcing the Act and authorized it to interpret and enforce the Act.

In 2000, the Federal Trade Commission announced for the first time the rules for the protection of children's online privacy in order to implement the Act. These Rules detail the rules governing the collection and use of personal information about children and about them on the Internet. This Federal Trade Commission Regulation restricts the collection and processing of personal information about children by website operators or online services when using child-centered web services. However, violations of children's rights are common on the Internet due to the development of new technologies and advertising activities.

In particular, in 2013, the Federal Trade Commission amended the Act to expand the definition of "personal information" and include permanent identifiers that identify users over time and in various online services. All behavioral ads on Internet child center services now require parental notice and consent. The Act requires websites that publish information and advertisements about children to publish a privacy policy that specifies "what information the operator will collect from children, how the operator uses such information, and how the operator discloses this information."[10]

This applies to operators of websites or services intended for children, including manufacturers of mobile applications and "any operator that knows that it collects personal information from a child." The Act also requires website operators to obtain a more secure consent method if they attempt to disclose a child's personal information to third parties or make it public.

One of the specific acts in the field of personal data protection is the Video Privacy Protection Act of 1988. The Act was passed "to prevent the illegal sale of rental recordings or video-cassettes, video games. Congress passed the Act after the publication of the story of Robert Bork's rental video during his candidacy for the Supreme Court. This creates a liability for any "video cassette service provider" that is liable for loss of rental information of up to $ 2,500 outside of normal business practices.

This Act, also known as the Bork Act, defines "personal information" as "information that identifies a person in order to request or receive a particular video material or service." The Act allows the disclosure of such information to any person with the written consent of the consumer. At the same time, the Act allows a consumer to disclose his name and address if he has "the ability to make such a statement openly and clearly."

3. The role of judicial precedents in shaping the right to privacy

Finally, judicial practice and court decisions made at different times play an important role in regulating legal relations in the field of personal data protection in the United States.

It should be noted that until the 1970s, the decisions of US courts did not provide the necessary protection of privacy. In Whalen v. Roe (1977), the Supreme Court unanimously ruled that the registration of a specific centralized database in New York State containing the names and addresses of persons prescribing certain drugs does not violate the right to privacy. The Supreme Court ruled that various types of protected privacy interests include "preventing the disclosure of personal documents." The Supreme Court also noted that in various situations, the interests of the state take precedence over the interests of the individual.[11]

Until the end of the twentieth century, information about the inviolability of privacy was not provided with the necessary legal protection in US courts. Thus, in its ruling of Whalen v. Roe, the Supreme Court acknowledged that New York State law, which requires doctors and pharmacists to report all prescriptions for certain medications to the state and keep them in comprehensive databases, does not violate privacy rights, despite protests from some patients and doctors.

Some experts have even described the US Supreme Court's decision as an invasion of privacy. However, there were many supporters of this decision. The point is that the Supreme

Court has put the interests of the state above the interests of the private life of the people in monitoring the information on drug control. At the time, there was an opinion in US society that, although some courts recognized the inviolability of personal information, courts should balance their decisions and, in any case, make their decisions independently, taking into account the public interest.[12]

In its judgment of 18 June 1981 in the case of the United States v. Westinghouse, the US Ninth Circuit Court prepared a "balance test" to be used in deciding between competing interests. When looking for such information, it is necessary to refer to some factors that need to be taken into account. At the same time, the harm that can be done to a person with subsequent statements; measures to protect information from any disclosure and issues of public interest in disclosure were also clarified in the Decision.[13]

In Katz vs. US (1967), Supreme Court ruled that the Fourth Amendment to the U.S. Constitution prohibits wiretapping without a formal warrant, although the Supreme Court ruled that "confidentiality" reasonable expectation “criterion was applied.[14] The decision in Katz v. United States demonstrated significant changes in U.S. law, as the Supreme Court reconsidered its position in its 1928 decision, Olmstead v. United States. However, the decision stated that the 4th and 5th amendments to the US Constitution were not related to wiretapping. It should be noted that the "reasonable expectation of confidentiality" test is still used to determine the limits of state control. For example, in January 2012, the Supreme Court overturned a conviction based on data from a GPS tracking device installed in a drug dealer's vehicle.[15]

In Stanley v. Georgia (1969), the Supreme Court interpreted some specific provisions of Amendments 1 and 14 to the country's Constitution as protection of privacy, especially privacy, at home (mainly in this precedent, some confidential, secret, intimate items and information should be kept at home). In Roe v. Wade (1973), the Supreme Court recognized that the 14th Amendment allowed abortion. In Eisenstadt v. Baird case (1972), the right of single couples to contraception was recognized based on the Griswold v. Connecticut precedent and the principle of equality.

In Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), the U.S. Supreme Court, based on Roe v. Wade the precedent, acknowledged that several provisions of Pennsylvania's Abortion Control Act were unconstitutional, as well as the doctor's duty to inform the woman about the negative consequences of abortion, the woman's obligation to inform her husband or parents before the abortion, and the obligation to postpone abortion for 24 hours.[16]

In its ruling, Doi v. Chao (2004), the Supreme Court interpreted the provisions of the Privacy Act of 1974 in connection with the minimum amount of compensation for violations of the right to privacy. The Supreme Court ruled that the provisions of this Act require a refund of $ 1,000 without the obligation of the plaintiff to prove the amount of damages and non-pecuniary damage, and if the plaintiff demands a large amount of compensation, the amount must be proved.[17]

These judgments have a limited scope and do not have a significant impact on the private sector, where there are many questions about privacy and confidentiality.

4. Conclusion

Under modern US law, the right to privacy is defined as the "right to be let alone." This concept encompasses a number of different rights that protect against personal interference in state relations or activities, the right of everyone to make independent decisions about their life choices. This right is not absolute. The right to privacy does not protect against certain socially dangerous behaviors, such as illicit drug use.

Thus, the development of the right to privacy in the United States has evolved from the recognition of doctrinal and judicial precedents to the formation and improvement of a system of specific legal acts that comprehensively regulate the right to privacy in various fields of human

activity. In the early stages of the formation of the doctrine of the right to privacy, the decisions of the British courts, which American authors often saw more than the British, had a serious impact on this process.

Continental law (primarily French law) also plays an important role in the formation of the right to privacy in the United States. The doctrinal impact of American law on EU legal concepts must also be assessed, as the United States already had a well-established judicial practice on the subject when the European Convention for the Protection of Human Rights and Fundamental Freedoms and the initial documents on the protection of personal data emerged.

But so far we can talk about serious differences in the concepts of the right to privacy in US and EU law. Modern EU standards place higher demands on the protection of personal data than American standards[18] .

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THE ROLE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF AZERBAIJAN IN THE APPLICATION OF INTERNATIONAL LAW

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Abstract

The domestic effect of the norms of international law does not end with the inclusion of these norms only in the constitution, the implementation of these norms, especially the application of the relevant state in the administration of justice is important. Courts play an important role in the implementation of international law. The application of international law by the courts is an important element in the implementation of international law. The activity of courts is important in determining the domestic effect of international law. In modern civilized countries, the tendency of the courts to the norms of international law has increased in the legal thinking. The Republic of Azerbaijan (AR) is also among these countries. There are many objective reasons for this. Thus, the realization of this process in our Republic is natural as a state that has supported many international agreements in the field of human rights and freedoms, integrated into Europe and built a stable, democratic society.

During the analysis of the decisions of the Constitutional Court of the AR, it is possible to observe an increase in the number of references to the decisions of the European Court. The Constitutional Court of the AR bases its position on the Constitution, as well as on the European Convention on Human Rights. Thus, it further strengthens its legal position on a specific issue. The Constitutional Court of the AR also refers to the norms of the Convention and the precedents of the European Court in its work on the interpretation of constitutional norms.

Keywords: *constitutional court, judiciary, norms of international law, human rights, legal state, rule of law, European Court, European Convention on Human Rights, precedent, legal position.*

Historical experience shows that litigation is the best way to resolve disputes and reveal the truth. However, this process takes place only when the court is truly independent, impartial and impartial. Under such conditions, the judiciary becomes an effective guardian of human rights and freedoms.

The central role of the entire legal system in civil societies belongs to the courts. It is the courts that administer true justice. The greater the prestige and role of the judiciary, the less dependent it is on the executive and the legislature, the higher the level of the rule of law and democracy in the country, and the normal level of human rights and freedoms.

The judiciary must ensure the constitutional rights and freedoms of the individual in relation to other branches of government, including its independence, high status, authority, and authority in the field of criminal justice [1, 388].

Judicial power in our republic is exercised by courts in accordance with the basic law of the country. Judicial power is exercised through justice. There are Constitutional Court, Supreme Court, appellate courts, general courts and other specialized courts in our country.

The formation of a civil society and a democratic state based on the rule of law in the AR in modern times requires the establishment and effective functioning of a mechanism for judicial protection of human rights and freedoms, which is logically strong, independent and accessible to the population. The establishment of the legal basis for the judicial protection of human and civil rights and freedoms in the Constitution of the country, the reform of the judiciary fully

guarantees the adequate understanding and observance of the values enshrined in the Basic Law [2, 57].

The country's constitution states that everyone is guaranteed the right to judicial protection (art. 60), and that a person's consent is required for his or her case to be heard in another court (art. 61). These articles are incorporated into Article 8 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights. However, it should be noted that the inclusion of international norms in the Constitution of the country means that the state undertakes to fulfill the relevant obligations, but the implementation of this obligation, ie the implementation of these norms of international law is important, otherwise these norms are declarative.

The experience of European countries (Germany, France, and Austria) shows that the norms of international law are mainly implemented in the activities of the courts, and a precedent is formed as a result of these activities. Even though dualistic European countries (Scandinavian countries) at first glance prefer national laws to international law, the supreme courts of those countries have repeatedly shown that they prefer international standards in their decisions.

In modern civilized countries, the tendency of the courts to the norms of international law has increased in the legal thinking. AR is also among these countries. There are many objective reasons for this. Thus, the realization of this process in our Republic is natural as a state that has supported many international agreements in the field of human rights and freedoms, integrated into Europe and built a stable, democratic society.

A key element of our country's integration into the single legal space was its accession to the documents of the Council of Europe, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

This Convention is a fundamental and conceptual legal act in terms of its purpose, mission and content. Thus, international rules and norms on the protection of the rights of individuals from state interference have been expanding since 1945[5, 600]. Major international human rights treaties, including the European Convention on Human Rights, state the use of remedies and the possibility of individual complaints at the international level [9, 156].

The European Court of Human Rights currently has jurisdiction over human rights and freedoms in 47 member states of the Council of Europe and 27 member states of the European Union. The European Court of Human Rights has had a significant impact on the rights and policies of European states in this area by declaring its authority to protect human rights and freedoms in a judicial manner [6, 147-148].

The European Court deals with the interpretation and application of the provisions of the Convention. This is enshrined in Article 32 of the Convention. The European Court has a direct influence on domestic law and, consequently, on the law-enforcement practices of States Parties.

The Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 25 December 2001 and its Protocols 1, 4, 6 and 7 expresses its principled consent to the recognition of the binding force of the decisions of the European Court of Justice. This event was an important step in the practical implementation of the requirements of Article 60 of the Constitution of the AR (judicial guarantees of rights and freedoms).

The Constitutional Court of the AR, in its activity is guided exclusively by the Constitution of the AR. The Constitution of the AR has supreme legal force, laws and other legal acts adopted in the AR cannot contradict it. "At the same time, the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system, and priority over the law in the event of a conflict.

In accordance with the Constitution of the AR, human and civil rights and freedoms are recognized and guaranteed in accordance with the generally recognized principles and norms of international law and in accordance with this Constitution. "Therefore, the Constitutional Court of the AR, when interpreting the Constitution in relation to human rights and freedoms, must

take into account the provisions of the Convention on protection of human rights and fundamental freedoms and decisions of the European Court of Human Rights.

In accordance with the current legislation of the AR, international treaties are an integral and integral part of its legislative system. In the event of a conflict between normative legal acts included in the system of legislation of the AR, in addition to the Constitution and acts adopted by referendum, and interstate treaties to which the AR is a party, international treaties are applied.

In accordance with Article 12 of the Constitution AR, "human and civil rights and freedoms listed in the Constitution are applied in accordance with international treaties to which the AR is a party." From this article it can be concluded that if we consider the precedents of the European Court as an interpretation of the provisions of the Convention, then they acquire exceptional importance, since these interpretations must be considered as an integral part of the Convention, and, consequently, the obligations of the state that acceded to this document.

Accordingly, it can be concluded that, like all other national courts in the AR, the Constitutional Court of the AR, in accordance with this article of the Constitution of the AR, is obliged to protect human and civil rights not only in accordance with the text of the Convention, but also with its interpretation, which given to him in judicial decisions called "precedent of interpretation." Considering the practice of the European Court of Human Rights as an effective tool for resolving legal conflicts at the national level, the Constitutional Court of the AR, while applying the provisions of the Convention, makes references to the case law formed by this international judicial body.

The Decision of the Plenum of the Constitutional Court of the AR dated 11.05.2004 states that refusal to register a legal entity without legal grounds violates the right to join, as well as the right to join a trade union. Referring to the decision of the European Court of Human Rights in the case of Sidoropoulos and Others v. Greece, the Court noted that the right to form associations is an integral part of the right to form trade unions makes.

During the analysis of the decisions of the Constitutional Court of the AR, it is possible to observe an increase in the number of references to the decisions of the European Court. The Constitutional Court of the AR bases its position on the Constitution, as well as on the European Convention on Human Rights. Thus, it further strengthens its legal position on a specific issue. The Constitutional Court of the AR also refers to the norms of the Convention and the precedents of the European Court in its work on the interpretation of constitutional norms.

Since 2002, in almost all its decisions, the Constitutional Court of the AR has referred to the norms of the European Convention on Human Rights and the precedents of the European Court, and has somehow turned those standards into a source of law.

In the practice of the Constitutional Court of the AR, the cases considered with reference to the precedents of the European Court mainly include freedom of opinion and expression, the right to a fair trial, tax liability, right to association, freedom of assembly, participation in court, right to liberty and security of person, reasonable term, sentence, etc. issues are encountered.

The Decision on the Interpretation of Articles 21 and 23 of the Civil Code of the AR on freedom of opinion and expression states that Article 10 of the European Convention on Human Rights states that everyone has the right to freedom of expression. The provisions of Article 10 of the European Convention on Human Rights formed the basis of the European Court's judgment of 1986 in Lingens' case against the Austrian State. Freedom of expression is one of the cornerstones of a democratic society and is seen as a condition for its progress and the expression of every member of society [8, 644-645].

The Decision on Article 440.4 of the Civil Code and Article 74.1 of the Law on Enforcement of Judgments on the right to a fair trial states that the experience of the European Court in this matter is also of interest. The European Court of Human Rights in its judgment of 19 March 1997 in the case of Hornsby stated that if the judicial system of the States Parties allows

the non-enforcement of a binding and final judgment of the European Court and thus the interests of one of the parties, the European Convention on Human Rights The "right to a judicial review" referred to in Article 6 will be of an imaginary nature ... The enforcement of a judgment rendered by any court is an integral part of the definition of "judicial proceedings" provided for in that article.

Provisions of the Constitution of the AR, the European Convention on Human Rights and other norms of international law, the existing decisions of the European Court on specific cases provide for the protection of property and judicial rights of individuals and legal entities [3].

The Decision on the Interpretation of Article 100 of the Constitution of the AR "… not liable to other states" states that in connection with tax liability, as in the legislation of some countries, Article 77.1 of the Tax Code of the AR considers the obligation to pay the established tax as its tax liability.

The European Court's judgment of 12 July 2001 (Ferrazi's case against Italy) stated that the material nature of the tax proceedings was clear. However, this does not imply the existence of a civil legal aspect. According to the traditional practice of the European Court, there may be obligations to the state that fall exclusively under the general jurisdiction and are not accepted as civil rights and obligations. The European Court has held that taxes are at the heart of the exclusive powers of public authorities. Although Article 1 of Protocol No. 1 to the European Convention on Human Rights relates to the protection of property, the State retains the power to enact laws necessary to ensure the payment of taxes. The European Court noted that tax disputes remain "beyond the scope" of civil rights and obligations, despite the fact that they have material consequences for the taxpayer. Thus, the European Court has accepted that the content of the tax liability does not arise from civil law relations [7, 532].

Regarding the right to join judicial acts on the complaint of E.Alizadeh and others on the right to unite, it is noted that in accordance with Article 11, paragraph 2 of the European Convention on Human Rights, this right is exercised in the interests of national security and public order, no restrictions may be imposed other than those prescribed by law and necessary in a democratic society for the prevention of riots and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. This article does not preclude the imposition of legal restrictions on the exercise of such rights by members of the armed forces, police or public authorities.

The European Court's judgment of 10 July 1998 in the case of Sidiropoulos and Others v. Greece stated the European Court's legal position on the matter as follows: "The text of Article 11 of the European Convention on Human Rights rests solely on the right to form trade unions. The right to form associations is an integral part of the right enshrined in that article. The right of citizens to form a legal entity to act together in their own interests is a fairly important aspect of the right to freedom of association, without which the right loses its meaning. The method and its application to the practical activities of the government is an indicator of democracy in the country in question. They must use methods that do not conflict with their obligations under the convention. "Restrictions on the right to association in our country are provided for in the Constitution and other laws [4].

Thus, the analysis of the decisions of the Constitutional Court of the AR gives grounds to say that the number of references to the decisions of the European Court has increased. The Constitutional Court of the AR bases its legal position on the country's basic law, as well as on the European Convention on Human Rights. In this case, the Constitutional Court of the AR further strengthens its legal position on the issue under consideration, based on the principles of the rule of law and the rule of law. The Constitutional Court of the AR also refers to the norms of the European Convention on Human Rights and the precedents of the European Court in its interpretation of constitutional norms.

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METSAMOR (MEDZAMOR) VIS-À-VIS NUCLEAR TECHNOLOGY, SAFETY AND ENVIRONMENT: "WASCH MIR DEN PELZ, DOCH MACH IHN NICHT NASS"

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Abstract

As images of catastrophe from Chernobyl and more recently Fukushima still haunt many around the globe, issues related to nuclear safety and environment appear to concern public opinion more than before. While some states have opted to cancel their nuclear projects or shut down their nuclear facilities in recent years, others still rely on nuclear energy for various reasons. For the former, it is easy to discern rationale behind such decision although nothing shall be taken for granted. For the latter, however, things seem not that easy. The main purpose of this article is to shed light on such double complexity surrounding the case of Metsamor (Medzamor) Nuclear Power Plant through analysis of civilian and military nuclear energy in national and international legal contexts. In this vein, the author purports to demonstrate that on the one hand, in its current conditions, Metsamor may appear to pose a serious threat not only to Caucasus environment and bordering countries but also to Armenian people as well. On the other, however disputed, Metsamor ensures the welfare and well-being of Armenians on their home soil. The basic idea herein, however, is not to blame Armenia and discredit the self-determination of Armenian people, but to grasp the complexity of issues surrounding Metsamor in international legal theory vis-à-vis nuclear technology, safety and environment with special emphasis on pre- and post-1989 successes and failures of nuclear framework at national and international levels.

Keywords: *international nuclear law, international environmental law, nuclear technology, nuclear safety, Metsamor (Medzamor) Nuclear Power Plant*

Introduction

In a recent (2018) documentary titled "Politics, power and pipelines", producers in Deutsche Welle have depicted national or transnational energy concerns to be intermingled with geopolitics, foreign policy, company governance and market administration with constant reference to a billiards game (seemingly a variant of carom) in the background, sometimes by flashy images, at others by balls knocking or flipping around a table randomly. Interestingly, throughout this otherwise brilliantly produced documentary, there is almost no room or little thereof for international law or any law proper across the table, however –for the producers and as for mainstream in academia– "in the great game of power and energy, environmental concerns also play an important role" just as unseen players taking shots around the table. Through our gaze however, we, the spectators enjoy the moment but remain unable to discern who is playing or even what is being played "within the limits of billiards alone" throughout the documentary. And, if we leave aside the billiards variation and return to the main theme, i.e. recurrence of Gerhard Schröder qua Nord Stream 2 Shareholders Committee Chairman (ex-Prime Minister, SPD) or Matthias Warnig qua Nord Stream 2 CEO (ex-Stasi in former East Germany), and their alleged ties with Russian counterparts, especially Vladimir Putin (who needs no introduction for obvious reasons) or being Russophiles, then all we are left with are complex set of differences in the European Union caused by German energy policy, dividing Poland backed up by the then policy of US on one hand, and Russia on the other. Conversely, the former policy's effects on dividing Russia from Ukraine and Balkans are only hinted, e.g., the former's shutting off of gas supplies to Central and Eastern Europe through Ukraine while almost concurrently Russia

making deals with Germany neglecting Poland, and penalizing the remaining Central and Eastern Europe through Ukraine in the midst of freezing winters.

So, what would be the significance of above-mentioned theme and variations, or otherwise put, how to interpret the missing reference to international law or any law in the mentioned documentary? To better grasp this missing reference, this void, let us take another example. Starting from his early compositions (e.g., Book I, op. 19b from 1829), Felix Mendelssohn – along with his sister Fanny– introduced a genre in classical music for piano, i.e., "songs without words" (Lieder ohne Worte), now almost a standard in piano repertoire and study. Distinctive quality of the genre, for Mendelssohn, has been that the latter are composed in a way for solo piano as to replace human voice which is missing, as if in the form of a 'lied' (piano and human voice) but harmonizing both the instrument and voice through representing each in higher and lower lines for piano, i.e., for left and right hand separately. In other words, rather than

(1) demanding pianist alone to follow "a third, non-vocalized vocal line" [1] through an additional line qua inner voice as Robert Schumann later did (i.e., Humoreske, op. 20, especially second section called 'Hastig' containing infamous inclusion of the third intermediate line with words 'Innere Stimme') or

(2) arranging a lied for a virtuosic concert performance for popular attraction via dominating both instrument and voice as Franz Liszt accomplished (notably, Liszt –following his master Carl Czerny– arranged several songs without words by Mendelssohn for two pianos later), or

(3) still, demonstrating pure virtuosic ability, and melodic richness by compositions dedicated mostly to piano alone but to dominate audience through the same as Frederic Chopin ably achieved (e.g., his nocturnes, waltzes, mazurkas, polkas and others frequently played in salons typical of 19th century French cultural setting),

(4) Mendelssohn only represented voice accompaniment in lied in order to replace it within the score for solo piano. Simply put, as he intended it, the idea was to express music by or "within limits of piano alone", and in a definite way rather than conveying indefinite messages to listener through "words" or suspending the "voice line" altogether. Therefore, in an ordinary performance, a pianist performing any "song without words" is expected to follow the score, and be in line with the composer's intention and opus to perform as if replacing human voice while giving life to a non-existent, unsung literary work in the piece. And, the enlightened listener in audience is expected to comprehend the meaning of piece through what is left unsung but only played along the other line. What Mendelssohn and those who developed the genre further (Fanny, Schumann and his wife Clara, or though much later, Busoni, especially the latter's 'romanza senza parole') achieved by inventing the "songs without words" is telling for the missing reference to law in the aforementioned context. But how?

1. The most sublime "song without words": Soviet environmental law and policy

The matrix on songs without words perfectly resonates with Soviet (USSR) environmental law and policy on nuclear energy [2]. On the official, formal side, civilian nuclear power production had been separated from military; and at an institutional level, the former was subordinated to the State Committee on the Utilization of Nuclear Energy and the Committee for Nuclear Industrial Safety. Further, the military nuclear power production was under the control of the Ministry of Defense and the Ministry of Medium Machine Building, being in charge of developing nuclear arms since the end of the World War II. On the other, actual, substantial side, however, senior managers of the civilian nuclear power institutions had a background experience in military side; civilian arm had been conceived as inferior to the military-industrial one; and it had been almost impossible to discern civilian facilities from that of military ones etc.

