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CONTENTS

ACADEMIC DREAMS ABOUT INTERNATIONAL IT LAW: GETTING CRAZY OR BEING INNOVATIVE ON A NEW LEGAL AREA
by Shahin Mammadrzali ……. 4

FEATURES OF THE LEGISLATION OF A NUMBER OF FOREIGN COUNTRIES IN THE FIELD OF COPYRIGHT PROTECTION ON THE INTERNET
by Amir Aliyev, Maryam Orujova ……..……. 14

TRANSPLANTATION OF HUMAN ORGANS AND TISSUES: INTERNATIONAL AND DOMESTIC LEGAL ISSUES
by Hikmat Babayev ……. 18

LEGAL REGULATION AND PRACTICAL ANALYSIS OF THE INTERNATIONAL ASPECTS OF THE ACTIVITIES OF THE HEYDAR ALIYEV FOUNDATION AS AN "INTERNATIONALIZED" NON-GOVERNMENTAL ORGANIZATION
by Elnara Mirzayeva ……..…… 29

SOME CHARACTERICTICS OF TAX AVOIDANCE PROBLEM IN MODERN NATIONAL AND INTERNATIONAL TAX LAW: INTERNATIONAL AGREEMENTS AND NATIONAL LEGISLATURE
by Asmar Aliyeva ……..……. 42

THE DEVELOPMENT OF WOMEN'S RIGHTS IN INTERNATIONAL LAW
by Yusif Mammadov ……..…… 49

REGİONAL HUMAN RİGHTS PROTECTİON MECHANİSMS
by Lamiya Zeynalova ……..... 54

ACADEMIC DREAMS ABOUT INTERNATIONAL IT LAW: GETTING CRAZY OR BEING INNOVATIVE ON A NEW LEGAL AREA

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Abstract

Current debates all around the world where the direct participation of IT lawyers is unpreventable, are always hot about the existence of international IT law or international ICT (information) law. For the purposes of the current research, I will name this area as IT law. Even in the territory of the former Soviet countries not all the scholars are sure about the system of international law norms on IT law or the presence of international information law legislation. Although the notion of national information law or IT law is well recognized in the Republic of Azerbaijan thanks to the support of national law researchers, the discussion about the separated international legislation on IT law is usually avoided. Simply put, we can't study international IT law as an individual legal area yet, but it is a mere fact that there is a system of international law norms regulating IT law relations. This system may be a cornerstone for the legal basis of international IT law in future. However, the modern trends towards harmonization of different legal areas as well as diminishing borders among legal areas puts really huge obstacles in front of the academic recognition of international IT law. At the end of the day, IT law is a complex type of legal area (or legal field) what emerged through the harmonization of different fundamental legal areas such as constitutional law, civil law and criminal law. This historical proof leaves for us some hope to believe that the future increasing links among international law areas would lead to the emergence of international IT law.

Keywords: *freedom of information, IT law, digital law, information society, legal ethics, sustainable development law.*

Some introductory remarks

The division to segregated law areas, the international law and the national law fields in particular, is a common sense of the continental legal system. E.g. traditional legal approach claims that commercial law is a commercial law and it has nothing to do with international law of organizations or international humanitarian law. Yet, there are some secondary (or complex) fields of emerging law that combines different features of those traditional and segregated law areas. IT law could be a very valuable proof of this trend. IT law deals with the social relations directly linked to the information cycle. The special nature of the information cycle (or circulation) makes the division of law into traditional international and national legal areas conditional. The flow of information takes place regardless of the existence of differences between the national legal norms of different states. At this time, the regulation of transnational information circulation and the rights and freedoms related to this circulation does not depend on one single state. The progress of ICT creates conditions for the development of cyberspace and information space independent of national borders. Such trends create duties for the national legislator to approach the implementation of IT law norms in a more modern and updated way. Implementation in the information sphere does not mean only the trans-

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formation of an international law norm into a national law norm. In other words, the national legislator can't look at the information process in such a simple way. The national legislator has to participate in the creation of universal IT law norms, taking into account the development trends of the global information circulation. In simpler terms, states themselves are interested in implementing international IT law norms so that they can benefit from the achievements of information circulation. Another reason that prompts the national legislator is that violations of law in the information sphere are often not national, but transnational or international in nature. E.g. the intermediary liability of digital platform owners puts obstacles on the harmonization of different national regulations, when the international law is mostly soft in this regard. In this sense, national implementation also forms a new perspective on global information security issues, notions of e-justice, information society and e-state.

The concepts of "information society" and "electronic state" are closely related to universal information rights and freedoms. There are even separate special international legal documents on information society and knowledge society. This means that information society and e-state are no longer terms of national law, they are also terms of international law. In other words, traditional principles of international law and ius cogens norms, concepts of international customary law norms are related to the information society too. This is mainly determined by 2 reasons.

First of all, information rights and freedoms cover information circulation, the information life of society. On the other hand, information rights and freedoms bring a new electronic communication character to public administration. In this sense, one of the researchers S.R. Dhaka notes that the provision of information rights reduces violations of law in public administration, increases transparency, and enables public institutions to perform better.[6; p.8-10] We do believe that the same ideas can be applied to the judicial sphere. Because the electronicization of the judicial system also serves to reduce the number of violations of law and to improve the quality of legal rules. However, it is not necessary to forget that the legislative system related to information rights and freedoms is quite wide and diverse. From this point of view, it would be appropriate to collect all these laws and legal acts in one place and make them into a code. As a code, it could be more possible to clearly analyze the main provisions regulating information cycle and to build a legal hierarchy among norms. The codification of legislation in the field of IT law, along with other positive aspects, would be a serious support in determining which information will be publicly open to everyone, which information will be limited access, and which type of information will be completely inviolable during the formation of the "electronic state" system. Such problems together with the emergence of the information society have created a new type of social relations, which we can call information legal relations or IT law relations.

The content and scope of information legal relations are similar to other public legal relations. Because, as in other public legal relations, the concepts of object, subject and content of legal relations are distinguished in information legal relations too. Subjects of information legal relations can be private individuals and legal entities, as well as state institutions. It should also be noted that the formation and development of IT law relations has led to the creation of a new field of law - the field of information law or IT law. From this point of view, issues such as electronic state, information society, electronic court system are considered to be included in the scope of IT law. The formation and de-

velopment of the information society has resulted in information covering all spheres of society, especially the economic spheres, which has conditioned the legal regulation of new types of social relations. The new type of economic-legal relations that we have mentioned is the basis of electronic economy and digital commerce, being distinguished by its information technology nature. Information rights and freedoms have acquired a new electronic character under the influence of the multifaceted development of ICT. We can give to these electronic rights other names including "cyber rights", "Internet rights", "digital rights", etc. In any case, electronic human rights and freedoms used in the information society have placed a number of obligations not only on civil society institutions, but also on state mechanisms.