When Chernobyl (officially, V.I. Lenin NPP) Reactor 4 went out of control on April 26, 1986, for instance, it was not crystal clear that since being on line in between 1977 to 1983

respectively, the Reactors were primarily producing weapon's quality plutonium or such production was a by-product of their electricity generation. Given the fact that Reactors' model was RMBK-1000 (i.e., high power channel type reactor, a particularly Russian type and still popular), it was highly probable that the origin thereof was military production, and had a "dual-use" capacity; or, it was quite obscure whether they were under civilian or military control. And, it was dubious whether the experiment was done in the civilian framework or as part of military planning, or why such experiment took place and who ordered the test. The engineers, scientists and workers in the plant had made several complaints prior to the catastrophe, but none of them was taken seriously. On top of these, top management and senior leaders (Party) lacked the necessary and accurate information following the meltdown, and Pripyat Party Committee were missing in the most crucial time after the accident. When they acquired relevant information, they chose to power up mass media and divert the attention from the plant and what actually happened, and then the media chose to portray the events as a war against the greatest accident without precedent. Officially, the Party declared that the Soviet Union, once again, was in the service of mankind as it was in the World War II. In this vein, the official report submitted to International Atomic Energy Agency (IAEA) was based mainly on positive steam void coefficient of reactivity (i.e., improper cooling altering the balance between water and steam in the circuit and giving rise to temperature of the core, thus overheating), and focused on violations of Soviet law and poor training of plant operators [3]. In the IAEA General Conference in 1986, Soviet nuclear power plants came under public censure in the plenary; and in a special session, multilateral treaties on early notification of nuclear accidents and assistance in case of nuclear accident or radiological emergency were adopted along with proposals to scale nuclear accidents, setting an international pool for liability of nuclear operators and a general convention on nuclear safety [4]. Embracing the war theme, people gave everything they could to help overcome the catastrophe, as had always been the case. In times of openness and restructuring (glasnost and perestroika), the reasons leading to the event, situation in the plant and fate of those responsible were not disclosed; leaders, specialists, environmentalists, artists and mass media filled in their stead. Simply put, the meltdown might be the result of faulty technology, but it was more the result of inept bureaucracy.

The (selective [5]) inaptitude of Soviet bureaucracy is well known, and for a reason. At a time when it gave rise to the biggest nuclear disaster (INSE level 7 major accident, only other being Fukushima), inability of Soviet administration reached its peak. And, this had also been reflected in emergence of popular jokes [6] (i.e., anecdotes), which have been common in Eastern Europe and Russian speaking communities since time unknown. For example, according to a popular one; a Soviet newspaper reported: 'last night, Chernobyl NPP fulfilled the Five-Year Plan of heat energy generation... in 4 microseconds'. Nonetheless, given the scale and magnitude of the effects of the catastrophe in glasnost context, this discontent also contributed to the then growing popular dissent for the Party and Soviet Union in general and nuclear energy management in particular. Through breakup of the USSR, other jokes emerged aiming at the initial underestimation of the catastrophe by official Party line and media. Thus, another popular joke reads as follows: a grandson asks his grandpa: 'Is it true that in 1986 there was an accident at Chernobyl NPP?' – 'Yes, there was', answers grandpa and pats the grandson's head. 'But, is it true that it had absolutely no consequences?' – 'Yes, absolutely', answers grandpa and pats his second head. Events before, during and after the catastrophe seem to have contributed significantly to alter the popular belief on legitimacy of the system as a whole. And this change appears to have different effects and results in imperial center on the one hand, and peripheries and ethnic communities on the other.

Gross environmental damage caused by Soviet energy law and policy had been widespread, encompassing both the center and the periphery, and relatively well documented. In years following 'Atoms for Peace' (1953), scientific circles around the Union have constantly

made complaints on threats to human life and environment up until the Chernobyl disaster. As late as 1992, at a time when the Union was "in the process of dissolution", one Western commentator noted that in the Caucasus, capitals Yerevan (nuclear energy and chemical industry) and Baku (petrol) were not only heavily polluted but also were levels of birth, infant mortality rates and increased sterility rates among adults gravely affected [7]. Further, as in other parts of the Union, heavy industrialization and reckless politics of the Party, gravely affected land, sea and air, as well as human life, flora and fauna. In northern Caucasus, for example, the intense use caused heavy saturation of agricultural chemicals on land [8]. Or, in the south, Razdan River in Armenia had been polluted, as of 1987, due to hydro-electric development projects as a result of discharging 18 million cubic meters of totally untreated effluent to the river [9]. However, the most important of all, "eco-glasnost" facilitated the studies on environmental damage inflicted throughout the then almost 70 years of Communist era and their publicization. Thus, especially after 1986, "Soviet" public had grown increasingly aware of environmental damage done for decades.

2. Metsamor as a living dead: a story of double complexity

Combined with the strengthening of civil society upon "eco-glasnost", Chernobyl disaster and publicization of the pollution of Lake Sevan and Razdan River among others, in Armenia, the public discontent stemming from Metsamor (Medzamor) NPP grew rapidly hand in hand with the process leading to the Union's dissolution [10]. When the Reactor 1 of Metsamor NPP (VVER-440/270) commissioned in 1976, the West had already been experiencing a strong anti-nuclear movement. For example, local protests by ad hoc citizens' initiatives (Bürgerinitiativen) against construction approvals of a new NPP in Wyhl (Baden-Württemberg) quickly turned into major protests and demonstrations around West Germany against all planned NPPs, at times resulting in clashes between demonstrators and the police [11]. Throughout the USSR, in turn, although numbers of NPPs were much higher than those planned in the Western Europe, no significant protest or public criticism occurred. And, when they started to occur, the center had initially interpreted these as a success of glasnost and perestroika, since most of them had not involved any explicitly nationalist demand, thus threatening the Union.

In this context, turnarounds on perceptions of Metsamor between late 1960s to early 1990s seem interesting and require brief analysis. Since, in Armenia, an additional element on environmental "concerns" in Soviet Union is remarkable that (i) several attempts had already been made by scientists and intellectuals to publicize criticism directed at the environmental management in Armenia in general and Metsamor in particular; and that occasionally public protest were made already before 1986. However, the criticisms seem to gain ground only after around adoption of glasnost and perestroika, and well after the Reactor 2's (VVER-440/270) being operational in 1980. For instance, when the center had decided to build a second, larger plant near Yerevan, that plan was dropped by the center in fear of fueling an opposition in Armenia [12]. In this, (ii) the overall tolerant approach by the Armenian Communist Party seems to play a key role, particularly before Chernobyl and through the end of the Union. And, not surprisingly, nationalism imbued with environmental "concerns" was the main drive behind the stance taken by the then Armenian communist government. How? The governments were playing Armenian people's demands against Soviet "imperialist" center's directions and vice-versa, possibly to gain as much as from the center while trying to protect integrity of the Armenian polity and to retain local popular support. (iii) In 1987 and 1988, environmental protests led by non-governmental organizations (e.g., Survival=Greens Union of Armenia), against Metsamor, Nairit Chemical Factory etc. have sharply channeled into demands for Armenian self-determination [13], especially over the Nagorno-Karabakh issue (i.e., the famous slogan as to equate environmental damage with the so-called genocide). Long story short, it is apparent that the government's lack of sanction and popular support to the nationalist cause

pushed the environmental and anti-nuclear movements to background in favor of the former. And, while the center had seen the protests as a political success of glasnost and perestroika, the local communist government had gradually favored the integration of Karabakh in turn, and transforming the local government into the base of the nationalist movement itself.

But, following the changes of local leadership upon growing tensions in Southern Caucasus; formation of popular fronts; clashes in and around Nagorno-Karabakh; and expulsion of Azerbaijanis by Armenian nationalists, and Azerbaijani reaction to expel the Armenians in turn seem to led the center realize that the issue at stake was the integrity of the Union. Since Karabakh was a territory of Azerbaijan, and to avoid any large-scale civil war in the South Caucasus, Soviet army entered Yerevan and the center banned any transfer of territory [14] –as armed intervention was the case for similar situations elsewhere around the USSR particularly between 1988-1991–. The latest events, unfortunately, coincide also with the earthquake in Spitak, approximately 90 km north of the Metsamor. (iv) It is in this context that the Metsamor was "permanently" shut down by the local government to be in effect from February and March 1989. The rationale behind closing is disputed among scholars, e.g., whether it was instigated by Western pressure, local government's concession to popular demand, or requirements of safety, as shown by the earthquake, though the latter have not damaged the NPP [15]. However, both environmentalists and nationalists appeared to gain from the closure. For the former, a threat to region's environment was eliminated, for the latter a symbol of center's hegemony was over [16]. In any case, the enjoyment was short-lived. Why?

As is well-known, the popular front in Azerbaijan enacted a blockade on Armenian SSR after Armenians had surged into Karabakh (occupation of which lasted until recently) and ethnic clashes therein. The Union collapsed in 1991, and both Armenia and Azerbaijan emerged as independent states. (v) Following the independence of both, newly found Armenia sought to overcome the economic difficulties, especially after experiencing hardships caused by the virtual blockade. One of the easiest options was the Metsamor, and immediately after the independence, feasibility was affirmed with the help of Russians and the West. Finally, Armenia reopened the Reactor 2 in 1995. As of the date of this study, Reactor 1 has been inactive since 1989 (in this connection, it is also notable that projected Reactors 3 and 4 were dropped post-Chernobyl).

Reading the above lines, one might wonder if any significant resistance to reopening of Reactor 2 occurred. To the contrary, the relevant literature suggests that there had been a national consensus in Armenia that the Metsamor should have been recommissioned promptly, with the notable but insignificant exceptions of NGOs (e.g., Greens Union), intellectuals and scientists compared to popular and political currents [17]. Such insignificance is probably due to the fact that as the independence was secured, the popular belief went against environmentalists blaming them for economic crises, energy shortages and unemployment caused by the closure of Metsamor along with other industrial facilities [18]. Virtually, the only question left then was to find the financing of the reopening, of necessary maintenance, of renovations and innovations as to improve poor conditions of the NPP to which Russian Federation responded positively with funding and resources [19]. Indeed, such works were severely needed due to NPP's being inactive for several years and to NPP's design lifetime to be set for 30 years. What was the official rationale behind the decision to reopen Metsamor? As the delegation of Armenia in IAEA General Conference in 1994 put, without energy supplied by Metsamor; "severe energy restrictions imposed in recent years had exhausted all domestic reserves and now threatened the reform process..." and "numerous studies... indicated that there was no solution in the short term other than re-starting the nuclear power plant" [20].

There are several conclusions to be drawn from the tragic, if not ironic story of the Metsamor. Why? For instance, the Armenian official policy is the almost exact opposite of the line of arguments put forward by Armenian environmentalists in pre-revolutionary period, if "reform" is also conceived as "democratization" in eco-glasnost. Therefore, a brief look at some

of those conclusions would be illuminating for the purposes of this study. What happened to the Union? Looking back to the turnarounds on perceptions of Metsamor (i-v above) along with the dissolution of Soviet Union and emergence of new states therefrom, the latter seem to undermine the idea that 1989 was a "revolution". Seen from today, it was, at best, revolution without a revolution in terms of environmental law and policy in the South Caucasus polities. How? Since the underlying idea behind the commission of Metsamor and other industrial sites in the area was "development" to the detriment of "environment", the so-called post-revolutionary status quo in the region suggests that that underlying idea is still valid. Otherwise put, insofar as environmental law and policy is concerned, only the content of legitimacy has changed but the form of legality remains intact [21]. As is the case for "songs without words", the audience is expected to listen to a song, but without the constitutive, defining element of it, i.e., words or human voice.

It is in this sense that Metsamor is a living dead. It is still in operation, i.e., it is living. But it will always be dead at the same time, since it both encapsulates the failure of the environmentalist, anti-nuclear movement in Armenia, and the institutional framework that gave birth to it, the USSR. From the perspective of environmentalists, their stance contrary to popular belief crystallized. In a way, they seem to have lost faith in popular support and political action in post-independence period since what they fought for quickly overturned in the aftermath of independence, they received little financial support due to economic crises apart from international grants, top environmentalists gained positions as new government's officials, and they resumed their discourse pre-1989 to the affect that they have been seen as "too extreme and unrealistic" [22] etc. And, in my opinion, this is a perfect case for the interrelationship between form and content, i.e., the former being the utmost expression of the latter. As Geukjian put it half-heartedly, "the movement was environmental in form but national in content" [23]. Therefore, when the national content was put at its extreme, it appeared in national form and quickly reversed environmentalism, i.e., all transformed into environmentalists without environmental form. How this happened? In my interpretation, the environmentalists have not faced the fact that their own acts (pre-revolution) ultimately resulted in the situation of which they complain (post-revolution) [24]. Perhaps, this is the explanation why officials and agents in the process of Union's disappearance have found their proper place post-revolution, e.g. (Mikhail) Gorbachev (no introduction needed) or others cited at the introduction of this study, as well as environmentalists from pre-revolutionary Armenia as suggested above. And, is not this a lesson for environmentalism, in turn: in Armenia as elsewhere, injection of nationalism into environmentalism resulted not in overall nationalization of environmental discourse but in environmentalization of the concept of nation to the detriment of environmentalism itself.

3. **Shifting perspectives I: Atoms for Peace to 3S-Concept – safety-security-safeguards**

It is well established under international law that rules, principles and standards applicable in times of peace differ from those applicable in times of armed conflict (i.e., international and non-international "war"). The underlying difference between war and peace has also been the case for nuclear energy in international law, i.e., peaceful nuclear energy and nuclear weapons [25]. In the case of so-called "international nuclear law", however, these two concepts have a peculiar relationship [26] and conditioned historically, which prompts a brief insight for the purposes of this study. It is in this context that I will be shifting the perspective from USSR to US and other states in Cold War and post-Cold War periods, touch upon the US law and practice of regulatory bodies along with other branches of international law, and from Chernobyl to other accidents, especially Fukushima.

In the standard narrative, when 'Atoms for Peace' plan propounded by US President (Dwight D.) Eisenhower in UN General Assembly was put into action through establishment of

the IAEA, the basic understanding was "to promote disarmament by an indirect approach, that of building up the peaceful uses of atomic energy" [27]. How? As is well known, the use of nuclear energy for military purposes precede that of the same for peaceful purposes, e.g., to generate electricity. The military use of nuclear energy had started with Manhattan Project and culminated in bombing of Hiroshima and Nagasaki, ending the World War II. However, up until the Atoms for Peace, US had pursued a policy of military hegemony and commercial monopoly [28] in nuclear technology. In turn, after successfully detonating atomic bomb in 1949, Soviets too, followed a policy to monopolize the technology in the Eastern bloc. On international plane [29], the former initially put forward the so-called Baruch Plan (1946) in UN Atomic Energy Commission. According to Baruch Plan (based on US Acheson-Lilienthal Report), an international body would have been vested with powers to control all nuclear energy activities potentially dangerous to world security so as to complement UN Security Council's mandate but giving no right to veto in cases of violation; to control, inspect and license all other atomic activities, to enjoy exclusive right to research atomic explosives and to produce and own fissionable material; and the duty to foster beneficial uses of atomic energy, to survey supplies of nuclear material and bring these under its control in return for all nations' grant of freedom of inspection for the body as it may deem necessary. But, the transfer of the then existing technical information, the destruction of existing nuclear arsenal and cessation of production of atomic weapons would follow only effective operation of the Plan.

As might be expected, the USSR rejected Baruch Plan. For the latter, it was not only contrary to the UN Charter (especially insofar as veto rights in Security Council are concerned), but also an intervention to national sovereignty. The Soviets, in turn, put forth the so-called Gromyko Plan (1946), under which production and use of atomic weapons would be banned and the then existing atomic weapons would be destroyed whereby violations would constitute a serious crime against humanity and severe penalties should be provided by internal legislation. Interestingly, the projected international body would be formed on a special convention and within the framework of Security Council in a way to make recommendations thereto on violations of convention on prohibition of atomic weapons and convention on control of atomic energy. As UN General Assembly approved Baruch Plan in 1948 by Resolution 191(III), US plan transformed into 'UN' plan for control of atomic energy but without making any change in situation on the ground.

When the UK detonated its atomic bomb in 1952, US double policy of military hegemony and commercial monopoly was shaken. Was not the Manhattan Project tied with Tube Alloys Project, and depended upon political arrangements of 1943 Quebec/1944 Hyde Park Agreements for nuclear scientific collaboration, combining nuclear arms efforts of US and UK (along with Canada)? It is in this context that US proposed Atoms for Peace in 1953. So, what did Atoms for Peace stand for [30]? In short, the proposal as it was put in action, included (i) transfer of technical and scientific information on nuclear technology and of nuclear material to other states (ii) through and under the control of an international body for peaceful purposes in exchange for (iii) safeguards against their diversion to military use.

The above scheme has all the basic elements of international nuclear law in action today: first set related to peaceful use is "safety regime" while the second is "safeguards regime", and that international body is "IAEA" [31]. However, through putting the plan in action several developments deeply affected the plan's crystallization through the end of 1970's. For instance, while upon UK-US bilateral agreement in 1958 [32] both parties agreed to disclose certain nuclear technology information to each other; already between 1953 and IAEA's formation in 1957, France had been developing nuclear capability independently, as had been the case for China. Almost concurrently, the first nuclear power plants for electricity generation (so-called 'Generation I' NPPs) were commissioned. Among these, Soviet Obninsk NPP (operational in 1954), dual-purpose UK Windscale/Calder Hole Power Station (commissioned in 1956), US

Shippingport Atomic Power Station (started in 1957) are included, and others followed suit. Throughout the 1950's, one of the fundamentals underlying US double policy was to prevent unintended results of technology transfer. In that context, for instance, at an informal level, uranium producers were convinced by US to supply such material only to those states under IAEA regime. Soviets, indeed have benefited from the information released by US through IAEA in designing NPPs (particularly VVERs), especially after 1960's. In turn, following the Cuban missile crisis (1962), the Union feared of Chinese nuclear project (which developed atomic bomb in 1964) and have started bilateral negotiations with US on reductions of nuclear arsenals of each side (so-called transition from "deterrence" to "détente"). France successfully developed its nuclear device by 1960 and by then, it was already clear for France and other West-European states that nuclear energy had been the way ahead for cheaper energy (a recurrent theme for nuclear policymaking, governance, lobbies and companies) and European integration is conditioned thereupon. The latter is evinced by EURATOM –an institution initially opposed by UK and USSR, and currently seen as a debilitating, if not defunct, factor in European integration– which performed safeguard inspections initially independently from and in parallel with IAEA and, later in the 1970's, under the control thereof (therefore, no EURATOM state has been under direct control of IAEA).

Therefore, the interrelationship (merge, convergence) between war and peace in international law has acquired a peculiar meaning in the context of "international nuclear law", and the two of the three pillars of the so-called '3S-Concept' (safety-security-safeguards) approach is built upon this premise [33]. With these in mind, it is worth noting that the merge of war and peace in international nuclear law have been complemented in several ways and by several instruments along with the addition of "security regime", to both of which we turn below.

Notably, throughout the expansion of nuclear technology for peaceful purposes over the globe, both US bilateral agreements, and US law and its underlying regulatory framework for privatized nuclear energy sector set the backbone of national and international standards and practice in safety and safeguards regimes, for individual states (e.g., Spain, Belgium) and international organizations, IAEA [34] and EURATOM [35] in particular. In this connection, it is not surprising that at both national and international levels, safeguards and safety regimes have been conceived as complementary to each other [36]. While the former secured nuclear technology and material to be accountable at every phase of nuclear energy production, the latter ensured standards which would protect industry, human health and environment especially against nuclear accidents. Nevertheless, as plurilateral negotiations between US, UK and USSR culminated in the Treaty on Non-Proliferation of Nuclear Weapons [37] (NPT), the divide between nuclear-weapon and non-nuclear weapon states institutionalized in a way to allow nuclear-weapon states, i.e., US, USSR, UK, France and China (the latter two acceded in as late as 1992), to voluntarily submit their civilian nuclear programs under IAEA verification as if switching from safeguards regime to safety regime and at their own discretion. And this they all did. Additionally, the division created between states implicitly recognized formal consensus on states outside these regimes (e.g., North Korea after 2003) or so-called non-state actors (e.g., "terrorists"). When India, for example, a non-party to NPT, developed its bomb rather unexpectedly in 1975, US and other nuclear-weapon states initiated or transformed complementary mechanisms, listing sensitive items, producing guidelines to prevent nuclear technology and materials ending in "wrong" hands, e.g., Nuclear Suppliers Group (London Club), Zangger Committee, Wassenaar Arrangement. In addition, unilateral measures have always played a key role in the implementation of safety, security and safeguards regimes. Typical example of the latter has been sanctions envisaged by US based on Nuclear Non-Proliferation Act of 1978 [38]. In terms of protecting NPPs and transportation of nuclear material from criminal acts or attacks, in turn, an international agreement for physical protection of nuclear material was adopted in 1979 [39]. As Braithwaite & Drahos put succinctly, if safety regime including but not limited to

technology transfer was the carrot, the stick of nuclear power politics backed by US trade and military sanctions have always been held [40].

On safety regime side, the significant challenges to the above-mentioned scheme of rules, standards and sanctions came from mass movements and privatized nuclear energy sector. For the three, it is not exaggerated to say that all are interrelated and the noteworthy challenges almost always came by disasters following nuclear accidents. And, every accident and following disaster resulted in tuning to a new reality. In this vein, one of the shortcomings of any research into this area is the secrecy surrounding the nuclear industry complex. Why? Because such nuclear accidents might have been and may be kept away from public eyes. Well before the Chernobyl, for instance, the disaster caused by an explosion of nuclear waste in Kyshtym (INSE level 6 serious accidents, near Chelyabinsk in Urals) around 1957 surfaced only after the then in-exile (Zhores A.) Medvedev's mentioning it to British reporters in 1976 and following publications. But it took Soviet Union to recognize it until 1989 while US and UK, though aware of the accident, declined the facts for a long time and helped USSR. Would Kyshtym "accident" have affected the Atoms for Peace deal? We may never know. However, it is true that "given the public nervousness over nuclear power, no government wants to be the bearer of bad tidings, even if the trouble was not on its territory" [41]. With this policy in mind, the governments' response might have been creation of secret, undisclosed side of industrial complex to enable nuclear establishment to function properly and without interruption. The Soviet solution was probably the invention of Ministry of Medium Machine Building, KGB-led counter-espionage while its Western counterpart was privatized nuclear energy sector, well capable of self-regulation and organized around "shared fate". Even, in some cases, international cooperation on covering up catastrophes like Kyshtym is extremely intriguing. And, is this not the other aspect of the "songs without words", i.e., top government officials knew that the "human factor" has been prone to accidents in nuclear technology, but at an official, formal level, or before the audience, authority and responsibility laid elsewhere, e.g., on nuclear technology itself.

4. **Shifting perspectives II:** **US nuclear law and policy – development-disasters-environment**

In comparing regimes of safety, security and safeguards, it is discernible that the US nuclear law and policy affected and shaped each level and every actor, especially in terms of international standards, rules and principles as a whole. So, factually, what is the significance of US nuclear law and policy at both formal and informal levels for nuclear framework in general? The US civilian nuclear industry complex might be illuminating in this aspect. In fact, as of 2020, US has approximately a quarter of the NPPs all over the world (94/443); internal electricity production share thereof has been around 20% at least since 2000 –high in comparison to territory/population–; and internationally, US design pressurized water reactors (PWRs) – along with its Russian design counterpart (VVERs) – are over 60% (302/443) of total NPPs (as per data provided by IAEA PRIS). To better grasp how nuclear framework is shaped and applied, let us now turn to US nuclear law and policy more closely.

One of the drafters of the report which formed the basis for Baruch Plan was the head of US Atomic Energy Commission (AEC), (David E.) Lilienthal. AEC came into being after World War II as the heir to the former military administration of "atomic energy" [42]. The so-called Atomic Energy Act of 1946 included only government-related nuclear activities and excluded any possibility of civilian nuclear production, e.g., substantially envisaging rules and prescriptions for control of technical information (Sec. 10 et seq.). In other words, in US, the information on nuclear technology were initially confined to military and senior management, then, substantial portion of it were transferred to AEC. It is only after Atoms for Peace that US needed privatization to operate the plan as projected at both national and international levels. The correlative instrument of Atoms for Peace is thus the Atomic Energy Act of 1954, which, at its

core, ensured disclosure of nuclear information with and distribution of nuclear material to national private companies and foreign entities under strict conditions [43]. Upon agreements with UK and original states forming the EURATOM, as mentioned above, the conditions were loosened by 1958 [44]. In turn, when US private sector embarked on forming reactors around US and globe, nuclear accidents followed, e.g., Idaho Falls in 1955 and 1961. Gradually, these resulted in public discontent and protest even among site personnel [45]. But these also have negative impacts on the industry itself. In financial terms: insurance companies in 1950's were only willing to insure nuclear plants to maximum $US60 million, whereby as late as 1964, AEC studies demonstrated that the damage might result minimum $US17 billion [46]. In response thereto, US has introduced rules to cap the liability of nuclear operators since 1957 [47] (total sum of $US560 million) and at an international level, the policy and basic principles of evolving US law gradually transformed into agreements initiated by the IAEA and the OECD though lowering the cap [48]. With growing public concern and movement against AEC regulatory activity, functions thereof have been split between Energy Research and Development Administration (part of Department of Energy since 1977) for industrial development on the one hand, and Nuclear Regulatory Commission (NRC) for regulation functions on the other [49]. To this date, outline of the US administrative-regulatory structure has been instrumental in shaping the formal part of safety regime at national and international levels.

On the informal part, privatized nuclear energy sector, in turn, nuclear operators formed the Institute of Nuclear Power Operations (INPO) following the highly popularized disaster of Three Mile Island (INES level 5 accident with major consequences, Pennsylvania, 1979). After Chernobyl, the model of INPO was instrumental in the establishment of World Association of Nuclear Operators (WANO) in 1989. As the handling of disasters, critics of regulatory activity in US and bureaucratic inaptitude of USSR suggest, both non-governmental organizations have arisen out of so-called "inefficiency" of governmental activity, conscious of "shared fate" between "hostages of each other" [50]. Both, especially WANO, purported to develop gradually a "nuclear safety culture" all around the globe, applicable to all nuclear reactor types and with due regard to broad but categorical membership (Atlanta, Moscow, Paris, Tokyo regional centers with London coordination center, involving 5 different categories of membership) [51]. In comparison to seemingly "tough and tight" but "counterproductively prescriptive" NRC regulations; or general, often too broad or abstract IAEA standards based on "minimum criteria", "hardware focus" and "rule application", INPO and WANO have become "serious, well-resourced and moderately effective" in standardization through focusing on "continuous improvement", "software focused risk analysis" and "nuclear professionalism" [52]. The efficiency of movement away from formalism is also attested by recognition of "safety culture", e.g., by the insurance companies which complement liability caps [53]. The same understanding has also been absorbed gradually by the IAEA itself through "consensus building", "international safety culture" etc. since Chernobyl [54]. How? In this context, safety regime purports to ensure protection of people (onsite and offsite) from harmful effects of ionizing radiation. Standard-setting establishes fundamental principles, requirements and measures to control radiation exposure of people and release of such material to environment. Complemented with security regime, the standard-setting helps harmonization of national legislation and treaty provisions are complemented by regular meeting of states parties and Codes of Conduct endorsed by IAEA General Conference. Standard-setting operates at three levels: fundamentals, requirements and guides. More detailed practical guidance on commendable technical requirements is provided by national or international organizations. Member states report to IAEA, and the latter conducts review and inspection as well as WANO. OECD and IAEA support joint projects and all interact through several channels, e.g., that of WANO [55]. And, at a more "formal" level, this understanding is essential to the so-called 3S-Concept, which provides national legislators with implementing international standards through a guidance to three technical areas which need to

be addressed, in turn, "in establishing an adequate legislative and regulatory framework to ensure the peaceful uses and prevent the non-peaceful uses of nuclear energy...; namely, safety, security and safeguards" [56].

The other noteworthy element on the informal part is mass movements [57]. As it is seen in the context of dissolution of USSR in general and Armenia in particular, or in the case of US industry's early bloom after Atoms for Peace, one of the counterbalancing or stimulating factors of changes in nuclear framework has been mass movements (environmentalism, anti-nuclear movement etc.) at national and international levels. This is due especially in relation to major or minor nuclear events (incidents, accidents), and at a global level –bearing in mind that media has always been a key actor–. Examples include not only non-licensing new plants, enacting moratoriums or "changes" –public attention is slippery– in "governance" but also phase-out or non-operation of NPPs. In this vein, it is worth noting that pertinence of these movements generally includes adoption of better practices, adjustment to newer rules, raising the standards if not aiming at total abolition of nuclear energy. In Europe, for instance, Austrian and Italian cases of nuclear phase-out are extremely intriguing examples [58]. Mass movements in this sense and especially in the West or "Global North", have been relatively effective, common and politically active. At an international level, this is also attested by OECD and IAEA standard-setting as well. Nonetheless, in my opinion, success of mass movements is questionable [59] on the safeguards side as seen in notable examples, e.g., bringing question of legality of nuclear arms before the ICJ in 1993 to 1994 through UN General Assembly and World Health Organization [60], and adoption of Treaty on the Prohibition of Nuclear Weapons in 2017 [61].

What the safety regime experienced in relation to Fukushima Daiichi nuclear accident (INES level 7 major accident, near Okuma) is probably best understood in comparison to what the safeguards regime experienced during and after Operation Iraqi Freedom. As is well known and in contrast to Chernobyl, the accident occurred at the Fukushima Daiichi NPP (including 6 reactors, 2 projected for construction in 2012 and 2013) right after and mainly caused by Tohoku earthquake and tsunami on March 11, 2011 [62]. The earthquake covering a vast area around eastern Japan was of a high magnitude, i.e., M9.0, and caused loss of all off-site electrical power affecting all Units (Reactors) 1-6. To this, the NPP responded as intended and so did the personnel. And, in a short period of time, waves of tsunami between 4-15 meters in height swept and inundated the NPP despite seawalls. Though accounts of IAEA and Atomic Energy Society of Japan differ on the details of the events, it seems obvious that some Reactors lost all power (station blackout), cooling systems were defunct, 1-4 were extremely damaged, and though 5-6 were shut down due to a regular inspection both went out of order critically. Among the former, 1-3 were partially meltdown and 1-4 have released radiation to the environment in the following days, which had been under severe effects of the preceding natural disaster.

Although the main cause was a series of natural events, a US study demonstrated that the results were aggravated by factors relating to management, design and operation of the NPP even though onsite personnel reduced severity and magnitude of offsite radioactive release [63]. In another account, however, government, TEPCO (the then operator of the NPP) and other relevant actors were unprepared for a so-called "cascading disaster" [64]. The media, nearly immediately after the accident, reported that back in 1990's, NRC has already conducted studies as to risks caused by earthquake-induced on and offsite power failures. Later studies indicated that previous studies on earthquake and tsunami were ignored by government and TEPCO; the two knew that choice of locations for sites had been extremely risky; or, concerns arisen during the construction that backup power systems were prone to flooding were dropped by the same. IAEA and other organizations modified their technical standards taking lessons learned into consideration. Around different corners of the globe, anti-nuclear movement arose again and nuclear phase-out plans invaded the public opinion. Several NPPs around the world were immediately shutdown. Most notably, as early as June 2011, German Bundestag voted in favor

of a law envisaging complete nuclear phase-out by 2022 and decided that shutdown reactors shall remain closed [65]. However, this was not the case for some others, e.g., India, Russia, US, Turkey, which provided for commission of new NPPs. As the Japanese authorities evacuated the infected zone and even considered evacuation of one of the most densely populated areas of the world, i.e., Greater Tokyo Area, gone are the "serious, well-resourced and moderately effective" standardization. And, today, equally gone are concerns related to what Fukushima accident represents.

In this vein, Fukushima is a prime example whereby different fields and topics of international law, e.g., due diligence, precautionary principle, state responsibility, in relation to various concepts, e.g., development, disasters, environment, might be analyzed. In this sense, lessons from Fukushima might result in more questions than it may answer. From the perspective of development, self-determination, disasters and international lawmaking, for instance, given the fact that safety regime comprises international agreements containing broad principles, vague regulations and flexible mechanisms, do so-called "developing" or "least developed" states still be required to abide by more strict international legal rules to be adopted by a new agreement, although "developed" states, such as Japan, has neglected, if not violated the former? [66] Connectedly, will NPP financing be affected after Fukushima in relation to international investment law, and if so, what would be possible consequences? [67] Still, as another example, although "generated a certain ambivalence due to vagueness of its provisions, and its poor enforcement mechanism", does or should 1994 Convention on Nuclear Safety provide sufficient legal basis to hold Japan or any other state in the future responsible, and is it still "a law in the making–and a difficult making indeed"? [68] Or, is it or should it be possible to bring a dispute against a state in relation to a nuclear accident caused by that state's "non-compliance" with relevant rules, principles and standards, especially given the fact that state practice and precedent are still scarce? [69] Or, what would be legal consequences of emerging rules and principles on protection of persons in the event of disasters and especially with regard to human rights in particular? [70] These and others are worth asking, but their answers lay beyond the limits of this study.

Conclusions: How to see Metsamor?

Metsamor NPP is operated by state-owned CJSC Haykakan Atomayin Electrakayan and is the most important national energy source in today's Armenia. When Reactor 2's 30-year lifetime was about to expire, the government proceeded with the extension option in 2014 [71] (until 2026), probably after failing to attract foreign investment for a new nuclear plant other than Rosatom and at a time when Reactor 1 was being decommissioned. As of 2015, almost two thirds of total gross energy production in Armenia (30.46/46.38PJ) were provided by the NPP (as per data compiled by IAEA [72]), the other major provider being hydroelectric power plants (7.96PJ). In 2019, in turn, around 27% of electricity produced in Armenia came from the NPP (which have never dropped below 25%). 2015 also saw the maximum amount of generated electric energy (2.79 billion kW/h), but this only indicates how Armenia was and is away from meeting the domestic energy demand without Metsamor. To give an overall idea of Armenia's dependency for nuclear energy production, in 2000 and 2018, the rates were nearly identical (the former, 22/27.01PJ, the latter 25.25/37.93PJ). However, these rates were well below the domestic energy demand (in 2015, 30.46/132.72PJ). To meet the demand and keep up with the overall energy consumption, around 35% of which belongs to Yerevan, Armenia imports gas and oil products which provide, as of 2015, around 63% of total consumption (86.64/132.72PJ). Since 2000, the overall ratio of external dependency indicates, however, that it is around %68, which is relatively high and signals an ever-growing foreign debt. Further, the export products are not exclusively oil and gas, since Armenia is not producer of nuclear material itself, it is depended upon export of nuclear fuel from Russia (TVEL, Rosatom's fuel branch). Reactor 2 has

around 375 MW(e) capacity, and it is one of the oldest versions of VVER-440 technology. In remedying this, IAEA have actively involved in improving and maintenance works since reopening in 1995 but modernization is led by Rosatom since 2017 [73]. Additionally, Armenian governments at least since 2007 intend to build a new reactor. The projected 1060 MW(e) unit (at least VVER-1000/392) with a service life of 60 years is being developed in joint venture with Rosatom (CJSC Metzamorenergoatom) as well [74].

The NPP site is located in Ararat Valley, almost adjacent to Turkish border (16 kms) and around 30 kms to the west of Yerevan. When USSR Ministry of Energy approved the technical specification, around 20 possible sites were considered and the present site was elected. Soviet authorities were aware of the high level of seismicity, and initial design of VVER-440/230 was developed to VVER-440/270. IAEA data suggests that the site is not built on a tectonically active break as demonstrated by investigations of Atomenergoseismoproject (established in 1983). IAEA data submits further that reactor and auxiliary buildings, ventilation stack, and buildings and structures containing equipment and instrumentation of safety systems or safety-related on-line systems and communications connecting these structures were assigned a category of high importance, and designed to have one point more seismic resistance than overall site. Recent IAEA reviews, as well, seem to find that additional improvements have been made in several areas [75]. However, Metsamor NPP is the first and sole plant Soviets have commissioned in an area of high seismicity and they were aware of it [76]. In another account, the design and planning of Metsamor was and is faulty, and this has been known since the project's first official recognition in 1966, e.g., lack of a containment vessel [77]. Besides the EU and Greens Union opposition to furthering nuclear option, it is apparent that the siting of the NPP is highly questionable in terms of being in the vicinity of dense civil population, as it was for Chernobyl or Fukushima. Since the NPP is located near densely populated areas at the intersection of several bordering states, any release of radiation or nuclear accident might affect around 20 million people. Moreover, Ararat Valley is extremely risky for any nuclear power plant insofar as seismic activity, strong winds and floods are concerned. As of 2008, for instance, it is reported that the NPP had been designed to resist a maximum grade 7 seismic activity, although the activity may rise up to 8-9 grades. Coupled with the fact that the same region includes watercourses, large HES and reservoirs, several chemical and mining facilities, and vulnerable infrastructure, level of the risk concerned is higher [78]. It is also worth noting that nuclear fuel cycle and particularly waste stream of the NPP may casually damage flora, fauna, air, land and watercourse, e.g., Aras River. Simply put, Metsamor causes a serious risk not only for Armenian people but also for the peoples of bordering states [79]. And, the risk is not comparable to the benefits it provides Armenia with in terms of electricity demand, generation, consumption. And, this, in turn, is the song without words of the South Caucasus. Since, every state, actor and people involved in it, even not admitted openly, is aware of it.

This study has aimed at demonstrating that strong Russian presence in the energy field in and around Central and Eastern Europe, Balkans and in 'Transcaucasia' is not only historically conditioned on the Soviet experience but also the role Russians played in the development of civilian and military nuclear framework at an international level. In the case of Metsamor, the void created by the disappearance of the Party seems to be filled in by company technocrats, bureaucrats and politicians in the region in a way to function as a 'block' what once prevented furtherance of heavy industrialization along with nuclear energy through the end of 1960's to eco-glasnost of 1980's and breakup of USSR. Today, Armenian government, openly or secretly, is in a position to make and arrange deals, to attract Russian capital and participates in the global web of civilian nuclear framework. The "deadlock" Armenians felt around 1989-1995 (e.g., likening the environmental situation to so-called genocide) has been swept away through this process (e.g., in the wake of economic and human catastrophe caused by energy shortages it is

better to escape into already given solutions against which independence is gained). And, I sense that other versions of that "deadlock" is felt around the region as well and in different forms.

However, as the analysis in this study –through shifting perspectives– also has attempted to demonstrate, civilian and military nuclear framework of rules, principles and standards at an international level, have emerged not out of producing solutions "together" to common problems faced. In the case of Chernobyl, it signifies not only another chapter in the path to dissolution of Soviet Union but also paved the way for leaving the culture of "formalism", i.e., rule-compliance model based on application of minimum standards enshrined in US dominated rules, principles and standards at a national and international level by nuclear operators to a "continuous improvement", i.e., 3S-Concept in governance of nuclear technology, material, plants and programs but centered on operators and based on an understanding of community of shared fate, being hostages to each other through local, regional and global networks and harmonization. In my opinion, the scandal of the former framework in the context of USSR was made explicit, somewhat paradoxically, by Chernobyl, and the latter with Fukushima at a global level. Take the example of the element of seismicity in siting of NPPs. Going through most of the relevant IAEA treaties, codes of conduct and corpus of standards, i.e., fundamentals, requirements and guides or WANO Principles on Healthy Safety Culture; it is impossible to find a "rule" in the sense of subjective right (subjektives Recht), i.e., warranting rights and obligations for subjects, governing the relations thereof and consequences of their acts, omissions and actions [80]. This trend or process, in my opinion, correlates or at least comparable to what have happened to safeguards regime in terms of use of force (or rather violation of it) in the Operation Iraqi Freedom to the detriment of international community, UN Organization and IAEA [81]. Within this framework, the environmental and health concerns, in the sense of emerging field of international disaster law and international environmental law, seem to vanish in favor of promotion of clean, peaceful, civilian nuclear energy in the face of global warming, i.e., climate change. And, it is in this context that the logic of "songs without words" meet with a remark by pre-Kant philosopher (Johann Georg) Hamann on a pamphlet by (Moses) Mendelssohn in discussing nature, logic, law and justice, "Wasch mir den Pelz, doch mach ihn nicht nass! [Wash my back, but don't get it wet!]".

Nonetheless, as the cases of Chernobyl, Fukushima, Kyshtym and other incidents or accidents underscore the significance of nature, "natural" disasters, e.g., especially in the form of earthquakes, in comparison to "human-made" disasters, e.g., inaptitude of Soviet bureaucracy, cannot be emphasized enough. As mass media hinted time and again following the Fukushima disaster, in the context of US governance of civilian nuclear energy, an NRC reported already about the high risks posed by seismicity in siting of NPPs [82]. And, it is the contribution of media, mass movements and NGOs for disclosing nuclear incidents or accidents, e.g., Kyshtym, that today it is almost impossible for states to cover up such disasters. In my opinion, the above-mentioned are extremely crucial in conceiving the environment in terms of nuclear framework and though not recognized as a human right itself, in the words of the ICJ, which "is under daily threat and... nuclear weapons could constitute a catastrophe for the environment..." since it "is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligations of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to environment" [83].

And, in my opinion, this is attested also at the international legal level for an international cooperation based on "shared fate". For instance, in state practice, it is not uncommon –even before Chernobyl– for border states to conclude bilateral agreements, e.g., governing the burden sharing of risks emanating from a nuclear power plant near the frontiers, exchange of information pertinent to NPPs etc.[84] But in the case of Metsamor, under current political,

cultural or economic circumstances it is almost impossible to achieve such an agreement. How would not it be? [85]

Still, since Armenian government purports to build a new unit in the NPP, gradual implications may result therefrom. Nonetheless, no environmental impact assessment has been made or, even if it has been made, was not made available to public as far as I was able to ascertain and though bearing in mind that 1994 Convention on Nuclear Safety makes reference to "environmental impact" only in terms of timing of the shutdown of an NPP while implying at a discretion of the state of which territory that NPP is located at [86]. It is in the above-mentioned senses that, in my opinion, attempts made at searching for gaps in 'legal framework' [87], as this has been the case for quite some time, is not logical nor productive. Insofar as 3S-Concept based nuclear framework is concerned, there is no gap, it works as intended, it is how the framework is designed. Since no state has been held responsible for nuclear accidents causing damage to the environment or human life, in turn, bringing a state before an international court or tribunal does not resolve the issue either [88]. However, these do not mean that there are no other legal problems surrounding the responsibility or liability in the context of international nuclear law. How? For instance, in terms of liability of a state from nuclear activities, including but not limited to nuclear testing, and individual indemnification, there are scarce but illuminating examples although dependent on the varying regional contexts [89], similar to the case for international investment law [90].

One of the underlying issues touched upon in this study is pertinent to multiculturalism. Though this should not to be confused with undermining oneself or the other. Multiculturalism, as we conceive and attempted to reflect it throughout this study, is not "respect for the Other's specificity" but rather to try to generate an "authentic communication" in a way to point out to "the deadlock which hampers me is also the deadlock which hampers the Other" . And that perfect example of deadlock is provided by Turkish Government's decision, albeit in a different context than that of Metsamor NPP, to venture into nuclear energy, in collaboration with Rosatom in Akkuyu NPP (VVER-1200/513 Reactors 1-2, Mersin), which is also located in an area of high seismicity.

References:

1. For such interpretation of *Schumann* and my overall approach throughout text, please *see and compare* esp. the excellent analysis provided by Slavoj Zizek, *Nato as the left hand of the God?*, *in* FROM MYTH TO SYMPTOM: THE CASE OF KOSOVO, at 47f. (Slavoj Zizek & Agon Hamza eds. 2013).

For references, *cf.* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).

2. In the following, I rely on the excellent study by BARBARA JANCAR, ENVIRONMENTAL MANAGEMENT IN THE SOVIET UNION AND YUGOSLAVIA, at 323-331 (Duke Univ. Press 1987). *But see also* Tamara C. Gureghian, *Medzamor: Weighing the Reopening of Armenia's Unstable Nuclear Power Plant and the Duties of the International Community*, 5 VILL. ENVTL. L.J. 163, at 166-173 (1994).

3. For the report, *see The Accident at the Chernobyl' Nuclear Power Plant and Its Consequences* (Aug. 1986) available at <https://inis.iaea.org/collection/NCLCollectionStore/_Public/18/001/18001971.pdf> (last visited Dec. 16, 2020).

4. Convention on Early Notification of a Nuclear Accident, Sep. 26, 1986, IAEA Doc. INFCIRC/335 (Nov. 18, 1986); and, Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Sep. 26, 1986, IAEA Doc. INFCIRC/336 (Nov. 18, 1986). In 1990, IAEA adopted International Nuclear and Radiological Event Scale (INES) for event communication, and in 1994 the general convention on nuclear safety was adopted, *see* Convention on Nuclear Safety, June 17, 1994, IAEA Doc. INFCIRC/449 (July 5, 1994). For the supplementary liability agreement, *see* Convention on Supplementary Compensation for Nuclear Damage, Sep. 12, 1997, IAEA Doc. INFCIRC/567 (July 22, 1998). To some, adoption of 1994 Convention on Nuclear Safety is "*probably due to awareness of the danger posed by some unsafe conditions in nuclear installations in former parts of the Soviet Union*", ALEXANDRE KISS & DINAH SHELTON, GUIDE TO INTERNATIONAL ENVIRONMENTAL LAW, at 217 (Martinus Nijhoff Publishing 2007).

5. In my opinion, it was "selective", since in some areas it worked perfectly, e.g., extermination of dissenters, annihilation of environment for the sake of 'collective development', customs control... In other areas, such as higher education, infrastructure, medicine, agriculture... it had never worked or when it did, it was already too late.

6. On relevance of popular jokes for assessment of a given social context, *cf.* e.g., GISELINDE KUIPERS, GOOD HUMOR, BAD TASTE: A SOCIOLOGY OF A JOKE (de Gruyter 2006).

7. Charles E. Ziegler, *Political Participation, nationalism and environmental politics in the USSR*, *in* THE SOVIET ENVIRONMENT: PROBLEMS, POLICIES AND POLITICS, at 26f. (J.M. Stewart & R.C. Elwood eds. 1992).

8. D.J. PETERSON, TROUBLED LANDS: THE LEGACY OF SOVIET ENVIRONMENTAL DESTRUCTION, at 11f. (Routledge 2019). *But see generally* DOUGLAS R. WEINER, A LITTLE CORNER OF FREEDOM: RUSSIAN NATURE PROTECTION FROM STALIN TO GORBACHEV (Univ. of Cal. Press 1999).

9. Ulrich Weissenburger, *New trends in environmental protection policy in the Soviet Union*, 24 ECON. BULL. 4 (1987).

10. Ziegler, *supra* n. 7, at 27. However, it is worth noting that in almost all republics of the Union, revelation of the scale of environmental damage caused a great stir, though with varying degrees, particularly in between 1986-1991. On the latter point *see* Gureghian, *supra* note 2, at 172 (*one of the differences after Gorbachev took power is the use of nationalistic terms in environmental debate*).

11. On this, *see* e.g., Ortwin Renn & Jonathan Paul Marshall, *Coal, nuclear and renewable energy policies in Germany: From the 1950s to 'Energiewende'*, 99 EN. POL'Y 224, at 227 (2016).

12. On these criticisms, cf. Katja Doose, Green Nationalism? The Transformation of Environmentalism in Soviet Armenia, 1969-1991, 2019(1) AB IMPERIO 181, at 186-197 and Gureghian, supra n. 2, at 175-178.

13. Cf. JANE I. DAWSON, ECO-NATIONALISM: ANTI-NUCLEAR ACTIVISM AND NATIONAL IDENTITY IN RUSSIA, LITHUANIA, AND UKRAINE, at 61-63 (Duke Univ. Press 1996). On this, see also Allison Morrill Chatrchyan & Amanda E. Wooden, Linking Rule of Law and Environmental Policy Reform in Armenia and Georgia, in STATE OF LAW IN THE SOUTH CAUCASUS, at 158f. (Christopher P.M. Waters ed. 2005).