One of the main tasks of state institutions in the information society is to ensure information transparency and unlimited electronic information circulation. This obligation applies not only to executive and legislative bodies, but also to judicial mechanisms. From this point of view, it is not surprising that in the Republic of Azerbaijan, in addition to the creation of national law, special importance has been attached to the observance of the rule of law in the process of law enforcement, judiciary and to the protection of human rights and freedoms established on the basis of international legal norms in the course of justice. Within the information society and in terms of IT law, the "electronic court" system, which is part of judicial reforms, is important for us in 3 main directions. On one hand, the creation of an electronic court mechanism is designed to ensure the free circulation of information, informational rights and freedoms. On the other hand, the electronic court is included in the concept of "electronic state", the legal foundations of the information society. On the third hand, the electronic court serves to increase transparency in the public administration system and to observe the principles of "good governance". It should be noted that all 3 directions are interconnected in the legal literature and are considered as elements of a single structure. Researchers such as K. Driss and M. Bernard confirm that the concept of "electronic state" was put forward by state institutions to better meet the demands and needs of the society and that it coincides with the conditions of "good governance". [7, p.47] In this sense, the "electronic court" system is compatible with the principles of "good governance" by facilitating the transparency and availability of information about the judicial system. The electronicization of justice mechanisms ensures the free circulation of information and the society's right to access information in accordance with the requirements of the information society. Freedom in information circulation paves the way for political, economic and democratic transparency. In this regard, there is an opinion in the legal literature that access to information and transparency also play the role of "inoculation" in the direction of achieving the conditions of "good governance" by increasing the quality of public administration. [4, p.175]

Traditional international law approach

Issues of legal regulation of IT relations and human rights in the international information sphere can be investigated on the basis of both the theoretical and normative basis of international law. Informational international legal relations must be subject to the basic rules of traditional international law. In general, the fragmentary character of international law, the lack of hierarchy between different legislative and judicial bodies has spread to international IT law legislation too. Decentralized international legislation determines the rules of the international system of sources formed as a result of activity. These source forms equally apply to international legal relations in the information

sphere. That is, when examining international information legislation, we should refer not only to written convention norms, but also to customary law, court precedents, general principles of law and other types of sources. The division of international legal norms into mandatory and recommendatory nature can also be applied to international IT law norms.

In practice, when solving a specific legal issue, lawyers apply their general and specialized knowledge related to that field. In some literature, it is noted that "generalist" lawyers who have knowledge of various legal fields and apply their general knowledge are more experienced and skilled than specialized "specific" (specialist) lawyers. [9, p.14] In international criminal law, depending on the nature of the investigated crimes, the cooperation of generalist and specialized lawyers is recommended. [2, p.534] The same type of approach can be applied in the international information sphere. In our opinion, when examining the true existence of legal basis for international IT law and the human rights norms in the international information sphere as well as determining their implementation features, first of all, it is possible to apply the general theoretical aspects of international law ("generalist" approach), and then the "specific" approach to specific information-legal issues.

In the creation of international legal norms of a non-binding ("soft law") nature and decentralized mechanisms, in the end, various documents related to the same issue are established. The same situation exists in the international information sphere. For example, organizations such as the UN, the Council of Europe, and the EU have dozens of documents regarding information security in cyberspace that set various requirements. It is difficult to find specific customary law norms in the field of international IT law. However, customary law related to human rights, especially universally binding (ius cogiens) norms, also apply to the international information sphere. The principles of international law, especially the principle of respect for human rights and freedoms, are valid in the international information sphere. The fight against digital inequality in the global information space can be analyzed against the background of the principle of elimination of discrimination. In the 2019 deliberations of the UN International Law Commission, the elimination of discrimination and environmental protection were also discussed as potential ius cogiens norms. [15, p.61] In this sense, it is possible to analyze digital inequality and environmental information acquisition as ius cogiens norms in the international information sphere.

Those traditional (states and organizations) and new (individuals, transnational companies, etc.) users of international law may have mutual rights and obligations in international legal relations in the information sphere. Certain norms of international IT legislation are also found in various traditional fields. For example, the rights and obligations to obtain information about the environmental situation are examined within the framework of international environmental law. The use of drones and various technological innovations during war is analyzed in the field of international humanitarian law. Law violations in the information sphere can lead to both individual and other forms of international legal responsibility for human rights, including criminal responsibility (in cases of cybercrime, use of ICT for the purpose of terrorism, etc.). Therefore, the obligations imposed on state and non-state subjects (especially human rights obligations), the resolution of disputes, the implementation of norms and other related issues, and the ge-

neral rules of international law are valid for international information legislation and information space.

International IT law as the result of global information society development

It is impossible to imagine modern analysis of information circulation in isolation from research on information and knowledge societies. The impact of the Internet and other technologies on various rights and freedoms is also related to the information society. This connection is hidden in the explanation of the information society. The infomation society once again proves to what extent information circulation is included in the IT law. Thus, it is not expected that information circulation will always give positive results. Information circulation includes a number of negative processes and dangers. This includes violations of the rights and freedoms of participants such as information fraud, violation of privacy, etc. In this sense, information circulation needs certain control and regulation. Regulation does not necessarily have to be legal. Moral and ethical norms can also be established to ensure information circulation. However, legal norms stand higher than other regulatory methods due to their coercive and deterrent nature. The legal regulation of information circulation includes the normative base of information society and knowledge society. Since the information society covers all areas of social life, the definitions given to it are also different.

Information society is not related to national law, information society is a product of globalization and global economic and cultural relations. Giving a legal definition of the information and the information cycle is a rather complex process. However, in any case, the circulation of information should be explained through freedom of information and freedom of expression. Legally, the definition of information, in our opinion, should reflect its technical, social and philosophical aspects in a plural form and at the same time, which is difficult. The fact that information has the ability to give shape to any thought, idea or idea shows how important a role freedom of expression plays in the information sphere. Information, as a new direction of freedom of expression, is not limited to the expression of ideas, it strives for the transfer of ideas - that is, their movement and circulation. The movement of information includes the preparation, processing, transmission, reception, collection, etc. There are also authors who consider information as part of the communication process. [8, p.32] Therefore, the movement and circulation of information is the most basic condition that reveals its internal characteristics.

The information society is not only about informational freedom of expression, but also about various economic, social, cultural and other uman rights and freedoms. Although the difficulties caused by the information society related to social changes are many, its main task is the protection of human rights. [1, p.160] One of the authors, A. McKenna, even suggests a separate human right, such as "the right to participate in the information society." [12, p.2] In our opinion, offering a separate right to participate in the information society is expected and logical. Because the purpose of all public, state and private institutions in the information society is changing under the wide application and influence of ICT. For example, management in state bodies is becoming electronic, the weight of citizens' electronic participation in information circulation is increasing, etc. All these trends give a new electronic meaning to concepts such as citizenship, management, state, and the need to change the traditional application and provision of human rights. This need shows itself not only in political management issues. The role of the media in the information society is especially increasing too. The increasingly digitized and freed

nature of the media also affects its conditions for democratic governance and compliance with digital human rights. [16, p.99] Digitization of all areas, simply collecting information materials, engaging in any creative activity, acquires a new technological-electronic element in the information society. In the digital age, people are exposed to a new type of digital behavior, which affects their non-fictional creative activity, communication and work organization. [14, p.527] However, the information society should not be understood only as a result of technological development. The information society is also a reflection of ideas about development, economic, political, social structure, moral rules, etc. In other words, it is possible to apply multifaceted approaches to the information society. In the literature, it is noted that the concept of "information society" was first used by Japanese scientists in 1961 (Kisho Kurakawa, Jiro Kamishima, Johoka Shakai, etc.). [11, p.14]

If we examine the effects of information on our society by historical stages, we will see that, in fact, information is one of the primary factors that shape our society. So, society is an information society from its very historical and evolutional beginning. The first development period of this society was the emergence of speech and writing, the second stage was the emergence of books and printing, the third stage was the emergence of electricity and electronic information carriers, etc. In fact, the idea that society is entering a new information age is quite a relative but not an absolute claim. Because the increase in the weight of information in public life is not the result of the last 50-100 years. Historically, from the moment people gathered together and formed society, information has played an important role in our lives. Some of the authors claim that since the Early Bronze Age, when writing was discovered, people continue to live in different stages of development of the information society. [10, p.3] The approach to the information society in a narrow sense can be explained by technological development and the growing role of ICT in various areas of our life. In our opinion, the approach that suits the purposes of our research is a narrow approach to the information society. The narrow approach is also reflected in the various definitions given to the information society. The information society is closely related to the digitization of our life.