14. On this, cf. Ohannes Geukjian, The Politicization of the Environmental Issue in Armenia and Nagorno-Karabakh's Nationalist Movement in the South Caucasus 1985-1991, 35(2) NATIONALITIES PAPERS 233, 241-252 (2007).

15. *Compare* Dawson, *supra* n. 13, at 62 (*suggesting that the closure was in response to public opposition*), *with* Geukjian, *supra* n. 14, at 248 (*environmental concerns urged the closing along with Nairit chemical factory*); Doose, *supra* n. 12, at 197-199 (*explaining three possible reasons for closure as suggested above but giving preference to local government's attempt to regain public support upon its inability to provide effective relief following the Spitak earthquake*); *and* Gureghian, *supra* n. 2, at 177f. (*actual shutdown was planned for 1991, and the earthquake helped move the shutdown date to February 1989*). Please also note that as of 1989, each republic had the autonomy and responsibility in relation to dealing with environmental problems as set forth by USSR Council of Ministers. *Id.*, at 173.

16. Overall, environmentalist action seems to "strike" Soviet industry in 1980's, *see* Peterson, *supra* n. 8, at 197-199. But one should not overestimate environmental concerns over economic reasons. By late 1980's, most of the Soviet industrial complex were already suffering from inefficiency, mismanagement or both. On the latter, *see* Doose, *supra* n. 12, at 200.

17. *But see* Gureghian, *supra* n. 2, at 183 and 184 (*for many Armenians, the only way out of the energy and economic crises appears to be the reopening of Medzamor; but most Armenians and the then Armenian Nature and Environmental Protection Ministry fiercely oppose Medzamor's reopening[!]*). For a more prudent analysis, *see* Chatrchyan & Wooden, *supra* n. 13, at 158-161 (*despite improvements, as of 2005, the civil society sphere has not yet been sufficiently developed to counterbalance the state or provide sufficient non-state mechanisms for environmental protection. Environmental NGO activities have been limited to working around the edges of both the Lake Sevan and deforestation issues, making minor contributions to environmental protection through small-scale projects*). On this, *see also* Weiner, *supra* n. 8, at 437 (*purely economic and political issues edged out even the urgent concerns about public health; workers were now forced to choose between slow poisoning and unemployment*).

18. Chatrchyan & Wooden, *supra* n. 13, at 175, n. 69.

19. On this, *see* Dawson, *supra* n. 13, at 62f. The government promised a referendum but it never occurred, *see* Gureghian, *supra* n. 2, at 183.

20. IAEA, *Thirty-eighth (1994) Regular Session Record of the Plenary Meeting*, IAEA Doc. GC(XXXVIII)/OR.3 (Dec. 12, 1994), at 34-36 available at <https://www.iaea.org/sites/default/files/gc/gc38or-3_en.pdf> (last visited Dec. 16, 2020).

21. On this, *see generally* ALAIN BADIOU, D'UN DESASTRE OBSCURE: DROIT, ETAT, POLITIQUE [FROM AN OBSCURE DISASTER: LAW, STATE, POLITICS] (éditions de l'aube 1991).

22. Chatrchyan & Wooden, *supra* n. 13, at 158f. *See also* Weiner, *supra* n. 8, at 437 (*its brevity is indicative of a larger fact: glasnost and democratization, the hour of the traditional environmental movement's greatest triumph, paradoxically set the stage for its marginalization*).

23. Geukjian, *supra* n. 14, at 259.

24. On this, *cf.* SLAVOJ ZIZEK, FOR THEY KNOW NOT WHAT THEY DO, at 182-185 (2d ed. 2008).

25. For a comparative perspective with particular attention to marine oil pollution and other hazardous activities, *see* Alan E. Boyle, *Nuclear Energy and International Law: An Environmental Perspective*, 60 BRIT. Y.B. INT'L L. 257 (1989). On the "interrelationship" of the two, *see* e.g., Gaetano Arangio-Ruiz, *Some International Legal Problems of the Civil Uses of Nuclear Energy*, 107 RECUEIL DES COURS 499 (1962).

26. For Arangio-Ruiz, the "demarcation line is neither absolute nor easy". *Id.* at 506.

27. JOZEF GOLDBLAT, ARMS CONTROL: THE NEW GUIDE TO NEGOTIATIONS AND AGREEMENTS, at 40 (2d ed. 2002).

28. On both aspects but with a particular attention to commercial side, *see generally* JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION, at 297-321 (Cambridge Univ. Press 2000).

29. On the arguments of US and USSR and the outcome, I rely on the excellent study of Goldblat, *supra* n. 27, at 38f.

30. In the following, I follow and reconstruct the main findings and analysis of Braithwaite & Drahos, *supra* n. 28.

31. For the constituent instrument of IAEA, *see* Statute of the IAEA, *opened for signature* Oct. 26, 1956, 276 U.N.T.S. 3 [hereinafter IAEA Statute]. IAEA Statute has been amended 3 times, and all relate to art. VI (Board of Governors). IAEA is not a specialized agency of the UN but a "related organization" in UN "family", *see* Agreement Governing the Relationship between the United Nations and the International Atomic Energy Agency, UN Doc. A/RES/1145(XII) (Nov. 14, 1957), IAEA Doc. INFCIRC/11 (Oct. 30, 1959) (entered into force Nov. 14, 1957).

32. Agreement for Co-operation on the Uses of Atomic Energy for Mutual Defense Purposes, U.K.-U.S., July 3, 1958, 326 U.N.T.S. 3. The Treaty has been amended in 1959, 1968, 1969, 1974, 1979, 1984 and 2014. For the latest amendment introduced in 2014, *see* Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes, at 1, July 22, 2014, T.I.A.S. No. 14-1217.

33. On 3S-Concept, *see* CARLTON STOIBER et al., HANDBOOK ON NUCLEAR LAW, at 4 (2d ed. IAEA 2010).

34. For the standard-setting authority of IAEA in safety and safeguards, *see* IAEA Statute art. III(A)(5-6), XI.

35. For the EURATOM, and later EU standard-setting authority, *see* Consolidated Version of the Treaty Establishing the European Atomic Energy Community, title II chapters 3 and 7, Dec. 13, 2007, 2012 O.J. (C 327) 1 (entered into force Dec. 1, 2009) (the original EURATOM Treaty (Mar. 25, 1957) as amended by Lisbon Treaty). In one interpretation, rather than inspection by US, inspection by EURATOM was more favorable to France, "keen to compete with the US in commercial exploitation of nuclear power", "wanted to get access to US technology without having US inspectors in its plants as potential agents of industrial espionage", Braithwaite & Drahos, *supra* n. 26, at 299. For the US, in turn, EURATOM would help not only checking national nuclear programs but also strengthening NATO. *Id.*

36. As Organisation for Economic Co-operation and Development (OECD) does. On this, *cf. e.g.,* Arangio-Ruiz, *supra* n. 25, at 523.

37. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 729 U.N.T.S. 161 (entered into force Mar. 5, 1970).

38. Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, 92 Stat. 120 (amended in 1979, 1992, 1994).

39. Convention on the Physical Protection of Nuclear Material, Oct. 26, 1979, IAEA Doc. INFCIRC/274 (Nov. 1979), *amended by* Amendment to the Convention on the Physical Protection of Nuclear Material, July 8, 2005, IAEA Doc. INFCIRC/274/Rev.1/Mod.1 (May 9, 2016).

40. Braithwaite & Drahos, *supra* n. 28, at 301. On this *see also* Boyle, *supra* n. 25, at 263 (esp. after NPT, safeguards regime has been conceived more stronger in terms of implementation than safety regime). Please also note that as per IAEA Statute art. III(B)(4), UN General Assembly and Security Council monitors activities of IAEA. However, art. XII(C) sets forth that IAEA shall report a "non-compliance" to safeguards to all members, UN General Assembly and Security Council. No such mechanism is provided for safety regime.

41. For the quote, accident and its possible effect on Atoms for Peace, *see* Jancar, *supra* note 2, at 324f. For a balanced account of 1957 accident, *see also* André Bouville, *New light shed on the 'Kyshtym Accident' of 1957*, 40 J. RADIOL. PROT. E9 (2020).

41. Act of Aug. 1, 1946, Pub. L. 79-585, 60 Stat. 755.

42. Act of Aug. 30, 1954, Pub. L. 83-703, 68 Stat. 919.

43. Act of July 2, 1958, Pub. L. 85-479, 72 Stat. 276.

44. On this, *see generally* JIM MAHAFFEY, ATOMIC ACCIDENTS: A HISTORY OF NUCLEAR MELTDOWNS AND DISASTERS (Pegasus 2014).

45. Braithwaite & Drahos, *supra* n. 28, at 308.

46. Act of Sep. 2, 1957, Pub. L. 85-256, 71 Stat. 576 (in force until the end of 2025, see esp. sec. 4).

47. Paris Convention on the Third-Party Liability in the Field of Nuclear Energy, July 29, 1960 (as amended by 1964 and 1982 Protocols), *in* OECD, Legal Instruments, OECD Doc. No. OECD/LEGAL/0038 (2020), at 4 (2004 Protocol is not yet in force) and Brussels Supplementary Convention, Jan. 31, 1963 (as amended by 1964 and 1982 Protocols) *in* OECD, Legal Instruments, OECD Doc. No. OECD/LEGAL/0053 (2020); Vienna Convention on Civil Liability for Nuclear Damage, May 21, 1963, IAEA Doc. INFCIRC/500 (Mar. 20, 1996), *substantially amended in 1997* by Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, *opened for signature* Sep. 29, 1997, IAEA Doc. INFCIRC/566 (July 22, 1998); Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, Sep. 5, 1997, IAEA Doc. INFCIRC/546 (Dec. 24, 1997), and Convention on Supplementary Compensation for Nuclear Damage, *supra* n. 4. Some states, e.g., China, Iran, Pakistan has not been party to the latter. 1960 Paris Convention and 1963 Vienna Convention vary in geographical scope; therefore, a protocol joined the two in 1988, Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, *opened for signature* Sep. 21, 1988, IAEA Doc. INFCIRC/402 (May 1992). As far as I was able to ascertain, there is not a single state party to both Paris and Vienna regimes as of the date of writing of this study.

48. Act of Oct. 11, 1974, Pub. L. 93-438, 88 Stat. 1233.

49. On this, *see* Braithwaite & Drahos, *supra* n. 28, at 302, 306-308.

50. *See* e.g., WANO, Principles (May 2013), Doc. PL 2013-1.

51. Braithwaite & Drahos, *supra* n. 28, at 302. One of the concrete results in action was that after implementation of standards of safety regime, "*if unsafe practices are found, the Agency can only recommend, not enforce, changes*", Boyle, *supra* n. 25, at 265. However, "*many IAEA standards are relied upon by states in developing and implementing national legislation*

and standards" though obligations regulated in safety regime, esp. 1994 Convention on Nuclear Safety "*are characterised by their generality, by the failure to make reference to any of the IAEA's own international standards, and by the absence of any commitment to established and broadly accepted environmental requirements, such as environmental impact assessment*", PHILLIPPE SANDS & JACQUELINE PEEL, INTERNATIONAL ENVIRONMENTAL LAW, at 539 (3rd ed. 2012). In turn, 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management makes constant references to international standards. *Id.* at 540.

52. For more information on how insurance system works, *see* World Nuclear Association, *Liability for Nuclear Damage* (updated Aug. 2018) available at <https://www.world-nuclear.org/information-library/safety-and-security/safety-of-plants/liability-for-nuclear-damage.aspx> (Last visited Dec. 16, 2020).

53. *See generally* e.g., IAEA, Safety Culture (1991), IAEA Doc. 75-INSAG-4.

54. IAEA, Strengthening the Global Nuclear Safety Regime (2006), at 7f., IAEA Doc. INSAG-21.

55. Stoiber et al., *see supra* n. 33.

56. The significance of "social movements" in international law esp. in the context of development and so-called "Third-World" is argued in BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRLD WORLD RESISTANCE (Cambridge Univ. Press 2003).

57. On these, *see* Braithwaite & Drahos, *supra* n. 28, at 309.

58. Rajagopal is curious enough to remark (*in the Epilogue*) that significance of social movements does not herald "*a new era in international relations*" or "*is always unambiguously 'good'*", *see supra* n. 56, at 295.

59. For the advisory opinion, *see* Legality of Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶97 (July 8, 1996) (*Court found that as there is no specific authorization, there is neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such*). As is well known, the Court rejected the application for advisory opinion by the World Health Organization (WHO) since "*to ascribe the WHO the competence to address the legality of the use of nuclear weapons –even in view of their health and environmental effects– would be tantamount to disregarding the principle of specialty; for such competence could not be deemed a necessary implication of the Constitution of the Organization in the light of purposes assigned to it by its member States*", *see* Legality of Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. Rep. 66, ¶25 (July 8, 1996).

60. Treaty on the Prohibition of Nuclear Weapons, *opened for signature* Aug. 9, 2017, 729 U.N.T.S. 161 (to enter into force Jan. 22, 2021). Nuclear-weapon states and NATO members –except the Netherlands– are not states parties to the Treaty.

61. On this, *see generally* THE FUKUSHIMA DAIICHI NUCLEAR ACCIDENT: FINAL REPORT OF THE AESJ INVESTIGATION COMMITTEE, at 31-67 (Springer 2015), and IAEA, THE FUKUSHIMA DAIICHI ACCIDENT: REPORT BY THE DIRECTOR GENERAL, at 23-48 (2015).

62. DIV. ON EARTH AND LIFE STUDIES, NAT'L RESEARCH COUNCIL, LESSONS LEARNED FROM THE FUKUSHIMA NUCLEAR ACCIDENT FOR IMPROVING SAFETY OF U.S. NUCLEAR PLANTS (Nat'l Academies Press 2014). On evaluation of different perspectives post-Fukushima, *see* e.g., Lincoln L. Davies, *Beyond Fukushima: Disasters, Nuclear Energy, and Law*, 2011(6) B.Y.U. L. REV. 1937.

63. Yoichi Funabashi, Kay Kitazawa, *Fukushima in review: A complex disaster, a disastrous response*, 68(2) BULL. ATOMIC SCIENTISTS 9 (2012).

64. On this, *see* Renn & Marshall, *supra* n. 11, at 229. For further insight on early reactions of states in terms of nuclear phase-out, *see* Alexander Glaser, *From Brokdof to Fukushima: The long journey to nuclear phase-out*, 68(6) BULL. ATOMIC SCIENTISTS 10 (2012).

65. For the assessment of a similar question albeit with a focus on "stronger side" of safety regime, i.e., post-Chernobyl conventions envisaging "emergency preparedness and response", *see* Andrea Gioia, *Nuclear Accidents and International Law*, *in* INTERNATIONAL DISASTER RESPONSE LAW, at 94-98, 100-102 (Andrea de Guttry et al. eds. 2012). The development side, though hinted, is an interesting point to be raised in relation to this approach. Since, self-determination in relation to use of natural sources as enshrined in several UN General Assembly resolutions have been contested in various international fora the topic would be extremely relevant for any consideration of future international lawmaking. Another factor also would contribute to such discussion, which is almost concurrent to the period leading to the emergence of 3S-Concept, namely, evolution of right to use natural resources through resolutions of international organizations. In this context, do not UN General Assembly Resolutions, e.g., 626(VII) (Dec. 21, 1952) (right to exploit freely natural wealth and resources), 1803(XVII) (Dec. 14, 1962) (permanent sovereignty over natural resources), 3281(XXIX) (Dec. 12, 1974) (Charter of Economic Rights and Duties of States) and emergence of key concepts such as "sustainable development" correspond or relate to transformation of nuclear framework since Atoms for Peace? On the interrelationship between environmental law, sovereignty over natural resources and self-determination, *see* e.g., Sands &Peel, *supra* n. 52, 191ff.

66. For a balanced approach on this highly neglected topic, *see* Daniel H. Joyner, *Nuclear power plant financing post-Fukushima, and international investment law*, 7(2) J. WORLD ENERGY L. & BUS. 69 (2014).

67. For the quote, *see* Arangio-Ruiz, *supra* n. 25, at 510. On assessment of several "deficiencies" of Japanese government in relation to lack of independence and effectiveness of regulatory body, failure to evaluate all relevant site- and design-related factors, and design and construction of the installation as well as emergency response and due diligence and responsibility thereof for nuclear damage on the one hand, and need to revise and to strengthen Convention's monitoring mechanisms, *see* Aleksandra CAVOSKI, *Revisiting the Convention on Nuclear Safety: Lessons Learned from the Fukushima Accident*, 3 ASIAN J. INT'L L. 365 (2013). *See also* Alexandre Kiss, *State Responsibility and Liability for Nuclear Damage*, 35 DENV. J. INT'L L. & POL'Y

67, at 82 (2006) (*definition of damage itself and the conditions of proof given the difficulty in establishing the causal link between the damage and the act which is supposed to be at its origin make it, however, very difficult to apply the rules of general international law to nuclear accidents and their consequences*) and Michel Montjoie, *Treaty implementation applied to conventions on nuclear safety*, 96 NUCLEAR L. BULL. 9, at 33 (2015) (*it is not the flexibility of the conventions' commitments that is objectionable, nor their incentive nature, but the lack of meaningful (legal means of forcing the states parties to meet their commitments*).

68. For the analysis of a possible case against Japan before the ICJ, *see* Harold S. Yun, *Fukushima and New Zealand v. France Nuclear Tests: Can Japan Be Brought to the International Court of Justice for Damages Caused by the Fukushima Plants?*, 24 MINN. J. INT'L L. 387 (2015).

69. What I have in mind here is the Draft Articles on Protection of Persons in the Event of Disasters prepared recently by the UN International Law Commission. For the text and accompanying commentary, *see* UN ILC, Report of the International Law Commission: Sixty-eighth session (2 May-10 June and 4 July-12 August 2016), UN Doc. A/71/10 available at <https://legal.un.org/ilc/reports/2016/english/a_71_10.pdf> (last visited Dec. 16, 2020). *See also* UNGA, Protection of persons in the event of disasters (Jan. 14, 2019), UN Doc. A/RES/73/209 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/458/59/PDF/N1845859.pdf> (last visited Dec. 16, 2020).

70. World Nuclear News, *Russia and Armenia agree to unit 2 life extension* (Dec. 23, 2014) available at <https://www.world-nuclear-news.org/Articles/Russia-and-Armenia-agree-to-unit-2-life-extension> (last visited Dec. 16, 2020). *See also* World Nuclear News, *Armenia confirms ongoing role for nuclear* (July 23, 2015) available at <https://www.world-nuclear-news.org/Articles/Armenia-confirms-ongoing-role-for-nuclear> (last visited Dec. 16, 2020); Rosatom, *The X Session of Joint Coordination Committee on Modernization and Life Extension of Armenian NPP took place in Moscow* (Dec. 30, 2019) available at <https://rosatom.ru/en/press-centre/news/the-x-session-of-joint-coordination-committee-on-modernization-and-life-extension-of-armenian-npp-to/> (last visited Dec. 16, 2020).

71. IAEA, CNPP: Armenia (updated 2020) available at <https://cnpp.iaea.org/countryprofiles/Armenia/Armenia.htm> (last visited Dec. 16, 2020). Unless otherwise mentioned, information and data provided herein are based on IAEA's CNPP or PRIS.

72. World Nuclear News, *Russia to start upgrading Armenian plant in 2018* (June 15, 2017) available at <https://www.world-nuclear-news.org/Articles/Russia-to-start-upgrading-Armenian-plant-in-2018> (last visited Dec. 16, 2020).

73. On this, *see supra* n. 71.

74. World Nuclear News, *IAEA reviews long-term safety of Armenian plant* (Dec. 12, 2018) available at <https://world-nuclear-news.org/Articles/IAEA-reviews-long-term-safety-of-Armenian-plant> (last visited Dec. 16, 2020).

75. *See also* THE RADIATION LEGACY OF THE SOVIET NUCLEAR COMPLEX: AN ANALYTICAL OVERVIEW, at 51ff. (Nikolai N. Egorov et al. eds. 2000).

76. Doose, *supra* n. 12, at 186.

77. On these, *see* A.N. Valyaev et al., *Assessment of Risks and Possible Ecological and Economic Damages from Large-Scale Natural and Man-Induced Catastrophes in Ecology-Hazard Regions of Central Asia and the Caucasus*, *in* NUCLEAR RISK IN CENTRAL ASIA, at 140 (Brit Salbu & Lindis Skipperud eds. 2008) (*it is also worth noting that overall depiction of environmental risks is not peculiar to Armenia, but also valid for Georgia and Azerbaijan*).

78. For the scandalous argument before the reopening of Reactor 2 that "*Armenia would not violate its environmental duties by reopening Medzamor... Armenia would be in no position to pay for the resulting damage suffered by other nations, or the damages to even its own nation... international community would best be able to protect itself by assisting Armenia in preventing an accident, rather than seeking reparation after an accident occurs*", *see* Gureghian, *supra* n. 2, at 198 (*since international law is soft law, Armenia could not be forced to pay* (sic)).

79. *See* e.g., IAEA Site and External Events Design Review Service (SEED) framework; IAEA, Safety Standards for protecting people and the environment: Seismic Hazards in Site Evaluation for Nuclear Installations, IAEA Doc. SSG-9 (2010) or IAEA, Safety Standards for protecting people and the environment: Evaluation of Seismic Safety for Existing Nuclear Installations, IAEA Doc. NS-G-2.13 (2009); IAEA, Managing Siting Activities for Nuclear Power Plants, IAEA Doc. No. NG-T-3.7 (2012). *See also* e.g., WANO Principles: Management Commitment to Safety para. 2, *supra* n. 51 (*Decision-Making: Decisions that support or affect nuclear safety are systematic, rigorous and thorough*).

80. On this, *see* e.g., UK IRAQ INQUIRY COMMITTEE (2016), REPORT OF THE IRAQ INQUIRY (12 vols.), available at [https://webarchive.nationalarchives.gov.uk/20171123122743/http://www.iraqinquiry.org.uk/the-report/] (last visited Dec. 16, 2020).

81. For the full report, *see* N.R.C., Severe Accident Risks: An Assessment for Five US Nuclear Power Plants (3 vols.) (Dec. 1990) available at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1150/index.html> (last visited Dec. 16, 2020).

82. For the quote, *see* Legality of Threat or Use of Nuclear Weapons Advisory Opinion, *supra* n. 60, ¶29. For the "undeniable relationship" between protection of environment and human rights, *see also* The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity–interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 2, ¶¶47-56 (Nov. 15, 2017); *or*, Oneryildiz v. Turkey, App. No. 48939/99, ¶90, 118 (Eur. Ct. H.R. Nov. 30, 2014) available at <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1204313-1251361&filename=003-1204313-1251361.pdf> (last visited Dec. 16, 2020).

83. *See* e.g., Convention on Radiological Protection relating to the Installations at the Ardennes Nuclear Power Station [Convention sur la protection radiologique concernant les installations de la Centrale nucléaire des Ardennes], Belg.-Fr., Sep. 23, 1966, 588 U.N.T.S. 228 (1967); Agreement Regulating the Exchange of Information on the Construction of Nuclear Installations along the Border, Den.-Ger., July 4, 1977, 17 I.L.M. 274 (1978) (Janis A. Callison trans.); Agreement on Co-operation in Matters Affecting the Safety of Nuclear Installations in the Vicinity of the Frontier, Sp.-Port., Mar. 31, 1980 *in* PHILIPPE SANDS, CHERNOBYL: LAW AND COMMUNICATION, at 174 (Cambridge Univ. Press 1988); Agreement for the Settlement of Questions of Common Interest in Connection with Nuclear Power Plants, Austria-Czech, Nov. 18, 1982, 1365 U.N.T.S. 274 (1984).

84. On the doctrinal side, it is counterproductive to assert politically motivated assertions on the other side since what makes other "other" is that politics itself. For a perfect example for this, *see* Gureghian, *supra* n. 2, at 81 (*referring to Ararat as belonging to Armenia before invasion by Turkey* (sic)).