An attempt to the system of international IT law legislation

Attributing part of the norms related to information and ICT to different areas of international law allows us to approach legislation in the international information sphere in a broad and relevant sense. Information legislation in its broadest sense includes international public relations whose main purpose is not information circulation. However, these norms do not yet mean universal information legislation. In its narrow sense, international information legislation regulates public relations that are active in information circulation and whose ultimate goal is information exchange. Regulation is mostly carried out through the definition of countervailing rights and freedoms, determination of obligations - that is, human rights. Most of these public relations (e.g., human rights on the Internet, digital responsibility, cyber security, etc.) are also studied in the field of international human rights law. In our opinion, we can group the main universal standards of IT law that can be applied to the international information sphere and the implementation directions of these standards as follows:

- Norms related to information and knowledge societies - these norms include requirements for other basic human rights that are emphasized in the information and knowledge society (e.g., cultural rights, right to creativity, right to education). One of the first internationally recognized documents on the information society is the Okinawa

Charter on the Global Information Society, adopted at the Okinawa Summit of the G8. The provisions of the Charter were subsequently reflected in a broad form in the Declaration of Principles and Action Plan adopted as a result of the World Summit on the Information Society held in Geneva in 2003. M. Raboy, one of the authors, notes that, in fact, the world summit on the information society was the 3rd attempt of the UN to solve global information and communication issues. Thus, in 1948, the Universal Declaration established the right to seek, receive and share information as a human right, and in the 1970s, unsuccessful discussions on the "New Information and Communication Order" were held around the world. [5, p.181] Although there was no unanimity regarding the final documents of the summit, it reflected the general view of the participants about the information society. The next stage of the summit was held in Tunisia in 2005 and new documents were adopted. The UN Group on Information Society [20] closely participated in the activities of the summit. The ICT Task Force, established by UN Secretary General Kofi Annan in 2001, played a major role in the holding of the two-stage summit;

- Human rights norms - universal human rights documents on privacy, information rights, freedom of expression, etc.;

- Norms related to telecommunications, mass media and the press - many international law documents related to the media, especially the application of freedom of information in the media, defamation, fight against terrorism, etc. Since the importance of the media and mass media has increased, the UN General Assembly discussed the draft international convention on the dissemination of news as early as 1949. In 1950, the UN declared that the right to listen to the radio belongs to the content of Article 19 of the Universal Declaration. [17] In 1952, a draft Code of Conduct for information institutions was proposed within the framework of its activities in the direction of press and information freedom. Deeper regulation of the telecommunications field is currently carried out by the International Telecommunication Union. As early as 1978, mass information and communication systems were noted by the United Nations as important for all-round development and information dissemination. In Article 1 of the Constitution of the International Telecommunication Union, the provision of quality access to information and the distribution of technological achievements among the states are among the main goals of the Union;

- Norms related to the Internet and new technologies - The rights that people have offline - that is, in real life - should be protected to the same extent when they are online. [18] Furthermore, artificial intelligence is also linked to many human rights in the digital space. However, it has been recognized by the UN and other organizations that new digital technologies will lead to serious difficulties in the IT law field and human rights protection and that this issue should be specially investigated. In this direction, the regulation of human rights has been seriously considered in the context of Internet management. For this reason, it is possible to investigate the national, regional and universal level of Internet management from the first periods of its discovery;

- Norms on sustainable development - mainly derived from the UN's "2030 Agenda for Sustainable Development". The UN General Assembly determined that information society development features, science and technology play a significant role in the implementation of the 2030 Agenda [19];

- Norms on intellectual property rights – these norms are necessary to analyze the deepening contradictions between intellectual property, especially copyright and infor-

mation rights, as a result of the impact of ICT. For example, the right of third parties to comment on the trademark may conflict with the exclusive use interests of the trademark owner. Public access to information and specific private copyrights may also conflict with each other. For these reasons, it is important to examine the Paris Convention, the Berne Convention, and the Rome Convention of the World Intellectual Property Organization within the framework of international information legislation. The World Trade Organization has declared the norms for the regulation of copyright in the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS Agreement) in Part II, Section I of the scope of intellectual property rights.

Conluding notes

Traditionally segregated and separated law fields (or areas) are now being combined via the secondary (or complex) law areas, such as business law, banking law, tax law, cyber law, etc. Another very significant example of such secondary law areas is IT law (or information law, ICT law) area. In the post-Soviet region the existence of an individual law area called IT law or information law does not raise serious doubts. Yet, the existence of proof for international IT law is a lack. Nevertheless, one may try to see and collect a bunch of international law norms related to information circulation (or cycle) what may later play the role of legislative basis for international IT law. As it can be seen from the arguments presented above, legislation in the international information space does not consist only of freedom of information and only UN human rights documents. A number of other organizations also have norms directly related to the information sphere. However, the basic universal norms in the information sphere are regulated by the UN and its related organizations. These organizations can be called "UN system" or "UN family of organizations". But at the same time, it is necessary not to forget that the international information legislation covers not only human rights, but wider issues. Co-authors Molly Land and Jay Aronson recommend analyzing the challenges posed by new technologies for human rights in three ways: a) ICT, human rights and power, b) ICT and responsibility, and c) shifting boundaries between private and public. [13, p.6] These three directions can play an important role in determining the boundaries of international information legislation.

The law-making power in international law is not centralized, but there is a kind of hiearchy among different types of international legal norms. This means that one may build a legislative basis for a new international law area in the same direction. In other words, if there is a field of IT law at the level of national law, it is possible to talk about a separate field of IT law at the international level. Because international law is more favorable than national law for rules regulating global information circulation. In our opinion, the fact that international law, both in the narrow and broad sense of information legislation, has a leading character and a determining role can be explained by several arguments.

As the first argument, it should be noted that information legislation at the international level has historically developed more systematically. On the scale of national law, the development of information legislation is scattered. National information norms around the world have been adopted individually depending on the development characteristics of the states. As we have already mentioned, considerations about the information society were first proposed in Japan, which has rapid technological development. The first modern legal act related to information rights at the national level was adopted

in Sweden in 1766 regarding the public disclosure of state documents. On the other hand, the quality indicators of the global information space and the global information society are weakened due to national legal norms that define different and different requirements. The rights and obligations of citizens who are participants of the general information society are regulated differently because they belong to different states. For this reason, a number of experts consider it necessary to create a general charter (declaration) containing the rights and obligations of all citizens based on ethical values in the global information society. [3, p.17] The third argument is that reasons such as the different level of development of states and the interference of powerful states in other states call into question the universality of human rights. In our opinion, the same situation exists in human rights used in the information sphere. A significant part of the legislation in the information sphere is occupied by related human rights norms. As we mentioned earlier, the universal nature of human rights, as well as the content of the principle of respect for human rights, require the codification and international harmonization of relevant national norms at the world level. In simpler terms, the nature and characteristics of human rights favor international rather than national norms. First of all, this issue can be examined in the context of international legal theories and international human rights. Because international information legislation is closely related to the sources and principles of international law and international legal obligations. On the other hand, norms related to information can be found in documents related to various fields of international law. Therefore, a more accurate approach to information legislation should be developed. On the third hand, the information society and ICT have formed a new view of all human rights. There are many universal and regional international organizations dealing with one or another issue of the information society, in whose documents one can find many norms directly or indirectly related to human rights. However, it is not correct to examine all universal and regional human rights standards by including them in the international information legislation. Simply put, international IT law is something that is linked to international human rights law, but is individual and independent at the same time. International IT law has its own range of legal subjects, common and special legal principles as well as doctrine. Nevertheless, the last one – the conceptual basis and doctrine of international IT law is not well-developed yet. And of course, there is no so-called group of international IT lawyers, but there are cyberlawyers, criminal lawyers, commercial lawyers, etc. This facts stresses out again that international IT law is a kind of new workload for both national and international lawyers, but it is unavoidable.

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

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Abstract

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

Keywords: *copyright, the Internet, copyright protection principles, digital space, piracy, intellectual property*

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

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

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

According to the US Constitution, copyright is not an independent human right and is considered in its application aspect. Article 1, Section 8 of the U.S. Constitution empowers Congress to make laws "to promote the advancement of science and the useful arts, by granting to authors and inventors the exclusive right to their writings and inventions for a fixed term." For courts interpreting the US Constitution, the term

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"science" was equivalent to the term "knowledge," and they considered copyright a necessary tool for creativity that did not interfere with freedom of expression. The provision that gave Congress the power to grant patents and protect copyrights was based on the idea that rewarding individual efforts with opportunities for private profit was the best way to put the talents of authors and inventors at the service of the common good.

In the United States, the main regulatory act regulating new relations in the field of copyright, which arose due to the development of the Internet and the entry into civil circulation of works in digital form, which do not require physical media, was the Federal Act of October 28, 1998 "On Copyright Law in the Digital Age". (The Digital Millennium Copyright Act (DMCA)). The US legislator is faced with such a problem that international treaties require equalization of legal protection levels for all works originating from countries participating in international treaties. The United States Copyright Act of 1976 provides that works from other countries are protected in the United States only if certain conditions are met that entitle them to legal protection. A solution was found: Section 102(b) of the Digital Millennium Copyright Act WIPO amended the Copyright Act to extend its scope to subject matter protected under the provisions of copyright and related rights treaties. A significant expansion of the protection of foreign works is related to the requirements of restoring the protection of works that have not passed into the public domain in the countries of origin of these treaties. In the United States, the right to sue is subject to prior registration of copyrighted objects, but the WIPO treaties contain an express prohibition against making the protection of a recognized right conditional on its registration. Added to eliminate this requirement for all foreign works pursuant to Section 411(a) of the Copyright Act.

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

According to existing national laws and draft laws, international practice provides for gradual (three-warning rule) and/or alternative ways of bringing online pirates to justice: limiting access to certain Internet resources, reducing connection speed and/or completely refusing to provide Internet services (Ireland, South Korea); high fine (US); criminal liability up to imprisonment (France). In addition, there are systems in place to prevent the downloading of pirated music files from the Internet to mobile phones (Japan); The principle of authorization for publication of works is applied taking into account the existing translation of the original into the national language (Chinese); Records user data, including routing, for three years. [3]

The legal framework governing the provision of online services in the EU is scattered across numerous laws on e-commerce, the provision of communications services, the processing of personal data, media activity, copyright and related rights issues, and many other areas. The European Commission believes that the use of copyright and

related rights on the Internet is subject to serious criticism, mainly due to the failure to meet the demand for legal content at a reasonable price for the consumer. The European legislator is moving away from the notion that the situation can only be rectified by a system of tougher bans and prosecution of an ever-wider class of people, including internet service providers. Artificially blocking the exchange of information between individuals will lead to devastating consequences. Offering a variety of legal content online at an attractive price is seen as a cost-effective response to the piracy of copyrighted works.

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

Piracy, not the services provided by legitimate collective management societies, hinders the development of a single digital music market. All measures that hinder the development of the single digital market are, as a rule, justified by considerations of combating piracy. No mechanism for licensing the various services available today can compete with the existence of a readily available consumer market for unlicensed music. The threat of a market for unlicensed work (including in other fields) hinders digitization. The European directive on collective rights management includes anti-piracy measures as well as a strong and effective rights management system. This includes proposals to introduce competition between collective management societies, which have been put forward in order to reduce costs. The European Directive on the collective management of rights aims to create a (legal) framework for the management of rights in an environment where there are no borders between countries. Competition legislation alone cannot provide constructive solutions. A broader legal approach is needed to regulate the management of rights on a collective basis. The policy of states to fight against violations and crimes in the field of intellectual property rights on the Internet should be aimed primarily at creating an economically attractive alternative to illegal actions. And only after reducing the level of these violations, we can talk about repressive measures if many users prefer not to get into trouble with the law by paying relatively little money. [4]

Provisions allowing exceptions for commercialization of objects and services are important in copyright law. The digital dissemination of cultural and scientific material removes the limitations of the material world, allowing more people to be interested in and, most importantly, to have real access to it. The Internet enables the development of cultural exchange between representatives of different sections of society, and in the long run helps these sections to better understand each other's ideas and thoughts. At a time when the whole world is seriously talking about equality and the need to soften

physical borders, the Internet can be considered the first step towards globalization. The Internet promotes pluralism, provides access to more sources of ideas and information, and becomes a means of self-expression for everyone who would otherwise be denied such an opportunity. Not only professional communicators, but everyone gets technical opportunities to reach a wide audience. Obviously, it is not possible to make everything free for everyone. It is necessary to pay for the work of the author, the work of the publisher, and the work of the people involved in the creation of the work. It would be strange to condemn the desire of many countries to legislate to protect this justice.

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

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TRANSPLANTATION OF HUMAN ORGANS AND TISSUES: INTERNATIONAL AND DOMESTIC LEGAL ISSUES

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Abstract

The article is devoted to the analysis and research of the scientific-theoretical and practical problems of international and domestic legal regulation of transplantation of human organs and tissues. Transplantation is the replacement of organs or tissues that are absent from the patient (recipient) or surgically damaged, organs and tissues from a living donor (ex vivo – living donor, human) or a human corpse in order to save human life and restore health (ex muetro-former muero corpse). Legal problems of transplantation in the second half of the XX century began to acquire an international character, confirmation of the this is the adoption of international legal norms and recommendations aimed at protecting human rights in the field of transplantation: 1981 Lisbon Declaration on the Rights of the Patient; The 1987 Declaration on Transplantation of Human Organs strictly condemns the trade in human organs; Convention on the Protection of Human Rights and Human Dignity in the Application of Biology and Medicine: 1997 Convention on Human Rights and Biomedicine prohibits the taking of financial profit from the possible use of any part of the human body; The 2002 Additional Protocol to that Convention on Transplantation of Human Organs and Tissues (entered into force in 2006) contains provisions containing general principles and specific rules for the regulation of transplantation of organs and tissues for therapeutic purposes, without international acts and legislative acts, each it is impossible to ensure adequate protection of human life and health. In p-articular, the World Health Organization's 1991 Guidelines for Transplantation of Human Organs, Tissues and Cells (2008 Edition) Istanbul Declaration of 2008 on transplantation tourism and trade in organs; the 1994 Resolution on the conduct of physicians in the practice of human organ transplantation; the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; etc. the need to refer to international documents prohibiting the criminal trade of human organs and tissues is emphasized.

Keywords: *transplantation of human organs and tissues, biomedical rights and freedoms, Lisbon Declaration on Patients' Rights of 1981, Convention on Human Rights and Biomedicine of 1997, World Health Organization*.

Medical and biological achievements in the direction of life and health protection, which are considered the highest human value, have always been appreciated and encouraged by the international community. The role of the achievements in the field of transpantology in the significant advances and breakthroughs in medical and biological sciences during the last decades is quite large. Transpantology is a part of biology and medical science that studies the issues of transplanting organs and tissues and that develops methods for their preservation, as well as develops the opportunities of creating/generating and applying artificial organs. In medicine, the replacement of the diseased heart, kidneys, liver, pancreas, bone marrow, spleen, and skin with new and healthy organs has become a widespread practice and as the final result of this practice, the science of transplantology has appeared. As mentioned in the studies, transplantation of organs and tissues is a type of highly effective surgical intervention (operative)

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aimed at transferring organs from the donor to the recipient. [28, p. 38-40] By the way, let's note that the term *transplantare* in Latin means cutting a part of a bone, tissue, or organ and sewing or putting it in another place. Transplantation is the replacement of missing or damaged organs and tissues in the patient (recipient) with organs and tissues of a living donor (ex vivo - living donor, human) or a human cadaver (ex muetrocadaver) by conducting a surgical operation to save human life and restore health. Transplantation should also be understood as the process of replacing damaged or missing tissues and organs with one's own tissue or taking it from another organism. The transplantation procedure consists of two main points: the removal of organs from the donor and then inclusion of those organs into the body of the recipient. [18, p.76] An issue should not be forgotten that today, the increase in demand for healthy organs encourages the rapid development of biomedical technologies.