85. 1994 Convention on Nuclear Safety art. 6, *supra* n. 4. Environmental impact assessment (EIA) means a national procedure for evaluating the likely impact of a proposed activity on environment in a transboundary context, and is obligatory under Espoo Convention, monitored by UN Economic Commission for Europe Implementation Committee (to which Azerbaijan filed complaints against Armenia), and customary international law. For Espoo Convention, *see* Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 1989 U.N.T.S. 309 (1997) (entered into force Sep. 10, 1997). On EIA's customary international law character esp. in industrial activities, *see* e.g., Pulp Mills on River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶204 (Apr. 20); Certain Activities Carried Out in Border Area and Construction of a Road along San Juan (Costa Rica v. Nicar.), Judgment, 2015 I.C.J. Rep. 665, ¶104 (Dec. 16).

86. *See* e.g., Norbert Pelzer, *The impact of the Chernobyl accident on international nuclear energy law*, 25(3) ARCHIV DES VOELKERRECHTS 294 (1987).

87. *See* e.g., Yun, *supra* n. 69.

88. What I have in mind is the case of Enewetak People, *see* People of Enewetak et al. v. U.S., Memorandum of Decision and Order (Nuclear Claims Trib. Apr. 13, 2000) *in* 39 I.L.M. 1214 (2000).

89. LLC Amto v. Ukr., Final Award, Arb. No. 080/2005 (Arb. Inst. Stockholm Chamber of Commerce Mar. 26, 2008).

90. SLAVOJ ZIZEK, THE TICKLISH SUBJECT: THE ABSENT CENTRE OF POLITICAL ONTOLOGY at 216, 220 (Verso 2000).

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CONCEPTUALIZING CORRUPTION IN THE CONTEXT OF AZERBAIJANI ANTI-CORRUPTION POLICIES

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Abstract

Although corruption takes public agenda frequently, with governments adopting targeted measures under anti-corruption banners, its definition is not a settled matter. Few narrow definitions adopted internationally and set forth in national legislation do not reflect the scope and various forms of corruption. In order to understand this phenomenon, it is worth analyzing the measures taken in the framework of the anti-corruption policies and discerns the patterns in order to build a concept of corruption. This analysis highlights the dynamics in the concepttualization of corruption in line with the level of development and achievements in various sectors of public life, presently confining corruption to the domain of serious forms of misconduct, such as administrative and criminal misbehavior.

Keywords: *corruption, concept, conceptualization, transparency, good governance, open government, criminal law, professional behavior, conflict of interest, competitions, private sector, public sector*

Introduction

It is the settled position of the international expert community, that there is no single definition of corruption. Several working formulae developed by international organizations are used for specific purposes. But these definitions do not encompass various forms of this multifaceted phenomenon. Instead, the international community and foreign governments tend to conceptualize corruption. That is to say, they try to develop common principles and criteria based on which certain patterns of behavior; practices and conditions could be considered as corrupt. There are many benefits to this approach. Among others, this allows keeping the list open and subject to further adjustments, as necessary to meet the emerging challenges. In this paper, I attempt to identify the position on conceptualizing corruption in the context of the reforms that have taken place in Azerbaijan in recent years under the banners of the fight against corruption. I made a particular accent on the developments in public sectors, trying to discern patterns in delineating corruption in the public sector. Corruption in the private sector merits separate and closer attention. Although the national legislation even contains the definition of 'corruption' per se and mentions this word in legislation, this position does not contribute to the conclusion that the concept of corruption is clear-cut and net. Far from it, the practice of the application of laws and official statements of the Government shows that corruption is no way near to be defined yet. Whether this has a positive or negative ring to it, is not the subject of this article. In order to particularize the matter, the article aims to demonstrate a certain dynamic in shrinking and stretching of the corruption concept, which is reflected in the government actions. In order to show this, I will collate the measures and developments that took place within the framework of the national and institutional anti-corruption strategies and review the implemented measures against the yardsticks provided by the United Nations Convention against Corruption. Although the latter does not provide a definition of corruption, it certainly sets out a universal formula for tackling it.

General Framework

According to the global anti-corruption watchdog, Transparency International, "corruption is the abuse of entrusted power for private gain". In order to explain the phenomenon, TI classifies it as grand, petty and political, depending on the amounts of money lost and the sector

where it occurs.[1] The European Bank of Reconstruction and Development, in its turn, says that "corrupt practices mean the bribery of public officials or other persons to gain improper commercial advantage".[3] Although initially, the EBRD aimed at compartmentalization of corruption and targeting commercial advantage, in practice it also refers to the wider definition, for compliance and anti-corruption and anti-fraud activities. Explaining it as something resulting in the erosion of public confidence in political institutions and legal systems, the EBRD directive states that "Corruption involves the abuse of public or private office for personal gain". [4] The World Bank provides a definition of corruption as "the abuse of public office for private gain". [5] The definitions above hinge on the concepts of the 'office' or 'power', whether private or public, their abuse and the purpose of 'gain'. Research rightly points out that most definitions relate corruption to the behavior of a public official, point to an illegal act, emphasize the payment of bribes, and assume some direct and indirect benefits to one or both parties and these limitations make it impossible to capture the whole scope of corruption.[6] Despite the narrow circle, these definitions provide a fulcrum to build on, which may lead to a commensurate understanding of corruption. Whether the anti-corruption legislation and practice of its application in Azerbaijan reflect the centripetal trend of formulating the concept of corruption is the subject of the following analysis.

Early-stage

Traditionally, in Azerbaijan, corruption is either taken for bribery or for any possible misconduct in office. While the modern understanding of corruption is located in the domain of misconduct of officials, it was not always the case in the past. In the early years of independence, i.e. in the early 1990s, when the state was extremely fragile and prone to serious existential challenges, corruption was seen exclusively as a form of criminal activity, its serious forms to be specific. With little to no legislation aimed at fight against corruption, early statutory instruments listed corruption among serious forms of crime predicate to the activity of the organized criminal groups along with other forms of economic crimes, such as bribery, false entrepreneurship and bankruptcy, diversion of credits supported by state guarantees, racketeering, false auditing, etc. The law enforcement bodies took drastic measures against serious forms of crime, while corruption cases were some sort of side effects of the anti-crime efforts. Notably, the legislative instruments describe a dire condition of corruption being perceived 'as a norm' in the Presidential Ordinance № 181 dated 09/08/1994 On intensifying measures aimed at fighting against crime and consolidating lawfulness and law and order. As a measure to tackle corruption, the Ordinance 1994 required running of open and transparent trials to expose corruption. It also encouraged more active take on corruption and economic crime elements, as a means of undermining financial resources for the organized crime. While the priority of the state at the time was the restoration of law and order and thwarting of external menaces, certain measures driven by the early statutory instruments counted for consolidation of a prospective anti-corruption framework. When the law enforcement authorities demonstrated progress in the fight against crime, taking down organized criminal rings, it became apparent that bureaucracy had turned into the primary habitat of arbitrariness and corruption.

As the next step, the Government aimed at dismantling the legacy of the former Soviet Union, its bloated machinery of financial supervisory and law enforcement apparatus leeching on nascent entrepreneurship in the Presidential Ordinance № 463 dated 17/06/1996 On setting in order state oversight in the field of productions, service and financial-credit activity ad banning ungrounded inquiries. The measures which were taken at the initial stage, such as sporadic restricting of financial inquiries and centralizing financial investigations by law enforcement, did not seem to be a proportionate response to challenges in the field, which bred corruption. In the course of the reforms undertaken in line with the Ordinance 1996, the Government identified and scrapped several parallel and repetitive financial control and examination mechanisms. Soon it became apparent that further positive results were contingent on deeper reforms that would

secure removing barriers to building a market economy, especially hurdles to foreign investments, which was considered as a foundation for building a sustainable economy. According to the proclaimed position, tackling corruption stipulated achievement of these targets.

The new Presidential Ordinance № 69 dated 07/01/1999 On streamlining state oversight system and removal of artificial barriers to the development of the entrepreneurship identified bribery and red tape, especially the occasions of these types of behavior demonstrated in the course of ungrounded financial examinations, registration and incorporation of legal persons, as well as licensing as burning problems. In an attempt to curb abuse of office by the law enforcement officials, the Ordinance 1999 prescribed centralization of the parallel financial investigations through establishing a register for criminal financial investigations under the auspices of the financial authorities, including the tax authority and bank regulator. The Ordinance came at the time when the economy of Azerbaijan saw steady investments, the flow of which was diminished and occasionally interrupted by the unjustified interference and abuse of office by public officials. Facilitation payments extorted by law enforcement and auditing institutions were identified as the principal challenges posed to the economic development of the country. Apart from the private sector interferences, the reform also addressed abuses in the public sector. In order to streamline control of public spending's, Government scrapped supervisory-auditing units in all public institutions and left public financial control with the Ministry of Finance. It is apparent that in the course of a few years, the concept of corruption widened enough to merit addressing in its own right, and not as misbehavior emanating from the organized criminal activity or alternatively, as a form of economic crime. Duplication of control mechanisms, prolongation of the terms of auditing and criminal investigation, complicating of administrative procedures, abuse of power in the communication with the entrepreneurs, especially foreign businesses, addressing of civil disputes within the framework of criminal proceedings were perceived as manifestations of corrupt behavior. This added up to the understanding of corruption as a gross type of criminal behavior.

An important development in this field took place when the authorities spelt out economic crimes and corruption, specifically its forms like an offence of abuse of office, as the predicate to money laundering in the Presidential Decree № 730 dated 27/01/1998 On Some Measures to Tackle Economic Crime. Although it tackled specific instances of corrupt behavior and economic offences, it demonstrated the will to address corruption, not as an isolated criminal behavior. It reflected the approach of the Government to treat corruption as a crime committed at large scale and generating illegal funds, resulting in subsequent offences of money laundering and undermining the fragile process of setting up a legitimate market economy.

As a result of the aforementioned measures, the authorities managed to stabilize the situation, diminish red tape to sensible proportions and raise awareness about corruption in the society. With the bureaucracy harnessed to a certain degree and the economy resuscitated, mainly at the cost of the foreign aid, and law and order established, the state administration policy did not have to focus solely on the existential threats. The analysis of crime statistics show that the level of serious crimes dropped by 30%, violent crimes and fatality dropped almost twice within 1994-2000. Nevertheless, the level of fraud offences more than tripled.[7] The agriculture sector, shrinking in the years 1990-2000, started to grow since 2000 and reached the level of the 1990s only in 2015. Since 2000 the international donors, including the World Bank, EU started to invest in the non-oil sector. The growth in the level of productivity in the years 2000-2008 was 16%, later on, it dropped to 2%.[8]

Corruption took the stage among the ultimate challenges facing society. The new Presidential Ordinance № 730 dated 08/06/2000 On Intensification of Fight against Corruption specifically targeted corruption as the main problem for further economic development, foreign investments, adequate public procurement, proper usage of natural resources and other social and economic benefits. Building on the results of the preceding measures, including the partial development of the legislative framework dealing with economic crime, the Ordinance 2000

proclaimed the fight against corruption as one of the main trends of state policy. This instrument also reflected the new economic reality of Azerbaijan where the private sector by far dominated the public sector in the economy. This situation ought to be reflected in the statutory and institutional framework in order to address the challenges in an adequate manner. It was indicative of the fact that the authorities extended their vision of the concept of corruption to include the abuse of power in the regulatory and supervisory institutions, misconduct of officials with a view to gain not only material but non-material benefits, misappropriation of property and wealth of the state, unfair competition, concealment of income, flawed state financial control and inadequate public expenses, as well as illicit enrichment. Notably, the Ordinance 2000 remains the only legislative instrument to reflect on the illicit enrichment as a form of corruption. Illicit enrichment is not criminalized in Azerbaijan yet. The Ordinance also outlined a very important issue that all the measures aimed against corruption until then were occasional and sporadic and did not produce the necessary results. The authorities expressed the political will to tackle corruption in its own right and not only as a part and parcel of the economic crime or organized crime. Among others, the Ordinance 2000 envisaged the development of a specific founding statute and action plan to fight against corruption. Despite the time limit of six months allowed for the development of the mentioned instruments, the process took four years. This might also be indicative of the position that the Ordinance 2000 outpaced the existing level of understanding the phenomenon of corruption at the time.

Strategic Approach

The starting point for systemic and sustainable anti-corruption efforts date back to 2004. It is in this year that the principal legislation in this field was adopted. Previously, the anti-corruption measures defining the position of the Government in defining the concept of corruption were promulgated through the secondary legislation. The level of commitment rose when the parliament passed the Anti-Corruption [Framework] Act 2004, which became effective as of 01/01/2005. As declared in the preamble, the Act aimed at setting the standard for prevention and detection of corruption offences and to preempt negative consequences caused by corruption. Corruption is positioned in the law as an indispensable element of the general framework of the welfare state and social justice based on irrevocable human rights and freedoms and sustainable economic development. It hinges on the targets of lawfulness, transparency and effectiveness of State authorities, municipal bodies and officials. The Act accentuates on the behavior of people that should be regulated and punished in order to tackle corruption. It, therefore, meant to be the legislative foundation for securing systematic, coordinated, targeted and sustainable actions specifically against corruption, and also an etalon for subsequent legislative acts. The level and weight of impact of the Act on the subsequent legislative and institutional measures are hard to measure and even harder to demonstrate as the country achieved the European standards for systematic public consultations on bills and adoption procedure within the parliament only recently.[9] In the preceding period, there was a lack of any additional material which could have displayed the process of development, discussion and adoption of the laws hinting at the objectives underlying statutes. The review of the structure of this Act shows that only a small part of it is dedicated to the definition of the substance of corruption, while the most part of it is dedicated to institutional arrangements, description of violations and their perpetrators, as well as consequences of corrupt behavior. More symbolically, rather than functionally, the Statute obliges all officials of the state institutions and self-governing bodies to fight corruption within their competences. In addition to the lists of officials who can be held liable for corrupt behavior and the list of such types of behavior, the Act describes few anti-corruption measures. These measures cover certain aspects of asset declaration, gift and conflict of interest rules and whistleblower protection.

In order to specify the contribution of the Act 2004 to the shaping of the concept of corruption, it is worth to look deeper at the statute. The Anti-Corruption Act 2004 provides defi-

nition of corruption: “Corruption shall mean illicit obtaining by an official of material and other values, privileges or advantages, by using for that purpose his or her position, or the status of the body he or she represents, or his or her official powers, or the opportunities deriving from those status or powers, as well as bribery of an official by illicit offering, promising or giving him or her by individuals or legal persons of the said material and other values, privileges or advantages”. It is reminiscent of the definition of the criminal offences of bribery and abuse of office. Such an approach, if accepted as an exhaustive definition, would have diminished the scope of the anti-corruption activities and exhausted the means of handling anti-corruption measures. This narrow approach to the definition of corruption is compensated by the introduction of additional ancillary terms. According to this approach, the Anti-Corruption Act 2004 uses the term “offences related to corruption”, which according to Section 9 include corruption offences and offences conducive to corruption. The Section provides a long list of violations in addition to the one featured in the definition of corruption. Such an approach adds certain complications. For example, the use by an official of unlawfully obtained property with a view to deriving benefit for himself or herself or for third persons, for acting or refraining from acting in the exercise of his or her service duties or powers; and the getting, by an official, of benefits from savings (deposits), securities, rent, realty or lease in the course of performing his or her service duties (powers) are considered corruption offences. While acting as a representative of individuals or legal persons in affairs of the body in which he or she is holding an office or the body under his or her subordination or supervision or accountable to him or her; or refusing, without due grounds, giving to individuals or legal persons information as provided for in the laws or other normative legal acts, or to delay the giving of that information or to give incomplete or distorted information by an official are the examples of offences conducive to corruption. The complications mentioned above relate also to the rationale and practical significance of such a differentiation. The law neither provides for criteria and principles for a different classification of the types of behavior nor does it explain what kind of difference in consequences will ensue. Also, it is not clear why the legislature decided to provide this range of activities and not another. The attempt to expand the concept of corruption apparently lacked the necessary justification. The author has skepticism as to the practical and theoretical significance of having such a wide spectrum of misconducts. Not all of these are listed in other statutes for the purpose of prohibition, such as the Penal Code 2000 or Code on the Administrative Infractions 2015, or any other statute, in order to be enforced. As a framework statute, the Anti-Corruption Act 2004 is not referenced in other punitive statutes presently. Until 2011, the Penal Code 2000 had a reference to the Act for the purpose of defining the notion of ‘official’, but this reference was scrapped by the legislative reform in 2011, according to Penal Code (Amendment) Act 92-IIIQD dated 07/04/2006.

The adoption of the Anti-Corruption Act 2004 inaugurated the formal record of targeted anti-corruption efforts in Azerbaijan. In 2004, the authorities developed and launched the first anti-corruption triennial action plan. Since then the anti-corruption measures are implemented in the format of coordinated policies and action plans.[10] While the strategies describe the conceptual issues and approaches, as well as set standards and goals; specific measures aimed at reaching the goals and abiding by the standards are set forth in the actions plans. The Action plans are laid in the format of specific measures, indicators of performance, competent institutions and time frames. The overview of the anti-corruption strategies and programs cast light on the issue of conceptualization of corruption, i.e. defining corruption through the measures aimed to tackle this phenomenon through the set of regulatory and administrative measures. Within the period of 2004-2018, Azerbaijan formally adopted and implemented two anti-corruption strategies and four anti-corruption action plans. In doing so, the authorities drew on the achievements and good practices of the previous years and streamlined various initiatives by government, civil society and international stakeholders into a single process. Within the review mechanism of the UNCAC implementation, it was specified that anti-corruption strategies could

provide a comprehensive policy framework for actions to be taken by States in combating and preventing corruption and could be a useful tool for mobilizing and coordinating the efforts and resources.[11] Indeed, the anti-corruption strategies in Azerbaijan, especially the process of their collective elaboration, wider involvement of the civil society in surveying the efficiency and awareness-raising, as well as political support at the highest level have been acknowledged in the international reports.[12] The analysis below is not aimed at measuring the efficiency of the strategies in terms of their impact, ownership, addressing the real risks, simplicity, and being realistic in terms of their objective; nor does it provide an insight into the process of their formulation, promulgation and subsequent revision, i.e. the criteria provided for proofing sound anti-corruption policy.[13]

The first National Anti-Corruption Action Plan (NACAP) 2004-2006 was introduced by the Decree of the President of the Republic of Azerbaijan № 377 dated 03/09/2004. The document is composed of two parts, the first part setting the conceptual basis, akin to the strategic overview, and the second part listing practical measures. In addition to such important measures as setting up specialized anti-corruption agencies, NACAP required the harmonization of legislation with the Anti-Corruption Act 2004. The Action Plan referred to the requirements of the international instruments defining certain behavior as corruption offences. It provided for implementation of these provisions in the national legislation. Thus Azerbaijan joined international and regional anti-corruption instruments and hence the regime envisaged by these instruments, including review mechanisms, which had a profound effect on defining the concept of corruption. In 2003 Azerbaijan signed and ratified Criminal Law Convention on Corruption and Civil Law Convention on Corruption, both of which became effective in respect of Azerbaijan in 01/07/2004. In 2005 Azerbaijan signed and ratified United Nations Convention against Corruption and informed the Secretary-General hitherto on 01/11/2005, before its entry into force on 14/12/2005. Therefore Azerbaijan is under the effect of the UN Review Mechanism (UNCAC IRG) and Council of Europe Mechanism GRECO. Furthermore, Azerbaijan is under review by the Istanbul Action Plan of the Anti-Corruption Network of the Organization of the Economic Cooperation and Development. These developments profoundly affected and shaped the process of conceptualization of corruption of Azerbaijan. Azerbaijan has been evaluated for criminalization and incrimination of corruption, anti-corruption policy, transparency and prevention of corruption in parliament, civil service, judiciary and prosecution service, public procurement, political party financing, as well as international cooperation in corruption cases.

Without reference to any specific concept, the NACAP 2004-2006 rather accentuated on actions and outcomes relating to such as lawfulness, transparency, supervision of state agencies. Naturally so, as the Action Plan introduced the relatively new notion of corruption, it had to use other known concepts to pin on. In comparison to the previous approach, when corruption was seen as a form of crime or more specifically such a variety as the economic crime, this time the authorities tried to define fight against corruption in terms of a general framework of boosting the economy and improving state administration. The measures formulated in the action plan transcended the reign of the criminal law into the domains of finance, public administration and socio-economic sphere. The concept of corruption stretched out not only through the legislative but also through the set of regulatory and practical measures.

As a result of the implementation of the first Action Plan, Azerbaijan set up its anti-corruption institutions for prevention and law enforcement, in the meaning of the UNCAC relevant provisions. The Commission on Combating Corruption established according to Section 4.2 of the Anti-Corruption Act 2004 mainly acts as a specialized agency in the field of preventing corruption, develops state policy on corruption, and coordinates the activity of public institutions in this area. The Anti-Corruption Directorate with the Prosecutor General, set up by the executive order is the specialized anti-corruption law enforcement agency entrusted with limited functions in the field of prevention and mainly with the criminal investigation of corruption offences, including exercising of the Special Investigation Means. The former acts in the

domain of prevention and the latter generates case law through the investigation of criminal cases.

Most importantly, in 2006 corruption offences in the Penal Code 2000 saw a substantial upgrade to the international standards. Such concepts as an offer, promise, acceptance of offer and promise of a bribe, trade in interest were criminalized by the introduction into the corresponding sections of the Criminal Code 2000. The definition of an official expanded to cover a variety of functionaries in both public and private sectors, mainly in charge of the managing, controlling and disposing of assets. Such a considerable expansion of the corruption offences took place within the framework of the implementation of the international instruments at the recommendation of the review mechanism experts.

The subsequent Anti-Corruption Strategy, i.e. the National Strategy on Increasing Transparency and Anti-Corruption (NSITAC) had two action plans. The first one promulgated by the Decree of the President of the Republic of Azerbaijan № 2292 dated 28/07/2007 covered the period of 2007-201. The second one promulgated by the Decree of the President of the Republic of Azerbaijan № 2421 dated 05/09/2012 covered 2012-2015. As seen from the title, the authorities tried to insulate corruption from the domain of the general framework, previously tied to the concept of lawfulness, supervision, transparency, etc. This time the concept of corruption appeared in the context of good governance principles. According to the classical explanation, Good Governance has eight major characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.[14]

As seen from the title, transparency was set as the general framework and corruption was coined as unlawful practices and behavior worth punishment and suppression due to breaching the normal course of transparent activity of the state bodies. Corruption proofing of regulatory instruments, the raising of awareness and implementation of the international legal instruments were the typical issues specifically referred to the (anti) corruption domain in this document. Law enforcement and courts were set as the main platform to handle corruption, while other state institutions were commissioned to operate in the field of transparency. For example, in order to boost transparency the Parliament, Presidential Administration and Ministry of Justice were charged with the elaboration of the national database of legislation, securing of public participation in the legislative process and carrying out feasibility studies in the field of lobbying. Cabinet of Ministers was charged with formulation and adoption of conflict of interest and professional behavior rules and practical tools.

The National Anti-Corruption Action Plan for years 2012 - 2015 was endorsed along with the National Action Plan on Promotion of Open Government. It continued the trend of the previous action plan. Traditionally anti-corruption measures covered further improvement of (1) legislation in the field of criminal investigation and prosecution, (2) reviewing grievances and applications, (3) activity of the specialized anti-corruption agencies, (4) AML regime, (5) civil service regulation and practice and other sector-specific activities. Strikingly, it also encompassed the means and tools for securing professional conduct, prevention of conflict of interest and systemic violations, such as impeding entrepreneurial activity in the context of the fight against corruption. The Government continued its demarcation of transparency-bound measures through the establishment of the one-stop-shops. The concept of corruption was further pushed in the field of serious violations of conflict of interest and professional conduct rules, as well as criminal infractions.