Depending on the type of donor, there are different types of transplantation: autotransplantation is the transfer of organs and tissues within an organism, for example, taking a part of a person's own skin and transplanting it to a skin area of the same person; allotransplantation (homotransplantations) - transfer of organs and/or tissues from an organism to another organism of the same type, for instance, from a human to human; iso-transplantation is the transfer of organs and tissues from an organism with genetic identity, for instance, the transfer of organs between twins; xenotransplantation (heterotransplantation) the transfer of organs and/or tissues from an animal species (according to the criterion of immunological affinity, for instance, pig, monkey) to a human; transplantation of artificial organs and organs grown from stem cells (using the help of biomedical technologies as an alternative type of transplantation, the organs and tissues necessary for the patient are obtained). The first successful attempts at stem cell transplantation in cardiology, orthopedics and traumatology confirm that this development is prospective.

Modern transplant ology is on the verge of a process of transplanting genetically modified cells, tissues and organs from animals (for example, pigs) into the human body. In the body of such animals, proteins are formed, and these proteins prevent the damage to the transplanted organ by the human immune system. However, the world community is wary of xenotransplantation and animal organs and tissues are not used for human transplantation. Of course, there are certain reasons for this. The first reason is the high risk of immune rejection of xeno-organs, and the second is the risk of cross-species transmission of various dangerous infections (for example, retroviruses) from the animal-donor to the recipient-human and the lack of natural defense mechanisms against such infections and the possibility of a pandemic that can lead to unexpected consequences. Given these dangers and possible risks, currently the only bio-substrate source for human transplantation in practical terms is the living and dead human, as before. By the way, let's also note that Article 6.3 of the Law of the Republic of Azerbaijan (RA) "On Donation and Transplantation of Human Organs and Tissues", which entered into force on January 1, 2022, emphasizes that xenotransplantation in Azerbaijan is prohibited except for scientific research prohibited. [5]

Although transplantation of organs and tissues, based on modern scientific achievements and medical experience, has appeared in recent times, the history of this issue goes back to the distant past. In a number of studies, it is emphasized that two doctors named Cosmas and Damian, who lived in Europe in the 3rd century, amputated a gangrenous leg and succeeded in transplanting a dead leg instead. In India B.C. in the

second and third centuries, the implementation of transplantation on the human face was confirmed in writing [11, p.7]. In other studies, it is reported that the first transplantation studies were attributed to Italian and German doctors [29, p.79]. In the 16th century, the Italian surgeon Togliachocci performed plastic surgery on the face by transferring skin. In 1858, L.Ollier tried bone transplantation. The first attempt at kidney transplantation was made by surgeon O.Voronoi in 1934 and although he transplanted the kidney of a dead person to a woman poisoned with mercury, the patient died two days later. The first successful kidney transplant was performed on twins in 1954 in Boston, USA, under the leadership of C. Murray, who was awarded the Nobel Prize laureate in 1990. From the obtained results, it was concluded that having the same genetic structure of the donor and recipient organisms is a great chance for the success in organ transplantation. In 1960, successful kidney transplants were performed between non-twin relatives, and a little later between the donors and recipients that are not relatives. The first successful heart transplant was performed in 1967 by the famous surgeon Christian Bernard in the Republic of South Africa. It should be noted that the initiation of research in the field of immunology in the 50s of the 20th century and the achievement of positive results were of decisive importance in the development of transplant ology.

Since the transplantation of human organs and tissues is accompanied by religious-philosophical, social and legal problems, the solution of these problems is also of great importance. When we approach the problem from a religious point of view, we notice that the different attitudes of world religions to bioethical problems are also evident in the issue of transplantation. Researches emphasize that the emergence of such different approaches in world religions is related to the fact that a person is an honorable being, to the value given to him, to the fact that the body is a trust and a person cannot have the ability to rule over his own body, etc. [4, p.27; 7, p.33] According to Judaism, if a donor is in danger of dying during a transplant, it should be considered an attempt on his life. At the same time, it is not permissible to transplant the organs of a person who is dying but not yet dead, because he is alive while he is still breathing. According to the tenets of this religion, the transplantation of any organ is allowed only in the following cases: 1) a healthy and living donor agrees to the transplantation of one of his organs after detailed consultation with medical and religious authorities (in this case, the Torah state that "do not take the soul of a living being" is somewhat ignored; 2) a dead person can be used as a donor. According to Judaism, a person's death is considered a fact if it has been medically established that breathing has ceased, metabolism has stopped, and the impossibility of resurrection has been detected. After death, any organ of corpse can be used to save the life of someone else, that is, the patient. [3, p.753; 34, p.945-946]

One of the heavenly religions that are most sensitive to the current problems of bioethics, including the transplantation of organs and tissues, is Christianity. In this religion, although its Catholic and Orthodox currents (churches) take a different approach, it is considered a sincere act of love and a virtuous act for a person to donate his organ in order to save another's life. Although organ donation is ultimately a personal choice, organ transplantation is recognized as a moral Christian rule [10; 30, pp.52-57].

Harming the body of living or dead people is forbidden in Islam. However, in the Islamic religion, it is considered permissible to save another person's life, to help people in difficult situations for the sake of goodness. In two verses of Surah Maidah of the Holy Quran, the importance of saving human life and helping each other is explained: "

cooperate in righteousness and piety" (verse 2) and " whoever saves one – it is as if he had saved mankind entirely". [8, p.105, 112] Considering these two verses of Surah Maidah and the importance Islam gives to human life, one can notice that organ donation and therefore organ transplantation are not against Islamic teachings. To be more precise, the transplantation of organs and tissues is not prohibited in the context of the current legislation and Islamic bioethics. It should also be noted that the expression of consent to the transplantation of human organs and tissues in Islam was already established in the decision (fatwa) No. 26 (1/4) in the 4th session of Council of Islamic Jurisprudence Academy under Organization of Islamic Conference (Organization of Islamic Cooperation).

Transplantation of human organs and tissues is considered one of the most successful types of medical practice in the last fifty years. At present, transplantation not only solves the problem of saving people, but also brings society members back to social activity, stimulates transplanted patients to live and start a family. However, the absence of inadequacy of advanced legal bases (both international and domestic) for the regulation of transplantation is unfortunately one of the issues that concern the international community as an urgent problem. In particular, this manifests itself in the inadequacy of legal regulation of the following complicated problems: 1) commercialization and criminalization of this field of medicine due to the lack of donor organs; 2) confirmation of human death according to the criterion of brain death; 3) removal (explanation) of organs and tissues from a corpse and a living donor; 4) distribution of donor organs by appointment; 5) mutual relations between the donor and the recipient; 6) mandatory instruction to transfer organs and materials; 7) responsibility for providing transplant operations; 8) protection and confidentiality of information about the donor and recipient; 9) determining the priority for transplantation of living or deceased organs in determining the donor; 10) artificial implantation of organs and tissues; 11) the possibility of rewarding for donation, etc.

The legal content of transplantation is its relation to personal, somatic law (with the physical body and spiritual world of a person). Human rights, which imply the ability to dispose of one's own bodily substance and are of a purely personal nature, are considered somatic (Greek soma - body) rights. Transplantation of organs and tissues, sterilization, sex change, sexual rights, right to death (euthanasia) and similar rights are involved to somatic rights. [19, p.82-85; 23, p.124-133] Transplantation of organs and tissues in the sense of somatic law is a process or social and legal event that determines mutual relations between the donor and the recipient who needs the necessary organ and tissue. Donor literally means one who gives. To put it more precisely, the donor, gives his organ to the recipient as an anatomical gift without any economic motive. Incorporating any economic benefit into this process diminishes the spiritual significance and value of that gift. It should be noted that the importance of organ donation as a social phenomenon (for example, giving one's organ as a priceless gift to save the patient's life, compassion, human love), that it is a special type of donation, and at the same time, the possibility of a commercial transaction in the case of mediation between the donor and the recipient, are recognized by researchers. Is also mentioned. [22, p.11-17; 32, p.984-994; 35, p.23] Alvin E.Roth notes that organ donation is the most difficult and even the most tragic market for free, and which is characterized by economic and biological difficulties in selecting its participants. [26, p.34]

This factor and other criteria mentioned, for example, religious approach, ethical and moral aspects, the diversity of people's approaches and views, have also contributed to the different directions of the legislative practice of countries in the removal of human organs and tissues for the purpose of treatment. [16, p.1-4] Since modern times are the age of transplantation, the legal regulation of transplantation of human organs and tissues is considered one of the vital prerogatives of most states. For instance, in Germany, the Act on Donation, Harvesting and Transplantation of Human Organs and Tissues (1997), Transplantation Act of 2007 as amended in 2009; Argentine Law on Transplantation of Human Organs and Tissues (1993); Law of the Swiss Confederation on transplantation of organs, tissues and cells (2004) [14, p.113-122]; Law of the Russian Federation on transplantation of human organs and tissues (1992) [12, p.18-21]; Swedish Act on Transplantation of Tissues and Organs of Deceased Persons (1988); US National Act on Organ Transplantation (1984) [21]; Brazilian Law on the Use of Cadaveric Tissues and Organ Parts for Therapeutic and Scientific Purposes; Law of Republic of Azerbaijan of 2020 on Donation and Transplantation of Human Organs and Tissues, etc. regulate the transplantation process. In some countries, for example, in Switzerland, the issue is even regulated at the constitutional level. Rather, somatic rights related to transplantation have a constitutional basis. The relevant (75-article) Law of this country contains a more extensive form of regulation. [12, p.113-122] In general, in more than 40 countries of the world, it is found that the issue is regulated by the relevant section either by the constitution or by a special law.

However, the legislative, organizational, socio-economic measures of the states in the field of transplantation of human organs and tissues cannot fully meet the requirements of the time. This has led to the emergence of a "black" market for the trade of human organs and the commercialization and criminalization of this field of medicine (the demand exceeds the supply and criminal purposes are pursued on the basis of this). Although national legislation and international legal norms in force in this field prohibit the trade of donor organs. Criminal trade in human organs and tissues is caused by economic crisis, very low living conditions of human society from a social point of view, cases of armed conflict, human trafficking for the purpose of transplantation of human organs, and the wide spread of such transnational crimes, etc. Scientists note that it is currently impossible to find real information about people who are victims of the criminal transplant market, about the connection of this crime with other crimes, for example, kidnapping. [20, p.126-132] Research scientist V.B.Ryzhov mentions in his research about the involvement of Israeli citizen Boris Walker in the criminal trade of organs with Syrian refugees. Turkey, Azerbaijan, Sri Lanka and Kosovo were Walker's field of activity. [27, p.125-129] Trade in the organs of women and children are expanding even more in economically disadvantaged countries. No matter how much the international community reacts to the crime of human trafficking, the illegal trade in human organs on the initiative of individual states (the 2000 Palermo Convention system, of which more than 147 countries are members), as a result, crimes such as human trafficking are becoming widespread. In some countries (for example, India), even though the transplantation of human organs and tissues is not an object of trade in a legal state, the "organ transplant agency" promotes the trade from countries where it is prohibited.

In many countries (for example, Germany, Great Britain, Italy, the Netherlands, etc.), the creation of banks, funds, and information markets for the storage of blood,

other material, and donations of biological material taken from the umbilical cord of a newborn child on legal grounds is a legal regulation of relations on transplantation in a new format. The need for legal regulation in the field of transplant ology is directly related to the use of donor organs and tissues. Legal regulation should be ensured during the removal of organs from severely injured and sick, as well as comatose patients, creation of artificial organisms and robots with tissues taken from living organs. Serious ethical problems regarding brain death have also created controversies. Although brain death is recognized as a necessary condition for the removal of human organs and tissues in medical practice, its acceptance in the public consciousness contradicts the traditional views of people about the "heart" as the basis of human life activity. From a legal point of view, death is an event that causes the creation, change and termination of a person's rights and duties under civil law. To determine the moment of brain death, three conditions or ethical principles must be obeyed: the principle of a unified approach, that is, a unified approach to diagnosis, regardless of whether the patient is a potential donor or not; principle of collegiality - mandatory participation of several doctors in diagnosis; the principle of organizational and financial independence of medical teams involved in transplantation. [15]

The presumption of consent to the donation of human organs and tissues in the regulation of new generation somatic rights is one of the most controversial aspects of transplant ology and legal science. Two principles of transplantation in particular: the presumption of consent and the presumption of non-consent have made a difference in the legislative policy of states. First of all, let's note that the presumption of consent of the donor precedes the legal regulation from a moral and spiritual point of view and has a decisive influence on it. Psychological preparation of a person to agree to be a donor is important, and at the same time, both courage and will are required to donate. Normally, a person does not consciously want to include information about his own death and, accordingly, organ and tissue donation in his life. Since donation is considered acceptable for medical institutions, the process is contradictory. In particular, the psycho-emotional state of relatives of a traumatized, sick, and sometimes already dead person whose organs are to be removed affects the "presumption".

In countries where the presumption of consent is in force, the removal of organs and tissues from the body of a deceased person for transplantation and scientific purposes is allowed if the deceased person did not object to the removal of the organ during his lifetime and did not register it in an official document and register. According to the meaning of that principle, this means automatic consent. Such a norm is valid in Israel, Belgium, Spain, and other countries. For example, in Israel, a document called the "Adi card" (the abbreviation of the card is derived from the initials of the name and surname of Ehud Ben-Drora, who died at the age of 26 although was waiting for a kidney donor) is used, and everyone who signs it confirms their consent to organ transplantation after death. [17] Countries such as Sweden, Norway and Croatia even require a mandatory family consent for transplants.

In the Decision No. 4605/05 (24) of 2014 *Petrova* v. *Republic of Latvia* and No. 61 243/08 (25) of 2015 *Elbert* v. *Republic of Latvia* (similar cases in substance), the European Court of Human Rights thus concluded that there was a violation of the right to family and private life in the applicants' situation (relating to the removal of a deceased family member's organs for transplantation without their consent and notification) (art. 8 ECHR 1950). Although the Court noted that Latvia's Law on the Protection of the Body

of the Deceased and the Use of Human Organs and Tissues in Medicine 2002 (art. 11) provides the next of kin of a deceased person with the right to formally object to the removal of his or her organs, Article 8 of the Convention also confirmed that the interference with the right to respect for private life, as required by the article, is not sufficiently clearly and precisely provided by the law and does not provide effective protection against arbitrariness. At the same time, the Court assessed the state's failure to provide the relatives of the deceased with the necessary information so that they could object to organ transplantation, including not requiring them to be notified, as a violation of its international obligations.