The success of the national project on delivery of public service ASAN, to be described later, led to the shift on the approach of tackling corruption. The authorities refrained from adopting a separate anti-corruption plan and confined the anti-corruption measures to a chapter in the National Action Plan for 2016-2018 on Promotion of Open Government, promulgated by

Decree of the President of the Republic of Azerbaijan № 1993 dated 27/04/2016. It would be a far-fetched statement that the authorities tried to conceptualize corruption as the most aggravating form of breaching the normal course of public administration, civil service and entrepreneurial activity. But the intention to concentrate main efforts in the domain of the criminal or administrative law and slightly in the field of integrity is obvious. While some areas encompassed by Action Plan are specific to the OGP, other areas traditionally considered as anti-corruption was declassified as anti-corruption measures and handled as efforts targeting Open Government targets. The former include such measures as improvement of electronic services through the capabilities and use of the Electronic Government portal, reduction of the number of official documents and certificates required by the public institutions, improving e-payment methods; securing access to information through the operation of Information Ombudsman, developing the mobile versions of the websites of public institutions; and ensuring public participation and civil society involvement through establishing civil society platform, financing projects, setting up civil councils in state institutions. While the further improvement of the legislative database; ensuring financial transparency shifted to the transparency domain due to applying such methods as using information technologies in the implementation of the state financial oversight and improving electronic control, disclosure of the annual report on execution of the state budget, on state procurements by budgetary organizations in the internet pages. Recruitment and discipline, as well as professional conduct of municipal officials; and increasing transparency and responsibility in private sector, including measures aimed at securing transparency, ethics and accountability standards, development and adopting draft law on Competition Code were listed among the OGP activities. Notably, the cornerstone of the criminal law reform envisaged mitigation and decriminalization of economic violations in the private sector.

The national authorities abandoned the plans to develop separate anti-corruption strategies by continuing the trend and adopting the Open Government Initiative Action Plan 2020-2022. However, this approach does not match the concerns of the international institutions looking at the corruption situation in the Country. The measures described above affected the scorings of Azerbaijan to a certain extent. The score of Azerbaijan in the ratings of TI's Corruption Perception Index surged from 24 in 2011 to 31 in 2017.[15] However, subsequent shifts to 25 in 2018 and back to 31 in 2019 makes it hard to argue with the argument that fluctuations of these ratings do not add up significantly to understanding the corruption situation in the country.[16] However, the study in this field also expressed a cautious opinion that the institutional and regulatory measures did not affect the international anti-corruption ratings [17], the long term results partially disproved it. But the overall performance does not allow much room for optimism in continuing the trend of shrinking the concept of corruption. It rather necessitates the expanding of the concept to deal with the problems in a robust manner.

Conclusion

Although the national legislation contains the definition of 'corruption' in the Anti-Corruption Act 2004, this definition is not conclusive and indicative of the understanding of corruption and handling measures to counter it in Azerbaijan. The analysis of the measures potentially targeting corruption shows that the authorities in Azerbaijan did not pursue the goal of clearly delineating the concept of corruption. Apparently, due to the lack of profound research of this problem and scientific justification, they rather took the stance of identifying particular violations and proposing measures to address its consequences or prevent its occurrences. The concept of corruption, mirroring the process of fight against corruption, passed several stages of evolution, first growing to dominate the public agenda and then shrinking back to its traditional domain of corruption. It is presumably explained by the substantial achievements in establishing law and order and then reaching the economic stability, which moved corruption, as a challenge, behind the scenes. It started in the criminal law reigns when corruption was treated as a predicate to the organized criminal activity. After gaining tangible achievements in the field of law and

order, corruption was declared as the stumbling block for the development of the economy and building social justice. Soon enough, problems previously identified as corruption-related were rethought as matters of transparency, good governance and open government. While the government closely follows the pattern defined by the international instruments to which it is a party, the concept of corruption entrenches in the domain of serious forms of misconduct, which are subject to various forms of liability. This approach, however, does not match the existing concerns.

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INFORMATION OFFENSE OR CYBERCRIME: AN INTERNATIONAL AND NATIONAL-LEGAL APPROACH

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Abstract

One of the current problems of modern society is cybercrime, which is characterized by multidisciplinary nature. Due to the development of ICT, the increase of information offenses requires an international legal approach to the problem. There is a need for legal regulation of the terms "information offense", "cybercrime", "computer crime" used in various sources. At the same time, it is important to legally identify the differences between information and data, which are the main object of such violations. In the article these problems were analysed in detail, suggestions and recommendations were put forward.

Keywords: *information offense, cybercrime, information communication technologies, computer crime, information, data.*

Cybercrime, which is emerged with the advent of ICT and the Internet first was mentioned in the 1960s. The information about the first known cybercrime was published in the Minneapolis Tribune on October 18, 1966, in an article under the title "A Computer Specialist Accused of Hacking a Bank Account." [4, 8]

A thought-provoking point about the research is that the term "cybercrime" is being interpreted from different perspective. The notion of "computer crime" used by a group of authors is interpreted as cybercrime. Other groups of authors describe cybercrime from a wider perspective.

Authors who use the concept of cybercrime, in any case, link them to the data. Dulger Murat Volkan refers to computer crimes (cybercrime) as crimes against data systems and systems related to data operations. [3, 1486]

To define the most relevant approach, one should set as a target the clarification of the following issues:

Comparative analysis of theoretical approaches to cybercrime and computer crime;

Analysis of international and regional norms on the issue;

Research and analysis of national legislative basis;

Research of international experience on the issue;

Summing up of the received research results and conclusions.

At the international level, various international organizations defined the term “cybercrime”. According to the definition given at the Paris meeting of the Commission of Experts of the European Economic Community in May 1983, computer crimes are any illegal, immoral, or unauthorized behaviour in a system that automatically brings to processing or transmitting data. The European Economic Community divides the cybercrime into five categories:

Deliberately accessing, compromising, deleting, or destroying computer data in order to get illegal access to the source of information or other valuable information;

Intentional access, alteration, damage or destruction of computer data or programs;

Knowingly and without permission deletion of computer data or programmes for the purpose of disruption of computer systems;

Violation of the commercial rights of the legitimate owner of a computer program;

Intentional intrusion into the system by violating the security measures applied without the

consent of the person in charge of the computer system. [4, 7]

The Budapest Convention on Cybercrime of 23 November 2001 should be noted as one of the international norms in this realm. The Convention classifies cybercrime differently:

Crimes against the confidentiality, integrity and accessibility of computer data and systems - illegal access, illegal interception, data interference, system interference, misuse of devices;

Crimes related to the use of computer tools – computer-related forgery, computer-related fraud;

Crimes related to the content of data - offenses related to child pornography;

Crimes related to copyright and other similar rights - offenses related to infringements of copyright and related rights.

The Convention divides cybercrime into computer crimes and crimes committed with the application of computers. One can agree with the position offered in the Convention, as all the crimes listed above are committed in cyberspace. Though all these acts are sanctioned in the criminal legislation of the Republic of Azerbaijan, these norms are not mentioned just in one chapter on cybercrime but are reflected in various chapters. Since ICTs cover all aspects of human life in modern times and that are widely used for criminal purposes, information technology should be regarded as the easiest way to commit crimes. In this case, it is not reasonable to consider all crimes committed using the cyber environment as cybercrime. This is due to the fact that the object and motive (purpose) of criminal acts are various. On the other hand, many actions in cyberspace can be performed in traditional ways. For instance, the circulation of child pornography provided for in Article 171-1 of the Criminal Code of the Republic of Azerbaijan - distribution, advertising, sale, transfer, sending, offering, acquisition of child pornography is accompanied by the actions of preparation, acquisition or storage for the purpose of facilitating, disseminating or advertising. Such pornographic products can be distributed not only in cyberspace, but also in the form of various publications, hard copy items and materials. Therefore, the approach of the legislation of the Republic of Azerbaijan can be considered acceptable. It is relevant, by considering the characteristics of the environment in which ICT is developed to introduce changes regarding the methods of committing many traditional crimes. The other burning issue is that terrorism and other similar crimes are left outside the scope of the Convention. The spread of open calls for terrorism (for example, on behalf of ISIS) on Twitter, YouTube and other social networks requires to increase the list of crimes committed via ICTs. [2, p. 414] Dragging attention to the international experience, one can consider varying norms and regulations on the issue. In France, for example, though securing personal information is specifically regulated, there is no separate regulation for Internet-related crimes. Moreover, there is no distinctive norm as to who will be responsible for crimes on the Internet. Overall, a distinctive feature of French law is that crimes related to data and computer systems are classified in a specific way. [8] Although the Criminal Law of France does not provide the definition of cybercrime, special entities have been established in many government agencies to combat cybercrime.

In the UK, the legal norms on cybercrime and ICT-related crimes are governed by the Computer Misuse Act from August 29, 1990. [10]

At the time of its first adoption, the Act consisted of 3 sections and a total of 18 chapters, later on, 3 chapters were added (to the first chapter 3ZA was added in 2005, 3A in 2006, to the third chapter the 16 A part was added in 2006). The purpose of the Act is to prevent unauthorized access to computers, alterations, or similar intrusions. Most of the actions provided for in the Computer Abuse Act are formal by nature, and liability arises regardless of the outcome (the only exception is 3 ZA). The penalty for the preparation, supply, and acquisition of means for the commission of other crimes is not reflected in Chapter 3A. This is due to the fact that ICT is included in the norms establishing sanctions for these crimes as means of committing crime. This in its turn avoids double liability cases. The United States of America being one of the world's tech giants, was the first country where computer crimes were committed. According

to the relevant sources, already in the 1980s, information business and information services started to develop rapidly in many developed countries. For instance, at that time in the United States, 3% of the population worked in the agricultural sector, 20% was engaged in industry, 30% worked in service sector, and 49% was occupied in the development of information processing tools. Moreover, as the United States has a federal structure, each state has its own cybercrime regulation. Section 18 of U.S. legislation under the title "Crimes and Criminal Procedure," sets out various penalties for information rights violations. Here we see a triple classification of computer crimes, computer-facilitated crimes, computer-supported crimes. This type of classification or very close to this one is also used in Australia, Canada, the United Kingdom and on international level.

As it becomes evident, cybercrime and ICT-related crimes in the United States are being considered separately and have different legal regulations. By the same token, current Federal laws are being amended as new types of cybercrime and ICT-related crimes emerge.

The first laws and regulations in Continental Europe on who will be responsible for crimes committed on the Internet were adopted by Germany. Therefore, the Law on Telecommunications of 1997 brings clarity to the situation of subjects in Internet broadcasting in terms of penalty terms. According to the abovementioned law, the content provider who prepares the content of any publication on the Internet will be liable under the general provisions if the articles, images, and other materials in that publication contain criminal content. Moreover, the law stipulates that providers should not be prosecuted. On the other hand, service providers can be held liable for such negligence if they are aware of this characteristic of the criminal information they store on the host computer and have the technical ability to prevent that information from being obtained on the Internet. Afterwards, the amendments to the Law dated 14.12.2001 expanded the areas of responsibility of individuals on the Internet. The violations were also codified in Germany, which is part of the Roman-German legal system. An interesting aspect is that cybercrime in Germany is not considered under the separate chapter.

Depending on the different objects of crime, specific articles prescribe punishment for acts related to ICT. Thus, the German Criminal Code provides for the following crimes related to ICT on "Violation of the confidentiality of the private and personal spheres". [9]

Furthermore, Information espionage (Article 202a); Phishing (Article 202b); Preparation for information espionage and phishing (Article 202c); Processing of stolen data (Article 202d) are considered as different types of crime.

The Computer Misuse Act of Singapore, [7] which presents by itself a compelling approach to combating computer crime, provides a list of cybercrimes. Based on the review of the Act, one can presume that the Regulation of data breaches of Singapore is almost identical to British law. Hence, illegal logging has been criminalized in all foreign countries. However, there are already discrepancies in the Regulation of the use of computer data for profit. In some countries, this is considered a cybercrime,

If to extrapolate, one can conclude that in the early days of ICT, the term "computer crime" was preferred, but in recent years in the legal literature, the term "cybercrime" is used more often. There are two possible reasons for this state of the art: Primarily, to raise the legal profile of cybercrime at the international level; Secondly, to prove that due to the rapid development of the sphere, the ICT is not just about computers.

By coincidence, in most literature on the topic "the infringement of the right to information" refers merely to cybercrime. Certainly, cybercrime is a major act that puts under the threat the completeness, confidentiality, and accessibility of information. However, as information relations are more extensive, the violations of the right to information must also be considered within a broader perspective. For instance, if by obtaining information about a person's private life, certain cyber information becomes the object of an attack, then it is also possible to violate the rights of that person by insulting him in cyberspace. In this regard, the boundaries of the issue of the infringement of the right to information are somewhat wider. Plausibly due to this

reason the classification of cybercrime in the Budapest Convention is given in this context.

Taken into consideration the abovementioned points, the interpretation of the violation of the right to information in the current article is given in a different form: the violation of the right to information does not only mean actions directed on infringement of computer information, but also any infringement in cyberspace, and one should bear in mind that the existence of ICT is an important condition for the perpetration of this infringement.

In fact, it would be more accurate to use the term "data" rather than information as the object of violation of the right to information.

Since upon the registration of information, it acquires the form of data. In general, there are terminological entanglements. To elucidate the issue and come to a definite conclusion, one should clarify some theoretical and legal concepts:

Approaching to the issue from the legislator's point of view, information is data on persons, objects, facts, events and processes regardless of a form of their representation (Article 2 of the Law of the Republic of Azerbaijan “On Information, Informatization and protection of information”).

Article 1 of the Law of the Republic of Azerbaijan on “Freedom of information”, information for goals of this Law means any news on events, processes, facts and persons ongoing in nature, society and state irrespective of its presentation form.

None of the abovementioned legislative acts defines the term “data”. Article 1 of the Law of the Republic of Azerbaijan dated March 9, 2004 “On electronic signature and electronic document” defines data as information suitable for processing by means of information technologies. Furthermore, the Criminal Code and the Code of Administrative Offenses do not cover the term “data” but refer to the notion of "computer information". Thus, according to Article 271 of the Criminal Code, "computer information”, means any information (facts, information, programs and concepts) that is suitable for processing and using via a computer system. The Budapest Convention “On Cybercrime” sticks to a similar approach:

“Computer data means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function. Traffic data means any computer data relating to communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service.” Therefore, the Convention brings extra chain-notion to the scheme pictured in the current work:

The question arises: Which term can be more effective and relevant for legal interpretation so as to meet the conditions of both theory and practice? – Of course, the word "information" is mostly used for news in the media. "Information" transfers to "data" after registration. Would it be better if the legislature uses the term "computer data" or "data"? – Let's consider now the theoretical side of the problem.

In the textbook "Information Law" which is the first textbook in the field of information law published in Azerbaijan, the authors interpret the data as information about the events and occurrences. To put it in other words, the data is information recorded through long-term observations or technical means, devices. In the English-Turkish Encyclopaedic Dictionary on Informatics under the term data are understood: 1) observations, measurements, etc. required for making a certain decision; 2) Numerical or non-numerical quantities that can be processed and used in a computer; 3) Formal and agreed presentation of facts, concepts or orders relevant to communication, interpretation and operation. [6, 180]

Information: 1) Meaning that was given to the data based on the rules adopted in data processing; 2) From the perspective of information theory, any information that reduces the uncertainty of the occurrence of a particular event among many possible events; 3) Covers any concept, fact, meaning derived from the data. [6, 373] Data is interpreted as the information that can be processed by human beings or automatically. [6, 52]

According to other scientists approach, data is a dialectical component of information, a type of information that is described in a more earnest, special form in comparison with the usual freely structured information, which is usually inherent in speech, text and visual information. Such a form of description allows you to automate the collection and storage of data, which is then processed by humans or the media. [5, 13]

If to sum up both theoretical and legal aspects, the legislature does not clearly determine that any received fact appears in the form of information upon registration. However, the interpretation of many norms (for example, in order to obtain registered information, a person must submit a request for information, not a request for obtaining data) makes it clear that in legal regulation facts recorded on both electronic and paper media are considered as information. However, there is also a contradiction. This is due to the fact that the above-mentioned laws use the term "personal and family information" (personal information). In this case, there is confusion in the terminological apparatus. Therefore, we consider it necessary to make the following changes in the legislation: It would be more correct to use the term "data" in the Laws of the Republic of Azerbaijan "On access to information" and "On information, informatization and protection of information" regarding the norms related to the extraction of any information from the information system. Since information is a broader concept and is perceived as "data" upon completion of registration. Although there are different approaches to data, it is unfeasible to envisage the notion without ICT. However, "computer information" limits the content of the data. Data also plays a significant chain role in the operation of modern artificial intelligence systems. Therefore, one can propose to edit the concept of data in the following way: “Data is any form of presentation of facts, data or concepts that is suitable for processing in a computer system, including software that allows delivering any function in the computer system.”

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HUMAN PROGRESS IN THE WORLD'S ECONOMIC-POLITICAL POLICY, STRENGTHENING HUMAN WELL-BEING AND THE BASIS OF EFFECTIVE SOCIAL PROTECTION ACTIVITIES

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Abstract

In the article, the model of development of the world economic system and human well-being of Azerbaijan in the conditions of increasing political-economic relations of countries in the modern world was studied. In this regard, the economic, political relations and cooperation of the states, the mutual economy of the countries, the organization of ensuring financial and human well-being and the modern state of human resources cooperation and development prospects were investigated. At the same time, socio-economic proposals were made to eliminate existing problems.

Keywords: *economic diplomacy, foreign investment, economic policy, human welfare, sustainable development, economic realities.*

İntroduction

In modern times, new approaches in the World Political Economy, the existence of high technologies are conducive to human progress. At the same time, we believe that in modern economic conditions, unlike socialism, human welfare states have a number of social and social needs through budgetary expenditures, which must be provided directly by state institutions. Such processes are also fundamental in the Holy heavenly books, the rule of human rights “Man is the Ashraf of the Earth” and the importance of his social progress. Thus, the human being is born with socio-economic rights as a natural process. The issues described in the Holy Heavenly books characterize a person as a full-fledged member of society as the creator of his / her moral and material rights as a result of his / her social abilities and abilities. Thus, in the political economy of the world, human progress, strengthening of its material well-being and effective social protection are considered as the main conditions. The essence of these issues is also explained by the fact that these criteria are achieved individually by The Citizen, the right to social protection for the improvement of his / her material well-being. Of course, it should be noted that economic independence, as one of the important conditions of political and economic principles, is the basis of political independence. In general, it is possible to accurately determine the goals and objectives, the directions of development for the medium and long-term period, to develop action programs in various fields sole to achieve fundamental progress in the socio-economic life of the country [7].

At the same time, it is known that the volume and size of the ship is very small in relation to the universe when compared with the image of” humanity as a small space ship". However, the rights of people who are residents of the small ship and ensuring its sustainable welfare and social protection condition the stability of mankind. For this reason, class discrimination and social inequality created the basis for the tension arising from the pandemic. Of course, it should be noted that for hundreds of years the world's natural resources, regulating all political and economic events, states that dictate the management of small states and presented themselves as “the world's recognition” experienced a pandemic. Thus, the most politically and economically developed countries found they helpless in the face of the global disaster caused by Karuna.

Some political scientists and economic educators commented on the political and economic turmoil created by the pandemic, which is associated with the existence of divine injustice in humanity. However, with the flexibility of the political ideology and the regulation of the socio-economy, fundamental guarantees for the progress and protection of human well-being are created.

Thus, material well-being, which is present in all periods of human history, together with its economic and social features, necessitates a complex approach. In this regard, H.Aliyev noted that" the national wealth of each state is its people", mankind is constantly moving towards sustainable socio-economic progress and human well-being [1, 23]. In this sense, the existence of different approaches to the strengthening of human well-being, the directions of its development should not change due to circumstances and should always move towards sustainable progress. In the current conditions, a number of shortcomings in education and living standards related to individuals attract attention, which is considered necessary conditions for their regulation as a result of socio-economic policy. Thus, sustainable promotion is based on economic growth, which means that the necessary conditions for increasing the financial capacity of people depend on the production of goods and services. Ensuring effective social protection along with sustainable human progress in the world's economic policy is as specific as the quality in the economy.

It should be noted that according to David Ricardo's forward-looking theory, the state's import and export processes should focus on maximizing human well-being based on the principle of supply and demand. However, the state program and mechanism of action in this direction are planned in our republic. At the same time, state measures aimed at ensuring sustainable social protection of the citizen and covering all areas were taken into account. Thus, the concept of development "Azerbaijan 2020: vision for the future", approved by the decree of the president of our country dated December 29,2012, is characteristic as a clear example of state support to the progress of human welfare [2, 149]. Thus, we believe that this concept, provision of education services to the population in the field of sustainable human development and perorate issues for various social groups, including low-income families and citizens are the basis for strengthening human progress and its material well-being. Since the day Azerbaijan acts as an independent state, there has been a steady progress of human development in all spheres of political, economic, social and social life. However, the national leader noted that society cannot develop without education characterizes the sensitivity of the state in the field of education and the development of human development in this direction. At the same time, Heydar Aliyev noted that "it is impossible to annex and occupy countries with educational progress and keep them in captivity" [1, 27]. The main goal of human progress is to create a favourable environment for the long, healthy and creative life of the population.

In connection with this, the political scientist Mehman Ismayilov notes that social welfare is one of the important directions of state policy and conditions sustainable human progress. Thus, the head of the country repeatedly noted that Azerbaijani citizens are at the centre of the state's social policy. All socio-economic measures characterize the political will of our president and the political and economic agility of the state. More comprehensive solution of the problems of low-income families in the country is the state's priority policy [3]. One of the important issues here is the elimination of all factors hindering human well-being.

The World Bank also made comparisons on the countries related to human progress and considered daily US $ 2.85 for purchasing capacity of the population and US$ 3 for developing countries acceptable. However, the calculations determined by the World Bank do not reflect the reality of human welfare in the socio-economic policy of the countries of the world. Thus, we believe that the amount of food and Consumer Energy Per Capita should be 379.1 kilocalories. At the same time, issues of development of Agriculture and increasing its productivity,

restoration of working capacity condition human progress. One of the factors determining human progress in world countries is that the material income of the population is higher than the costs and the quality of life of the population varies in social context as it is different for different societies. But the diversity of human well-being should not lead to deprivation and social isolation in human progress. For this reason, Azerbaijan is one of the countries sensitive to the norms of human progress in the world. Thus, the wise leadership of the country's President Ilham Aliyev reaffirms the purposeful and large-scale economic measures aimed at protecting the health of the population and supporting social welfare in Azerbaijan and civil progress at the heart of our state policy. Thus, the socio-economic orientation of public expenditures in the budget policy, which creates conditions for economic growth in our republic, is a guarantee for the development of sustainable human well-being. The definition of socio-economic welfare criteria stipulates issues such as social protection and creation of new jobs reflecting the real economic landscape, support of agricultural producers, and provision of state-funded higher education for young people.

Thus, the World Bank, the World Economic Forum and other international organizations explain the stagnation in the socio-economy, borrowing, reduction of income as a result of unequal monetary policy and the dictation of the existing financial monopolists to GDP. However, in modern conditions, the interpretation and reasoning of the stagnation existing in the political economy of the world, conditions the economic progress of the countries of the GDP and all their achievements are considered the main criteria of human well-being. At the same time, GDP is not enough to determine the current standard of living and human well-being of countries, because the presence of other non-monetary indicators of development in the mirror of economic progress is characterized as criteria affecting social well-being directly. Of course, in the interpretation of all these issues and on the basis of socio-economic policy to determine the directions of achieving economic growth and Human Development. Thus, in addition to creating an increase in economic progress, the socio-economic environment based on the sustainable progress of people is considered acceptable.

Economic Welfare and Social Protection Issues

The economic well-being of each state is based on its healthy and reliable socio-economic policy. Thus, the period of political and economic tension in the United States, which constituted an effective socio-economic defence, was a plan designed to improve the material well-being of people. Some economists described this idea as a subject of international law and tried to equate it with the “Beveric plan” in Britain in 1945, which was related to the solution of “social security” issues in the Atlantic country. However, the idea of social protection in the world literature was also common and political-economic realities reflecting the progress of human well-being. Thus, the pension provision received in the United States has been applied after some time to state and military personnel, those who work in the field of Science and education, and those who work in other areas. At the same time, in the plan of The Truman and Marshal, he did not have a scientifically comprehensive actuality, although he encountered issues of human well-being and social protection. Thus, in 1947, in order to save mankind, Truman demanded financial assistance to Greece and Turkey in the great political intelligentsia. At the request of Truman, Greece and Turkey have raised $700 million. American aid in the amount of dollars was made. The political and economic progress of the state is connected with its social protection. According to the experience of one of the countries of the world, the state carries out political and economic measures in the direction of ensuring human welfare, organizing material progress and social protection. The high coefficient of social demands and educational orientation is of great importance in the expenditures of the state budget related to the organization of human progress and its social protection in our republic.

However, some researchers view human well-being and its social protection as the complex of political and economic factors of the strategic objectives of the state policy. At the same time, the laws adopted by Bismarck in Germany characterized the human well-being, which later formed the foundations of social protection. However, the social protection of people in the United States reflected the socio-economic issues by regulating modern economic relations [3, 239]. Thus, the social protection of people is connected with the material - economic, social and legal provision of state care for human well-being as a universal issue. Social protection and welfare of people in a number of countries of the world are regulated as follows.

- Pension provision;
- Diagnosis of human well-being;
- Sustainable human development;
- Targeted social assistance;
- Provision of social protection;
- Support of Higher Education demand of young people.

However, the data presented on the draft state budget of the Chamber of accounts of the Republic of Azerbaijan for the current year are also noted that the social requirements defined on the “budget system” related to the compilation and structure of the state budget project were taken into account in the current year. At the same time, in the relevant paragraphs of the law of the Republic of Azerbaijan” on the budget system", the requirements for the unity of the budget system and the independence of the budgets related to this system have been met. At the same time, the ratio of the state budget and the amount of the reserve funds of the president of the Republic of Azerbaijan to the revenues of the state budget was noted. Thus, a document on the state budget reserve fund and the President's Reserve Fund was envisaged, the use of projected funds on both funds reflected the guarantee of social welfare of the population. These include the social orientation of the state budget of the Republic; strategic programs in the socio-economic sphere of the country and the orientation of financial resources to solve problems characterize the sensitivity of the state support to the welfare of the population. The opinions of the distinguished President Ilham Aliyev on these issues, “no social projects in Azerbaijan will be stopped, no social programs will be reduced are a guarantee of the state care of the population in our country [5].

In the fiscal sphere of the CIS countries along with different countries of the world, socio-economic measures give grounds to note that our republic is more vulnerable to human welfare compared to different spheres. Thus, the reviews prepared by the International Monetary Fund say that the budget regulation in the CIS countries the political and economic situation of the republics with oil revenues affects the social welfare of people. However, in comparison with some states, the progress of human welfare is socially regulated in relation to the current political and economic landscape. Thus, a policy based on a solid foundation plays an important role in human progress and sustainable social development in states. The analysis of the political and economic situation of our republic improved and renewed in accordance with the requirements of the current realities, creating favourable conditions for socio-economic progress. It should be noted that our country enjoys a reputation as a social state in the world in view of the current political and economic realities. Of course, such a socio-economic situation is characteristic of the well-being of the citizen and his social progress on the basis of the state policy. Thus, the views mentioned in the table below are reflected in the official figures (Table 1)

Table 1.

Indicators	2019	2019 with comparision 2018(%)	2018 with comparision 2017 (%)

GDP per capita, Manats	9 257,5	105,9	109,5
Investment to main capital million manats	16 194,5	97,7	95,7
Revenues of the state budget, million manats	23 179,7	109,5	136,5
State budget expenditures, million manats	22 414,5	109,4	159,1
Nominal incomes of population, million manats	57 135,5	107,5	109,5
Nominal allowances, manats	679,7*	237,9**	149,7***
Export	17 251,4	91,9	145,9
İmport	14 559,7*	149,7**	139,7***

Mark: *Table prepared on the base of statistical yearbook Azerbaijan*

As mentioned, in the political and economic picture associated with the promotion of human welfare, social orientation in relation to human development in the state expenditure compared to GDP was a priority. Thus, revenues of the state budget of the Republic of Azerbaijan for 2019 amounted to 22 917,5 mln. Azerbaijan's defence ministry has said the Armenian armed forces continue to violate the ceasefire regime. In the next year, the ratio of state budget revenues to GDP was taken into account at the level of 29%. However, the economic recession that began in the first years of independence in Azerbaijan was prevented only by the implementation of macroeconomic stabilization programs since 1996. Thus, after the implementation of the national leader Heydar Aliyev's decree "on measures to strengthen Social Protection of the population and stabilize the financial situation of the economy" dated June 15, 1994, inflation was increased to 84 per cent in 1995 and 2.5 per cent in 1996. However, this decree on the regulation of monetary and financial policies is characterized by the stabilization of regular anti-inflation measures in the Republic.

When determining GDP, the production is based on the income generated from goods and services, wages of hired workers, net income from production and output, and the total mixed benefit. Thus, the criterion for measuring GDP is the consumption of goods and services, the stability of material turnover, the acquisition of valuables, the export and import balance of goods and services. At the same time, socio-economic policy is consistent with the amount of GDP and rejects technical planning, which creates a ground for inequality in ensuring socio-social, financial and economic stability and reflects the progress of human welfare. Also, the progress of human welfare is the creation of new jobs and education, science, culture and.s. conditions for the provision of needs. Social protection of human well-being creates fundamental progress in the political and economic progress of the state. As noted by President Ilham Aliyev, the principle of "citizens should serve the state, not the state" is one of the main factors for the interests and interests of the citizens of the country and social protection of human well-being. Also, ensuring the social progress of the people should be directed to the improvement and

improvement of the more sensitive service to the welfare of the citizens of the country by civil servants. Thus, we believe that human well-being and its social security are as typical as follows:

-Material Prosperity;

-Human Well-Being;

-Progress in continuing education;

-Physical and moral health of young people;

-Social promotion;

-Achieving sustainable human well-being of Education;

Macroeconomic stability and economic growth, employment policy and social protection of population: development of human well-being and social development, contribution of Education to sustainable human well-being constitute a priority in the state policy in the direction of programs of political and economic measures to achieve sustainable human well-being and its goals in social protection issues. Thus, in the world experience, there is only a different, effective policy in this direction. So Turkey, Croatia, Pakistan, Germany, France, Russia, Ukraine and so on.in the state policy of s countries education policy prevails in social protection issues related to the progress of human welfare. Thus, the educational policy of these countries maintains its own actuality in the improvement of macroeconomic conditions, in the transparency of the Budget Policy and the regulation of uncertainties.

At the same time, the provisions of the Constitution of the Republic of Azerbaijan form the basis of social protection of human welfare. So, the supreme goal of the state is I. Ensuring human and civil rights and freedoms and decent living standards for the citizens of the Republic of Azerbaijan is the highest goal of the state. The Azerbaijani government takes care of the welfare of the people and every citizen, its social protection and decent standard of living. The state guarantees the continuation of education of talented persons regardless of the material situation. Thus, youth policy in Azerbaijan is an integral part of the state policy and constitutes its leading force. The main purpose of the youth policy is to formalize the youth with mental, physical and spiritual potential, solve their socio-economic problems and protect their rights.

The above-mentioned views are an undeniable fact that stipulates the victory of human well-being. Thus, Azerbaijan achieved an increase in its revenues from natural resources on the basis of a larger targets (2008-2015) volume of GDP, including the real volume of GDP in the non-oil sector, repeatedly reducing the level of poverty, etc.) “State program on Poverty Reduction and sustainable development in the Republic of Azerbaijan in 2006-2023” was approved. The state program also identified the following key strategic objectives for 2008-2023. The issues of protection of macroeconomic stability, ensuring sustainable economic growth, and expansion of income generation opportunities of the population, increasing the demand for education and creating opportunities for their access, improvement of the ecological environment, ensuring sustainable management of the environment are reflected here. Thus, the analysis of official data shows that the volume of GDP per capita in Azerbaijan since 2023 will be one and a half times higher. Thus, according to the World Bank's classification of gross national income per capita, Azerbaijan, which is in the upper middle 90 income countries category, became a member of the upper income countries Group in 2023.

However, along with the progress of human well-being and its Social Protection Index, ensuring economic growth and achieving a quality of economic progress in the volume of Gross Domestic Product. Also, forecasting the annual economic growth rate at 7% for the coming years in the country characterizes the focus on the economic growth noted in sustainable human progress and human well-being. At the same time, nine indicators are mentioned in various sources for measuring human well-being, as well as the quality of Life Index, developed by the International Reporting Unit (Economic Intelligence Unit). These include longevity, health, prosperity and social life, material well-being, political and economic stability, new jobs, etc. it

contains the principle in itself. In addition, one of the alternative approaches to measuring human well-being was developed by the American Public Research Foundation (South American Audience Research Foundation, SAARF) and applied in marketing work. In these principle's, the Millennium Development Goals require the elimination of man-made obstacles to human well-being and the focus on the material provision of human progress.

Thus, the provision of human well-being in socio-economic policy is aimed at eliminating inequalities and establishing the definitions focused on the targeted results in this direction. It is the realization of the existing socio-economic policy or the direction of the progress of human welfare in effectively supporting human welfare by the state, focusing on eliminating the causes of social inequality. As a result, economic growth for some time has to be secured from possible resources, and in the period of time it is necessary to achieve human well-being progress by adding existing production issues to economic growth. At the same time, the growth of the economy indicates an increase in the production of goods and services in the current period compared to the previous period, the quality in GDP. Human well-being is the guarantee of increasing worthy financial resources of individuals, social and cultural needs. In general, as people's material income increases, a certain part of the income is directed towards welfare and human progress is characterized by an increase in financial income. In some countries, the main direction of social protection measures for human well-being is characterized by the provision of social security of citizens by the state, regulation of legislation in favour of the employee in labour relations, granting broad powers to the trade union on the issue of raising wages in accordance with economic realities. Thus, the issue of human welfare and its social protection is based on the assurance that macroeconomic policy is at the macro level depending on revenues. Thus, the head of our country, Ilham Aliyev, related to human well-being and its social protection, noted that" improving people's living conditions is our greatest task" [1, 239].

Results

Scientific analysis of human progress in the World Economic Policy, strengthening of its material well-being and the basis of effective social protection activity is the focus of modern economic models. Thus, socio-economic policy, Social Welfare and human progress are considered the main targets of economic policies of many countries. Thus, the state carries out purposeful economic measures in the direction of human well-being and its progress as a result of effective social policy on the determination of financial and budgetary expenditures. Thus, the issue of human welfare and social protection forms the basis of the socio-economic policy of the state, being scientifically active. At the same time, human welfare society is characterized by the constant attention of the state's economic policy, regardless of any economic risks. Thus, based on the above-mentioned views, we believe that the issue of human well-being and social protection reflects the human progress caused by civil satisfaction in the real economic policy of the state.

Thus, economic achievements, the political will of the country's leadership and the protection of socio-political stability, effective economic policy of the state, the implementation of a single state policy, the determination of the main goals in socio-economic progress, the sustainable nature of socio-economic policy, state programs aimed at meeting the real needs of society are aimed at ensuring human well-being.

Thus, the sustainable socio-economic policy of Azerbaijan and its observation with innovations in human development are considered to be a priority. Thus, it is based on the achievements of the state in the field of human welfare and its social protection in the policy of government, the Constitution of the Republic of Azerbaijan and State Building. Thus, it characterizes the implementation of new economic principles in the field of social protection, taking into account the criteria based on the progress of the political economy.

It should be noted that favourable conditions should be created for the organization of socio-economic policy and human well-being in the world economy, the progress of the national economy in accordance with the current conditions should be guaranteed and the involvement of foreign investors in the country's economy should be intensified. Thus, the scientific analysis conducted in the direction of human welfare and protection of its social progress social policy principles characterize human progress. In this connection, the large-scale economic measures implemented in the socio-economic and political spheres in Azerbaijan stipulate comprehensive opportunities and new perspectives for the progress of human well-being.

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ISSUES OF MIGRANT INTEGRATION IN EUROPE

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Abstract

It is known that the problem of migrants in Europe has grown in the last decade, and even reached a state of crisis. In particular, in 2015, the migrant crisis peaked for European countries, and urgent solutions were discussed. The fact that the main part of the measures discussed at the beginning and implemented in the following years covers the issues of integration can serve as an example for other regions in the modern approach to migrants. Another important point is that European countries, or rather EU member states, work together in the process of migrant integration. A typical example of this is the drafting of the European Migration Agenda, and the work done over the past period to implement the Agenda has been included in the article. The European Union has played a key role in promoting the integration process among its member states, with the main goal being to prevent those who cross the EU's external borders from creating a new crisis. When conducting scientific research on the administrative-legal regulation of migration processes, the study of the features of the integration of migrants into the society in which they migrate is of particular importance in terms of the scope of the study. The study shows that the integration process allows migrants to develop appropriate language skills, participate in refresher courses, acquire certain professions, and receive psychological support, allowing them to adapt more quickly and effectively to the new society and its way of life. Moreover, the use of the experience of European countries in this field in the near future can help Azerbaijan to more effectively integrate migrants into our society. In addition, the subject of the study includes the financing of integration projects, the funds allocated by the European Union and its bodies. Thus, this article addresses important issues related to migrant integration and process financing in European countries.

Keywords: *European Union, migration processes, migrant, integration, agenda, project, support, policy, crisis, funding, training, resources.*

At first, it is necessary to mention a little about the policy framework for the integration of immigrants, especially within the European Union. Because the solution of almost all the problems regarding immigrants is through the integration of this group with the society they live in. The most important document on the integration issue is the Common Basic Principles for the EU Migration Integration Policy adopted in 2004. The European Commission's report of 2016 includes the statement that successful integration of third-country nationals in the Schengen area should be a common interest for member states [5, 9]. In short, the EU fully supports the integration policies of the member states. There will be a manifestation of this, the European Commission established European Agenda for the Integration of Third-Country Nationals in 2011 and called for a more consistent and strong approach to integration in different policy areas and government levels through this Agenda. The Agenda draws attention to the problems faced by member states in this area, but gives clear suggestions to solve these challenges and provides action areas for the states [5, 9].

After the emergence of the migration crisis in late 2014, the first signals about the renewal of the migration policy began to come from the European Union. Then, the European Commission, which took office under the chairmanship of Jean-Claude Juncker on 1 November, 2014, included immigration among the ten issues [5, 9]. The European Agenda on Migration proposed in May 2015 described the migration flow as both a chance and a challenge for the EU.

This Agenda set medium and long-term priorities for member states to manage crises and emergencies as well as to take advantage of opportunities [5, 9].

Saving lives and protecting external borders, reducing factors promoting irregular migration, strengthening the common asylum policy and developing a new policy on legal migration were the four main goals of the Agenda. The Agenda Action Plan was signed at the Migration Summit in Valletta in November 2015 [10]. The importance of education and employment of refugees and their integration into the society was expressed at the tripartite Social Summit in 16 March 2016 [12].

Undoubtedly, sufficient financial resources were needed to achieve these goals. In this regard, within the context of the Multi-annual Financial Framework covering the years 2014-2020, member states allocated around 765 million euros through the Asylum, Migration and Integration Fund (AMIF) [5, 10]. In addition, the European Social Fund's 86.4 million euro assistance covering the same years was also of great importance for the integration of immigrants. In the initial phase, AMIF, with more than 3m euros, undertook the mission of promoting refugee integration, while The Fund for European Aid to the Most Deprived (FEAD) aimed to alleviate refugee poverty and exclusion. Here, it was important to use the existing fund flexibly and effectively for the stated purposes, and the European Commission fulfilled its incentive task. Another important action of the Commission was to support and mobilize initiatives and programs in this field within the framework of the vocational training integration of immigrants [5, 10].

It is possible to say that the European Migration Agenda has accomplished important works in the past five years. As stated in the European Commission's Statement on the Agenda dated 16 October 2019, the works carried out after the migration crisis that erupted in 2015, the implementation of new tools and procedures have created a strong migration policy in the EU [9]. Although the overall immigration situation has returned to pre-crisis level in 2019, new targets have been set in this area in the changing conjuncture. In the statement, these targets are the implementation of urgent actions to improve the situation in the Eastern Mediterranean region, increasing solidarity in search and rescue efforts and accelerating evacuations from the current situation in Libya [9].

Although most of the ideas in the statement are correct, larger steps need to be taken regarding the migration problem in Europe. Because, even though the intensity of the migration flow has been greatly reduced, escapes from Syria, Pakistan, Iraq and Libya to Europe continue, as everyone knows. In addition, it is crucial that citizens of the member states of the European Community should always be sensitive to the anti-immigrant discourses of certain fascist groups.

Now we can take a look at what has been done in the last 2019 of the European Migration Agenda. Firstly, it is clear that continuous financial assistance is provided to member states throughout the year. It is seen that the countries located in the external borders of the EU, especially in Greece, Spain and Italy, receive more financial assistance. It is certain that the reason for these countries is the exposure of more immigrants. In addition to financial aids, many factsheets have been published about the decisions taken about immigration and the activities implemented. For example, the summary dated 6 March 2019, "Migration – immediate measures needed" emphasized that the EU's effort in the past 4 years has contributed to minimizing irregular arrivals, but some key problems still await solutions. It is also highlighted that cooperation with the relevant state and international organizations is undertaken to secure the Eastern, Central and Western Mediterranean regions, known as the main routes of irregular crossings [6]. As we know in the Eastern Mediterranean region, particularly Greece and Turkey most exposed to irregular migration and therefore also the EU country where it is clear that they attach importance to cooperation.

Another important summary document with the same date is called "Facts Matter: Debunking myths about migration" and does a remarkable job in terms of rebutting a number of

common false claims and myths about migration in Europe. The "Delivering on resettlement" fact sheet, which was published several times during 2019, is a proof that the issue of resettlement is of great importance for Europe. The last fact sheet about this was published on December 17, 2019 [2]. In the summary, it is emphasized that one of the primary issues of the European Commission is to create safe and legal ways for people who need international protection [2]. The EU's resettlement programs were launched in 2015 and its aim was to ensure that the most vulnerable refugees travel to Europe without needing illegal roads and criminal networks, and thus without endangering their lives. In the past four years, it is seen that significant achievements have been achieved in line with this purpose and of course it is stated that the studies related to this will continue in the upcoming period. The meaning of resettlement as a term is explained as follows: Resettlement means the admission of non-EU citizens who need international protection to a Member State that is protected from a non-EU country. It is a legal and safe way compared to irregular migrations. It is also considered an indication of European solidarity with third countries that house people fleeing war and persecution [2].

Looking at the statistics, two successful EU resettlement programs have been implemented since 2015 and more than 65,000 people, who can be considered the most vulnerable within the framework of these programs, are assisted in finding refuge in EU member states. Member states, who place people who need international protection on their own lands through these programs, also receive financial support from the EU budget and the volume of the aid is set at 10,000 euro per person [2]. In the report, the figures related to the studies carried out in this field are shared under the heading of "Sustained efforts are delivering results." [2] It is said that with the ongoing resettlement plan of the EU, in September 2017, Member States made a collective commitment to relocate more than 50,000 people deprived of international protection. As of December 2019, 83 percent of this promise was fulfilled and more than 41,000 people were relocated [2]. It is striking in the report that Member States should continue this momentum before the program expires and the remaining 17 percent should complete. And of course, the Commission will show the necessary assistance to the Member States in the completion of this task, as in the previous stages. It is clear, however, that the need for global resettlement will not decrease in the coming years, and therefore the Commission calls on Member States to continue their efforts in 2020. We can regard it as a manifestation of the call that we have mentioned that Member States promised 30,000 resettlement sites for 2020 [2].

It is highlighted in the last parts of the report that EU funds support resettlement activities not only in Europe but also in other regions. In Africa, for example, UNHCR provided assistance to the establishment and operation of emergency evacuation mechanisms, from Libya to Niger, of which approximately 4600 of those included in the most vulnerable category were evacuated from Libya and 2,020 of them were sent to Europe [2]. It seems that Rwandan is also actively involved in this procedure.

We appreciate these efforts of the EU and wish it to continue in the coming years. We have already mentioned the question of integration and the fact that the European states started working on this a few years ago. As of today, there is a need to obtain information about what has been done in this field. When we examine the studies on the integration of immigrants, it can be seen the phrase "good practices". The European Commission stands for this statement as follows: "'Good practices' can be defined in multiple ways. However, a thread common to most definitions implies strategies, approaches and/or activities that have been shown through research and evaluation to be effective, efficient, sustainable and/or transferable, and to reliably lead to a desired result." [11].

The "Infusion" project, which has been carried out since 2017 in Lisbon, the capital of Portugal, is the first to draw attention among the integration efforts in 2019 at member states and regional levels. The project started on 1 September 2017 and is planned to continue until 31 March 2020 [3]. "InFusão" (in Portuguese) is a platform that supports third country citizens'

(TCN) participation in the integration process. This platform uses a multilevel approach in its work and focuses on education, health and employment. At the same time, Infusion aims to create local tools and synergies to leverage local resources and ensure sustainability [3]. The project has certain main objectives and works are carried out in line with these objectives:

Promoting the participation of TCNs in the identification of problems and implementation of solutions to improve the living conditions of the TCN community

Identifying existing knowledge and know-how, with a view to its diffusion to other audiences and actors

Promoting roadmaps for TCNs on local resources

Producing pilot projects for the integration of TCNs with respect to health and education

Promoting the production and dissemination of materials on health and education services

Promoting the production and dissemination of materials for better knowledge of the different cultures present in the area

Developing synergies among relevant actors to facilitate the employability of TCNs [3].

Another noteworthy project is the Refugee and Immigration Integration Center in the capital Kaunas, which has been run by the Lithuanian Red Cross association for more than 15 years. The center, which started operating as of 28 November 2004, provides services to third-country nationals and refugees with the joint support of many NGOs together with LRC [7]. Studies such as supporting refugees' integration process, ensuring security, supporting social and economic independence, guaranteeing basic needs are carried out by this center [7]. We can list the activities under the title of integration support as follows: social support and psychological assistance, vocational training and capacity-building for refugees, help with employment-related matters and legal assistance to refugees. The center also organizes events for the host community to ensure integration with the local community. The center aims to ensure that refugees and immigrants are integrated into the community they live in and benefit from equal opportunities, to support intercultural dialogue, personal and professional development, and to make refugees self-sufficient in Lithuanian territory [7].

Such centers have been successful in not only in Lithuania but also in Bulgaria (St. Anna – Centre for social rehabilitation and integration of refugees), Austria (Zusammenleben in Quartier und Gemeinde), Italy (Anabasi - Labour market integration in the industrial sector) and other countries, on the integration of refugees and migrants into the social community or the labor market, and most of the projects are still ongoing [7].

In addition to these, it is necessary to mention the projects that several countries have jointly organized and implemented across the EU. If we first evaluate the INTED - Integration Through Dialogue and Education project, the activities carried out in five different countries at the same time - Sweden, Germany, Italy, Croatia and Austria covered 2016-2018 [4]. The project, which was carried out to train the trainers who would go to the regions to train local service providers to work with immigrants, was coordinated by many municipalities and NGOs. The INTEND project organized several events related to the core competencies required for integration, and each of these events was hosted by the current subject's expert [4]. The objectives of the project in order to improve the integration process were: training on basic skills for migrants and refugees and preparing them for further studies/work; educating new instructors and improving competences of professionals, including competence in dealing with trauma; establishing trustful communication with refugees and migrants in their neighborhoods; identifying, building relationships and including people who are suffering from war-related trauma and psychological instability and who are not in studies, in the labor market or socially active; involving more volunteers and NGOs in integration work [4].

More specific trainings have been planned and conducted on issues such as intercultural knowledge and skills, family learning, recognition and overcoming of trauma. Considering the results parts, a total of seven meetings were held within the scope of the project, four of which

focused on education and training for professionals. Teachers, connectors and various other experts attended the meetings, and transnational meetings were held to plan and manage the project [4].