In case of presumption of non-consent, the removal of organs and tissues is possible only if the person gave his consent during his life, or after his death, his relatives gave their consent and such consent was registered in the "donor card". This principle is in force in the USA, Great Britain, Canada, Korea, Ukraine, etc. countries, including the Republic of Azerbaijan. According to Article 21.1 of the Law of the Republic of Azerbaijan "On Donation and Transplantation of Human Organs and Tissues" of 2020, if a person expresses his written consent to the transplantation of donor organs during his lifetime, and the use of donor organs for educational and scientific purposes, in accordance with the procedure provided for in Article 21.1 of this Law, after his death his donor organs can be used for transplantation, teaching and scientific purposes. If a person does not give his written consent regarding organ donation during his lifetime, in accordance with Article 22.1 of this Law, after his/her death, with the written consent of his wife (her husband), his/her adult children or parents, and in their absence, his/her brother (sister), it is allowed to the removal of his/her organs for transplantation, educational and scientific purposes (21.2). Consent regarding the removal of the donor's organs is obtained from relatives, determined by Article 21.2 of this Law, of a deceased person who did not express his will to donate during his lifetime and such information is entered into the unified state information database (11.3.4). As a rule, the transplantation of the donation of living persons is governed by the principle of informed consent. We believe that the presumption of non-consent in solving the problem is more acceptable from an ethical point of view. In this case, the basic human right to liberty and the voluntary determination of the fate of one's physical body after death is observed and protected.

At the same time, let's note that transplantation requires the resolution of moral and legal issues for each party, passing through the donor-recipient-doctor relationship. Modern biomedical research is facing new challenges in the field of transplant ology and genetic engineering. A characteristic feature of transplant ology is that it is related to biological problems. Transplant ology is reaching new achievements by the improvement in close connection with medical and biotechnological processes. In particular, scientific research on the implantation of artificial organs and tissues can be a significant breakthrough in the treatment for transplant ology. At this time, the psychological issues for a healthy human donor and moral issues for the patient will not arise. The legislative policy of the states should support the implantation of artificial organs and their transplantation. The mentioned issue can be defined as a prospective task.

The different legislative experience of the states has finally created the international legal regulation of transplantation of human organs and tissues. In particular, the main aspect of transplantation that requires strict legal regulation is the prohibition of its commercialization (that is, human organs and tissues become an object of purchase

and sale for the purpose of financial gain). Any violation should involve punishment in all types of legal liability. For example, the World Medical Association's 1987 Declaration on Transplantation of Organs and Tissues...trafficking in human organs is severely condemned. The 1997 Oviedo Convention of the Council of Europe (Chapter VII) also prohibits the taking of financial profit from the possible use of any part of the human body (art. 21). The 2002 Additional Protocol to that Convention on the Transplantation of Human Organs and Tissues (entered into force in 2006) also contains general principles and specific rules for regulating the transplantation of organs and tissues for therapeutic purposes. [13] The criminal trade in human organs and tissues is also prohibited by the following international documents: the World Health Organization's 1991 Guiding Principles on the Transplantation of Human Organs and Tissues and Cells (in 2008 redaction); the 2008 Istanbul Declaration on transplant tourism and organ trafficking: the 1994 Resolution on the conduct of physicians in the practice of human organ transplantation; the 2000 Protocol on the Prevention and Punishment of Trafficking in Persons, Especially Trafficking in Women and Children; 2005 Agreement on cooperation of CIS member states in the fight against human trafficking, human organs and tissues (entered into force in 2007); the 2004 EU Directives on the establishment of safety and quality standards for donation, the procurement, testing, processing, storage and distribution of human tissues and cells and the 2010 Directives on the safety and quality standards of human organs intended for transplantation; 2015 Council of Europe Convention on Combating Trafficking in Human Organs, etc.

International organizations for the protection and monitoring of human organ and tissue transplantation and somatic rights have also been established. For example, the WHO at the universal level, the CoE Steering Committee on Bioethics at the regional level, the European Committee for Organ Transplantation, the EU COORENOR and FOEDUS programs and Euro-transplant, Skandia-transplant and other institutions at the level of non-governmental organizations are active in the regulation of organs and tissues within the framework of biotechnological processes.

Today, an important international legal issue is to prevent the purposeful commercialization of the transplantation process and to define all forms of manifestation that include this activity as a criminal act. Article 137 of the current Criminal Code of the Republic of Azerbaijan stipulates responsibility for buying and selling human organs or tissues and forcing them to be taken for the purpose of transplantation (also due to aggravating ingredients). [1, p.147-148] The degree of public danger of the crime provided in Article 137.1 of the Code is expressed in the transformation of organs and (or) tissues, which are important for human health, into objects of purchase and sale with the motive of greed. The object of that crime is human health. Any person can act as a victim of this crime. Objectively, this crime is expressed in the illegal sale of human organs or tissues, and subjectively, it is committed directly with intent. According to the meaning of the mentioned article, buying and selling of human organs or tissues is understood as the transfer of human organs and tissues by the offender to another person in exchange for money (property). According to the interpretation of Article 137 of the Code, if the victim's health is seriously harmed as a result of physical violence, the perpetrator's action is defined as a set of crimes under Articles 137.2 and 126 of the Criminal Code, if such violence causes the death of the victim, then his action will be described by articles 137.1 and 120.2.5 of the Criminal Code. [2, p.448-450]

We consider that Article 137 of the Criminal Code does not fully cover all possible manifestations of criminal organ transplantation and incentives for it. This gives us a reason to say that the legislator should adapt Article 137 of the Criminal Code to the norms of international law prohibiting all possible manifestations of criminal transplantation, and for this it is not so important whether the Republic of Azerbaijan necessarily joins any international act or not. For example, when transforming the elements of crimes against humanity and war crimes, our legislator directly relied on the Statute of the ICC, although Republic of Azerbaijan has not yet ratified that act. [9, p.124] Based on this factor, the legislative body can take advantage of the 2015 Convention on combating trafficking in human organs (entered into force in 2018) and other international legal acts. The scope of application of the Convention [33] applies to trafficking in human organs for transplantation or other purposes, as well as other forms of illegal removal of human organs and their illegal implantation (art. 2). According to paragraph 2 of that article, trafficking in human organs means any illegal activity in relation to human organs defined in paragraph 1 of Article 4, as well as in Articles 5, 7, 8 and 9 of the Convention. By the way, although the illegal removal of human organs is a form of exploitation characteristic of human trafficking in the Palermo Protocol of 2000, the problem of illegal trafficking of human organs and its essence have not been fully and precisely defined in that Protocol (e.g., connecting the illegal circulation of human organs with the case of transporting any person's organs for removal etc.). [17, p.161-173; 31, p.87-90]

Chapter II of the Convention, which is called "*substantive criminal law*", requires the member states to transform and criminalize the following acts, which are never provided in their national criminal legislation or other international legal acts: 1) illegal removal of human organs (art. 4); use of illegally removed organs for the purpose of implantation or for other purposes (art. 5); implantation of organs outside the national transplantation system or in violation of the basic principles of the national law on transplant ology (art. 6); Inciting, recruiting, offering and demanding illegal benefits for the purpose of illegal transplantation of organs and tissues (art. 7); preparation, preservation, storage, transportation, transfer, reception, import and export of illegally removed human organs (art. 8); inciting, aiding and abetting the crimes provided in the relevant articles of this Convention (art. 9). In addition, Article 13 of the Convention considers it necessary to include the following cases as an aggravating factor in the criminal law: a) a crime that causes the death of the victim or causes significant damage to his physical and mental health; b) committing the offense by abusing one's position; c) committing the act by a criminal organization; d) committing a crime against children or especially vulnerable persons; e) the person who was previously convicted for the same crime commits the same act again.

Descriptive features of the acts listed in the Convention include: intentional commission of these acts, obtaining financial or equivalent benefits for the said illegal activity. It should also be noted that this Convention is a regional international legal act that criminalizes both live and deceased donors for the illegal removal of their organs and tissues for the purpose of transplantation or for other purposes.