Another important project carried out across the EU on integration is called SPEAK. As the name suggests, this program is carried out to improve the language skills of immigrants and refugees [8]. The project, which was launched in Portugal as of 1 January 2014, is still ongoing and aims to overcome the language barrier that is seen as the social problem of immigrants. One of the focus issues is also culture and community building. In addition to teaching a language, immigrants are also supported to train in this area. Since SPEAK considers the language barrier and the lack of meeting opportunities to recognize the "other" as the main reasons for the social exclusion of migrants, it extends a helping hand to people from different cultures [8]. The results of the project, which has been going on for 5 years, in this process are remarkable. Namely, SPEAK serves in 19 cities in Europe and the number of people it covers is more than 22,000. While completing more than 630 courses, the community also organized around 270 events. The social franchising model has been used and SPEAK has been operating in 24 cities by February 2020 [8]. The "distance traveled" method used by SPEAK measures the changes in participants' responses. The strategic questions asked at the beginning and end of the 12-week course are carefully selected. We can summarize the effects of the project under three main headings: 15 percent increase in participants' belonging to the city, 40 percent increase in the sense of appreciation of the other culture and 30 percent decrease in language barrier [8].

Finally, if the impact of immigrants on the prices of public services is evaluated, it is obvious that immigration can directly affect not only the provision of public services but also the cost per unit of these services. Here, effects can be addressed in two separate areas [1, 114]. The first is demand effects, which determines the impact of immigrant demand on public services. The second factor concerns the different profiles of migrant workers and directly affects the cost of providing current public services. Judging by the data, the differences between immigrants and non-immigrants in the use of public services per capita are not separated. This neglects the fact that immigrants use public services less than locals. If we consider education and health expenditures, not registering immigrants in these areas may lead to wrong figures about the effects. For example, has revealed that high migration density reduces waiting times in local areas in general. Under all these circumstances, it is possible to conclude that registering immigrants in the field of public services is of great importance in order to reveal the effects [1, 114].

However, in addition to the low enrollment rate, immigration demand should also be taken into account when providing services on a unit basis. In addition, the possibility of requiring additional resources, such as language services, cannot be excluded. It should also be noted that different labor market support may differ markedly across countries. However, in addition to the low enrollment rate, immigration demand should also be taken into account when providing services on a unit basis [1, 115]. In addition, the possibility of requiring additional resources, such as language services, cannot be excluded. It should also be noted that different labor market support may differ markedly across countries. In the report titled Migration and the economy: Economic Realities, Social Impacts & Political Choices by Citi GPS: Global Perspectives & Solutions, the following is continued on this issue: “Additional migrant demands, however, may not just be reflected in greater costs but a wider deterioration in service quality owing to the greater per student or patient demand associated with migrants. This, again, however, is not widely evidenced.” [1, 115]. It can be understood from this that the increase in demand per student or patient from immigrants also negatively affects the quality of service.

In addition, it is very difficult to establish a clear cause-and-effect relationship regarding attitudes towards migration and immigrants at the national level. Although the idea that migration is economically beneficial in countries where the elderly population constitutes the

majority at first glance, there is no correlation between the elderly population and positive migration attitude [1, 125].

Serious steps towards resolving all these problems began to be taken in 2015 and 2016, and great strides have been made in recent years, whether regarding legal regulations or practical work. Although each of these breakthroughs has its own specific goals and objectives, it is seen that ensuring the integration of migrants to the society in general and preventing social exclusion. Moreover, these breakthroughs have provided great support not only to the state level, but also to all EU level, and even many non-governmental organizations have initiated or implemented projects. The good news is that these studies and activities continue today and planning new targets and projects for the future. Although the migration crisis that reached its peak in 2015 has almost ended at the EU level, there are many problems that need to be solved. The agreements with Turkey, Libya crisis and other problems await solutions. We sincerely hope that the European states will overcome the problems stemming from the migration process, by establishing a definite willpower as in the past.

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INTERNATIONAL STANDARDS AFFECTING THE ENFORCEMENT OF SENTENCES FOR WOMEN SENTENCED TO IMPRISONMENT

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Abstract

Since the vast majority of prisoners are male, prison systems and prison regimes have historically been designed for men, ranging from prison architecture to security procedures, medical devices, family contact, work, and training. As a result, only a small number of prisons meet the specific needs of women prisoners. These prisons often do not provide rehabilitation services, mental health services, drug treatment and counselling for victims of physical and sexual violence, the lack of which is often the root cause of women committing crimes. Empirical evidence shows that women are more vulnerable to mental and physical abuse during arrest, interrogation, and in prison. Many of the problems that women face after being released from prison are similar to those of men, but women are more likely to be particularly discriminated against. In many countries, because there are very few prisons for women, it is difficult to maintain family ties while incarcerated, in violation of international standards. For many years, international standards and national laws that contain provisions on the rights of persons deprived of their liberty and on the corresponding obligations of States have mainly been developed for men. They also focus on the conditions rather than the causes and consequences of incarceration. The article examines the fundamental provisions of international standards for the treatment of convicted women and their application in the process of execution of deprivation of liberty. The final result of the analysis of international documents and implementation practices was the identification of a certain range of problems: the physiological, social, moral, psychological and criminological characteristics of female prisoners are not taken into account, which indicates a departure from the gender differences of the legal status. The study of the provisions of international and domestic penal enforcement legislation, as well as the practice of carrying out the maternal function of a woman sentenced to imprisonment, preparing her for release and problems after release indicate the presence of different approaches in the policies of specific States.

Keywords: *international standards for the treatment of convicts, deprivation of liberty, convicted women, penitentiary institutions, criminological characteristics of female prisoners, mental health services, drug treatment, gender differences, international documents, practice in the implementation of rights, moral and psychological characteristics of female prisoners, and preparation of female prisoners for release.*

The punishment in the form of imprisonment is a complex aspect in the system of criminal penalties in different countries, since it includes many parameters that have a negative impact on the physical and moral state, as well as on the social sphere of convicts, including women [31]. The studies of a number of scientists emphasize that in the penal enforcement legislation of most States, the legal status of women is regulated superficially. For example, in the process of serving a prison sentence, their psychophysiological, social, moral, psychological and criminological characteristics are not taken into account, which negatively affects the implementation of the penal policy.

Of course, the penitentiary system of any state has its own characteristics, but there are certain international standards that regulate the execution of sentences in the form of deprivation of liberty. These standards include: the Universal Declaration of Human Rights, the International

Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the UN Standard Minimum Rules for the Treatment of Prisoners of 1957, the Set of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules").

The opinion of A. D. Gorodinets deserves attention, who points out that the meaning of international legal acts on women's rights is aimed at protecting women who have young children, as well as those who do not have them, since any woman is a potential mother. Thus, any women are subject to special protection already because of their physiological, emotional and psychological characteristics that distinguish them from men. Respect for women's rights in all aspects, that is, from the point of view of equality with men and in the aspect of their special protection, is very important in any sphere of public life [1].

Domestic penal enforcement legislation provides for the specifics of material and household support for convicted pregnant women, convicted nursing mothers and convicted women with children, including: cohabitation with children, receiving additional parcels and transfers; the right to special assistance during childbirth and in the postpartum period. Women with children are a special category of persons sentenced to imprisonment, whose legal status should take into account the fact that they are responsible not only for themselves, but also for their young children [2].

The number of convicted women in Azerbaijan has increased dramatically. According to the Azerbaijani human rights center, at the end of 2019, there was a density in the women's colony. Previously, the number of convicted women did not exceed the limit of 350 people. The current number is 480, many of whom have short terms. Women of the Republic are jailed mainly for fraud, trafficking in women, and drug trafficking.

Some problematic aspects are still relevant today in the practice of execution of sentences related to isolation. For example, carrying out the maternal function of a woman sentenced to imprisonment, preparing for release, applying disciplinary penalties to this category of women, etc.

Ensuring the implementation of the maternal function of a woman is one of the main tasks of the legislator and law enforcement officer. When released from correctional institutions, women arrive in a stressful situation, since the issue of child maintenance and upbringing is acute. After all, during the period of isolation, a woman does not actually burden herself with the idea of how to support her child, since this was done by the staff and staff of the institution. Foreign experience shows that for a woman after her release comes a period of social restrictions — problems with finding a job and household appliances. Such a psycho-traumatic situation leads the woman back to places of deprivation of liberty. In addition, the study of the practice of executing a sentence in the form of deprivation of liberty shows that even during the period of serving a sentence, the violation of the established order of serving a sentence occurs for the reasons that women who are in prison are most characterized by such negative states as anxiety, depression, fear, loneliness. A number of authors, G. P. Baidakov, S. A. Kapunkin, A. I. Mokretsov, A. N. Pastushenya rightly believe that the correction of a criminal can be successful in the conditions of his isolation from society only if it is organized as a purposeful process of correcting the psychology of the person deprived of liberty, taking into account psychological and pedagogical laws and recommendations. The above implies the requirement for the legal support of the process of correction of convicts-the maximum psychological and pedagogical validity and optimal content and organization of corrective action [3], which creates the prerequisites for their correction.

Marlene Alejos, in the study "Infants and Young Children Living in Prison," points out that young children living in prisons with their incarcerated parents are not, "formally speaking," incarcerated for an offense or crime [28]. In fact, many young children living in prisons, especially infants, have no other choice. In the absence of better solutions for organizing child care, parents prefer that they stay with them in prison. Adults in charge of care choose to keep children in prison if allowed by prison authorities (or in some cases social workers or judicial authorities), who decide whether they can be allowed to stay or not. No matter how or by whom the decision is made, if a child is allowed to be with his incarcerated parents, the prison becomes his home. In some countries, housing for mothers with young children is organized specifically, but in many others, children simply live in the same cell (and sleep in the same bed, if there is one) as their mothers, and sometimes together with other adults [22]. If the prison has limited resources and conditions are harsh, children also suffer from these restrictions, and the general prison rules often apply to them, too. But in some countries, children living in prison are "invisible" to the criminal justice system and forgotten by social services. In many countries, these children are not even registered (in the institution's journals or elsewhere) and are recognized as living in institutions only on an "informal" basis [4].

In many countries, children born to incarcerated women live there with their mothers, and infants can enter places of detention with their mothers. There are wide differences between countries and within countries in what conditions are provided for this. In some countries, there are "mother and child blocks", where special conditions are provided for the support of the mother and the development of the child [30]. In other countries, children live in places of detention, but their presence there is not officially recognized or controlled by the state, and no special conditions are created for them. In places of detention, there are often no or insufficient conditions to ensure the safety, health and development of the child. However, studies have shown that young children who are forcibly separated from their mothers are harmed in their development and emotional sphere in the long term [21]. When mothers and children are separated, mothers may never see their children again or lose track of them. Sometimes this is due to the costs associated with organizing visits by children to the penitentiary institution. In other cases, this is due to the fact that the mother refuses relatives who raise children, or that the mother is deprived of parental rights to the child. These mental and developmental problems are usually they remain with children for life. And when children are allowed to live in places of detention, and when they are separated from their mothers – in both cases, difficult problems and dilemmas arise. In all decisions that are made with respect to a child whose mother is incarcerated, the best interests of the child are the main consideration. Children's preferences should always be taken into account, and prison policies should encourage and facilitate the participation of children, according to their age, in decision-making.

In 2007, the Constitutional Court of South Africa ruled in the case of M. v. State that the constitutional provision that "in every matter concerning a child, the best interests of that child are paramount" applies to the sentencing of the child's primary caregiver. In addition, the Court issued guidelines aimed "at promoting the uniform application of principles, consistency in measures of influence and individualization of the outcome."

Sometimes, contacts between mothers in places of detention and their children living outside of penitentiary institutions are severely or unjustifiably restricted [29]. In some countries, the mother is punished by temporarily stopping communication between her and her child (for example, by banning visits). For many prisoners, children are the meaning of life, and the violation of communication with the child is often the worst punishment for the mother, which has a significant impact on her physical and mental health. At the same time, a child who has done nothing wrong is also punished. Serving a sentence far from home is a particularly difficult ordeal for women with children. Studies have shown that if relationships with children are maintained, female prisoners are less likely to reoffend after release. The children of the

prisoners did not commit any crimes, so they should not suffer like criminals. For those children who live in places of detention, the quality of life should be at least as good as the quality of life they would have outside the prison. Their living conditions should always include good food, decent playgrounds and, if necessary, the opportunity to attend kindergarten. In all cases, the best interests of the children should be the primary consideration. Children living in places of deprivation of liberty should be allowed to leave at any time if it is considered that this is in the best interests of the child.

Additional information from organizations working directly with children living in prisons in various parts of the world was also studied to learn about prison practices in general and the problems faced by children living in prisons [20]. For example, in Canada, "when possible, the wishes of the child are evaluated" when considering applications from the mother with a request to keep the child with her. Children can also ask the head of the institution to terminate the program, but it is not clear from the policy how they can make the request and whether they have direct access to the head of the institution [19]. It is also not clear from the policy how children's opinions are collected, and whether they are given sufficient weight in accordance with the age and maturity of the child — in particular, with regard to children living permanently in an institution, which is possible for children up to the age of four.

The French policy does not contain any specific provisions that allow the child to participate in the decision regarding his or her stay in prison (this may also be related to the child's age).

In Australia, for example, convicts can request permission from the prison superintendent to keep a child with them in prison. Children are allowed to stay in prison with their mother, usually until the age of 12 months, and pre-school children can stay overnight and, in exceptional circumstances, older children too. The mother or primary caregiver may also apply for permission to stay overnight or have additional visiting days for their child.

In the UK, the possibility of visiting relatives of convicted prisoners has been intensified. The instructions regulate, and the state funds, the visits of children to their mothers in prison, and mothers can have three months ' leave to stay with their families. Thus, the practice of keeping convicted women with children confirms that all states have their own approaches to the concept of "convicted mother-child", so the opinion that the interests of the child are put first among specialists is different [1, p. 22].

Since the physiological, moral and psychological characteristics of women serving sentences in places of deprivation of liberty are quite acute in the penal enforcement policy pursued by various states and the legal status of women and men is equalized, it is necessary to focus on the issues of protecting the health of women in places of deprivation of liberty. For example, in 2011, the World Health Organization developed a "Guide to action and checklists for assessing current policies and practices", which reflected the issues of women's health in places of detention. The guidelines also addressed issues such as women's detention and sentencing, as well as the conditions in which women serve their sentences and which may have an impact on their health, including mental health.

All staff working with women in detention facilities should be trained to recognize and respond appropriately to gender issues, and should be made aware of the special health needs of female prisoners. The security and privacy of female prisoners should not be compromised by the use of male employees in certain positions or to perform certain functions (for example, pat-down searches). Concern for the safety and security of women's intimate lives also extends to the organization of transportation between penitentiary institutions and between penitentiary institutions and hospitals. In the criminal justice system as a whole, court officials, lawyers and judges should be familiar with the health care provided in places of detention and with the specific health needs of women and be able to take them into account when sentencing and

defending women in court. Women prisoners need unfettered access to a full range of health and dental services [27].

It should be noted that the Kiev Declaration (2009) does not challenge the provisions, but it is noted that in some countries, prison medical staff already have clinical protocols and standards of nursing care that need to be consulted periodically, and the proposed checklist should help in this. In particular, the provision of health services in places of deprivation of liberty should take into account the special needs of women in health care due to their gender identity; these services should be provided on a case-by-case basis and in an organized manner that respects the principles of integrity and humanity; comprehensive and detailed examinations of women upon admission to the penitentiary institution, after which such examinations should be carried out regularly throughout the entire period of detention; specialized health care that is provided without delay and taking into account the individual needs of women, for example, psychiatric care, including assistance in overcoming the consequences of violence and post-traumatic stress disorder; assistance in the treatment of chronic health disorders, HIV infection and AIDS, as well as other serious diseases. It is noted that it is important to carry out activities in preparation for release from prison, which must be properly planned and implemented in order to ensure the continuity of care and treatment and access to health care and other services after release. The services and approaches listed above can bring the desired results only if national governments, policy makers in this area, and prison administrations understand, accept, and fulfill their role in this process [5].

Much attention is paid to the preparation of women sentenced to imprisonment for release (social, psychological, medical aspects). Cooperation between correctional administrations, on the one hand, and civil, social and medical services, on the other, often leaves much to be desired. The successful implementation of comprehensive measures to prepare for the release of women sentenced to imprisonment, to return to a normal law-abiding life in society and to provide them with assistance depends not only on the provisions of the penal enforcement legislation, but also on the efforts made by the administration of executive institutions [6].

Practice shows that due to the criminal past, former convicted women are discriminated against in employment and in terms of education. Despite the fact that women, when returning to life in society, in many cases face the same problems as men who have been released, these problems can be more, and they can be much more serious. Due to the existing stereotypes of women in society, women are more likely to be discriminated against after their release. They may be turned away by their family, and in some countries they may be deprived of their parental rights.

According to the international documents, the principle of non-discrimination requires States to eliminate specific the difficulties faced by women prisoners, and take into account their gender-specific needs. The principle of non-discrimination also requires States to consider and address the disproportionate impact of criminal justice policies on women and children [18]. To do so, they must review harsh punishments, including the death penalty, that disproportionately affect female offenders. For example, the so-called "crimes of adultery" have led in some countries to the fact that the death penalty is applied to women more often. In addition, in many countries, minimum sentence standards for drug-related crimes, regardless of the degree of involvement in the crime, have led to gender inequality among prisoners.

Before women are released from prison, they should be able to complete programs that facilitate their transition to a life of freedom. These programs vary according to cultural background, but may include life skills, parenting, and health care courses [16]. The mere acquisition of basic household skills, such as cooking and washing clothes, will mean a great deal to some female prisoners and will help them in their life of freedom. In the reporting documents provided by the United Nations Office on Drugs and Crime, it is stated that resources and attention given to women's needs in preparing them for release and life after release are quite

insufficient, and cooperation between prison administrations and civilian social welfare and health services is often lacking. Women serving short sentences of imprisonment are particularly often denied access to pre-release programs [10].

Once released from prison, according to the Standard Minimum Rules for the Treatment of Prisoners, all former prisoners must have access to adequate food, clothing, housing, medical care and other necessary social services.

The administration of penitentiary institutions should arrange for female prisoners, especially women with children, to have housing for the first time after their release. Women may face the fact that they will not be able to take their children to their homes until they get housing, but they will also not be able to get housing until they take their children to their homes. In the reporting documents provided by Quaker Council for European Affairs, it is said, that this problem makes it extremely difficult for these women to return to normal life in society and may be a contributing factor to re-offending [13, 17].

The administration of penitentiary institutions should cooperate with responsible institutions in civil society. Foreign prisoners are often released in another country than the country where they served their sentences, so it is important to maintain contacts with foreign institutions.

The high prevalence of untreatable trauma is characterized by a large proportion of female prisoners, predisposing this category to mental health disorders and self-inflicted harm. Research indicates that mental health problems among female prisoners are often both a cause and a consequence of their incarceration. A short stay in prison, even in pre-trial detention while awaiting trial, can cause damage to a woman's mental health and family life, but does little or nothing to deter her from reoffending. This damage is much more pronounced when women are incarcerated away from home and do not receive adequate health care during and after their incarceration. Women's mental health may deteriorate in places of detention that are overcrowded, where there is no differentiation of prisoners based on a comprehensive assessment, and where there are either no programs for working with prisoners or they are not sufficient to meet the special needs of women.

The harmful effects on mental health are compounded when women do not feel safe and if they are supervised by male staff who make them feel at risk of further violence [26].

Consideration should be given to the prevention of harm to mental health when entering places of detention and to measures to strengthen the mental health of women. The promotion of mental health and well-being should be central to all prison health care policies, and a psychiatric check-up on admission should be an integral part of the routine procedure [9]. Other studies have shown that among women in pre-trial detention awaiting trial, the prevalence of mental disorders is higher than among convicted women. This indirectly indicates that the prevalence of mental illness does not increase in proportion to the length of time spent in prison. It also suggests that women with a mental health disorder may be arrested and detained as a result of their mental disorder, especially for relatively minor crimes for which they should have been hospitalized rather than incarcerated.

Whether a woman's mental health improves or worsens during her incarceration depends on several factors, including the structure of prison facilities, possible treatment options, for example, the availability of programs and conditions for coping with the consequences of trauma, and the services provided to women [12,15].

As suggested in the Standard Minimum Rules for the Treatment of Prisoners, a prisoner may require the continued services of a psychiatrist upon release. This is particularly important for female prisoners, given the high prevalence of mental illness among them, as well as the higher likelihood that they will receive treatment for a mental disorder during their time in prison, which is necessary to continue in civil society.

Women are three times more likely than men to report experiencing physical or sexual violence before being incarcerated. Women who have experienced violence and ill-treatment before being incarcerated may have low self-esteem, poor social adjustment skills, and a lack of self-confidence. Victimization also leads to a significant degree of poor health, which is manifested in disorders of mental health and somatic health, including disorders of the reproductive system [25].

Mental injuries are directly and indirectly associated with a criminal life path and a violation of both mental and physical health. This is why it is important to treat persistent injuries with adequate psychotherapy. In the process of medical examination, it is important to identify women who are or were victims of violence [14]. If they have previously been in a relationship that allows for ill-treatment, or are at risk of encountering other forms of violence when returning to civil society, they need to be provided with advice and support even after they are released from prison. Women who have experienced dysfunctional conflict and domestic abuse may need help to develop a healthy parenting style.

Support in performing parental functions provided by women who are incarcerated with their children, or pregnant women in the pre-and postpartum periods, should be directed to prevent the main risk factors (both in the mother and in the child) of underdevelopment of the spiritual connection between mother and child and parental skills in the mother [11, 24]. Full and comprehensive support is also needed for children separated from their mothers.

Post-release assistance is extremely important, so the prison administration should pay special attention to ensuring that women have access to treatment and social assistance services after their release. In this case, support on a voluntary basis can be very useful both within the prison system and outside it (for example, support from people of equal status). A complicating factor is that many female prisoners serve their sentences far from home.

The evidence clearly, consistently and irrefutably shows that the structures currently in place in criminal justice systems designed to deal with women offenders fail to meet their basic needs and are far from meeting the requirements of human rights, generally accepted international recommendations and the principles of social justice. Although for a small number of female offenders, incarceration is a justified and appropriate measure, too many women are sent to correctional institutions for whom this measure is undeserved and inappropriate. In general, it should be noted that the analysis of international legal acts shows that they often contradict each other in many ways, thereby creating difficulties for their further practical implementation. In the scientific community, opinions are expressed on the creation of a single codified act that would incorporate all the necessary basis for the practical application of these provisions, including the execution of sentences in the form of deprivation of liberty in relation to convicted women. So, Professor V. A. Utkin notes that the provisions contained in the international standards of penal enforcement activities summarize, accumulate and bring to the attention of legislators and law enforcement agencies the world experience, performing an important information function. In this regard, the position of the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 2015 (the Mandela Rules) is indicative: "The following rules... are intended only to set out, on the basis of generally recognized achievements of modern thought... what is generally considered correct from a principled and practical point of view in the field of the treatment of prisoners and the management of prisons."

Since the international standards of penal enforcement are also based on the norms of international humanitarian law (human rights law), their guaranteeing value in relation to the treatment of convicted persons is obvious due to the fact that they contain a number of legal guarantees of respect for universally recognized human rights [23]. As an example, the author indicates art. 1 of the "Set of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" adopted by the UN General Assembly in 1988»: "All persons

subjected to any form of detention or imprisonment have the right to be treated with humanity and with respect for the inherent dignity of the human person." Following the above-mentioned Set of Principles, the 2015 Standard Minimum Rules explicitly state that they "reflect the minimum conditions that the UN considers acceptable" [7].

Thus, the existing international standards for women sentenced to imprisonment provide a certain set of guarantees for the realization and protection of their rights and legitimate interests. However, in practice, studying the experience of different states, taking into account their legal, ideological, and cultural characteristics, we see that the above standards are not fully reflected in the work of penitentiary systems, which ultimately does not lead to the correction of a convicted woman and a decrease in the recidivism of crimes [8].

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