Based on the analysis of existing international acts in the field of transplantation, it is possible to come to the conclusion that they contain norms prohibiting the advertising of the sale of human organs and other related acts for the purpose of obtaining financial and equivalent advantages. We consider that such a prohibitive provision should be regulated in the criminal law. At the same time, the sanction part of Article

137 of the Code should be adapted to mutual proportionality, taking into account the degree of public danger of the act and the importance of the object of the conspiracy.

Thus, the use of transplantation of human organs and tissues for other purposes as a field of biotechnological activity, i.e., trafficking of human organs, is a serious crime that violates human rights and human dignity and poses a serious threat to public health as a whole, and requires international cooperation, including a transnational crime.

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LEGAL REGULATION AND PRACTICAL ANALYSIS OF THE INTERNATIONAL ASPECTS OF THE ACTIVITIES OF THE HEYDAR ALIYEV FOUNDATION AS AN "INTERNATIONALIZED" NON-GOVERNMENTAL ORGANIZATION

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Abstract

Article is dedicated to the legal regulation and practical activity of Heydar Aliyev Foundation`s international cooperation that has been established on the grounds of the nation's wish to express its esteem for the memory of Heydar Aliyev, who entered our history as a builder of an independent state, and the necessity of reflecting his rich moral heritage, underlining the importance for our country of the philosophy of Azerbaijanism and cultivating the national statehood ideas in our children. Starting its activity since 2004, the Heydar Aliyev Foundation has been actively participating in building a new society and contributing to the social and economic development of the country, by implementing various projects in spheres such as education, public health, culture, sports, science and technology, environment, and social and other spheres. While preparing the article, in addition to international legal norms and the national legislation of the Republic of Azerbaijan, ample space was also given to the analysis of corporate legal norms. Despite being established as a non-governmental organization on the basis of domestic legislation, its activities as a whole prove that it is an "internationalized" public organization.

Keywords: *The Heydar Aliyev Foundation, "internationalized" international non-governmental organization, UN Development Program, charitable activity, healthcare, international cooperation.*

In addition to the implementation of state policy in the field of protection and provision of human rights, it is necessary to emphasize the work done by non-governmental organizations in this direction. Undoubtedly, the trend of preservation and transmission of historical traditions is also important in this work. Thus, in the late 19th and early 20th centuries, patronage, which is a type of philanthropy, began to expand in Azerbaijan on a historical, cultural and spiritual basis. During those times, there were educational humanitarian societies and literary assemblies in Azerbaijan such as "Iravan women`s society", "Majlisi-uns", "Majlisi-shuera", "Nashri Maarif", as well as charitable societies such as "Nijat", "Saadat", "Safa". In modern times, there are non-governmental organizations in our country that their activity is conditioned not only by providing assistance to the population in various fields in accordance with the goals of the charter, but also includes a wide range of functions with the implementation of numerous projects and events within the framework of international cooperation, as well as the holding of charity actions in foreign countries. The Heydar Aliyev Foundation can be cited as an example. [5, p.13]

The initial legal basis for the establishment of the Heydar Aliyev Foundation is the Decree of the President of the Republic of Azerbaijan "On Perpetuating the Memory of the National Leader of the Azerbaijani People Heydar Alirza oglu Aliyev" dated March 10, 2004. So, according to paragraph 12 of the Decree, with other issues (measures taken

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by a number of private institutions, companies and non-governmental organizations in connection with the perpetuation of the name of the national leader of the Azerbaijani people, Heydar Alirza oglu Aliyev; Baku-Tbilisi-Ceyhan export pipeline to the oil pipeline and in addition to naming the "Lider" drilling rig after Heydar Aliyev), the creation of the Heydar Aliyev Foundation is supported on public grounds. [7]

In this regard, the Heydar Aliyev Foundation has been established on the grounds of the nation's wish to express its esteem for the memory of Heydar Aliyev, who entered our history as a builder of an independent state, and the necessity of reflecting his rich moral heritage, underlining the importance for our country of the philosophy of Azerbaijanis and cultivating the national statehood ideas in our children. Starting its activity since 2004, the Heydar Aliyev Foundation has been actively participating in building a new society and contributing to the social and economic development of the country, by implementing various projects in spheres such as education, public health, culture, sports, science and technology, environment, and social and other spheres. [31]

As a non-governmental organization, the goals of the Heydar Aliyev Foundation, which began operating on May 10, 2004, are as follows:

- to support studying, promotion and implementation of the policy guidelines developed by eminent political figure Heydar Aliyev aimed at the country`s social, economic and cultural development, increase of living standards and further integration with the civilized world;
- benefiting from the rich heritage of National Leader Heydar Aliyev for Azerbaijan's prosperity and the nation's well-being, to support in implementation of large-scale projects and programs serving these deeds;
- development and implementation of various programs and projects in such fields as science, culture, healthcare, sport, environment, etc.;
- cooperation and implementation of joint projects with local and foreign foundations, NGO`s and voluntary organizations;
- support in addressing local problems in various parts of the country, as well as assistance to the vulnerable groups of population;
- exposure of personal creativity, skills and knowledge with a view to supporting and developing talented individuals;
- promotion of cultural heritage of Azerbaijan, support to the efforts aiming at protection of the country's most cherished values;
- support in comprehensive upbringing and education of younger generations;
- support to promotion of Azerbaijan`s image worldwide;
- communication of true information on Azerbaijan;
- cooperation with national and international educational centers;
- support to scientific research;
- implementation of scientific exchange programs with leading centers and scholars around the world, support to scientific and creative capacity building programs within the country;
- development of child care institutions` infrastructure;
- development of medical and healthcare institutions;
- support to substantial environmental studies, promotion of healthy lifestyle;
- arrangement of workshops and conferences on pressing issues in Azerbaijan and abroad;

- arrangement of exhibitions of young talents and people of art;
- promotion of religious tolerance, support to the civil society building processes and preservation of cherished national values given the ongoing globalization processes. [32]

It should also be noted that the Foundation has an important role in the implementation of numerous events and projects in a number of fields - science and education, health, culture, social, sports, information and communication technologies, ecology, including the promotion of our country and its adequate recognition in the world.

The Heydar Aliyev Foundation has given special importance to the implementation of international cooperation in order to take appropriate measures in its areas of activity. For instance, A cooperation agreement (October 21, 2013) was signed between the Romanian Representative Office of the Heydar Aliyev Foundation and the Romanian-American University. Thus, supported by the Heydar Aliyev Foundation, the Azerbaijan Research Centre was inaugurated under the Romanian-American University operating in the city of Bucharest/Romania on that day. [34] Moreover, the presentation ceremony was held on March 27, 2014 (Washington), in connection with launching a new project of the Heydar Aliyev Foundation with the organization Urban Alliance of USA. Primary objective of the organization Urban Alliance was to support graduates that have just finished their university education through trainings and practice. [35]

On the other hand, in order to implement the provisions stipulated in the Memorandum of Understanding "On cooperation between the Ministry of Education of the Republic of Azerbaijan and the United Nations Educational, Scientific and Cultural Organization (UNESCO)" (2005) an to fulfill the measures set as a task, the UNESCO delegation visited Azerbaijan on December 13-17, 2005, and an action plan for 2006-2007 was drawn up for the improvement of technical vocational education, teacher training and in-service education. In those years, 230 new schools (163) and additional buildings (67) with 91 thousand 572 seats were built, as well as 69 schools were overhauled, according to the state programs in the field of school construction, the projects of the Heydar Aliyev Foundation and the Saudi Development Fund. [16, p.96-97].

Also, in June 2008, on the initiative of the Heydar Aliyev Foundation, a building of a new scientific educational center was built and put into use in the Dmanisi region of Georgia. The center's classrooms equipped with a modern type of heating system, two large gyms, a library, auxiliary rooms, and a canteen are equipped with equipment. The Heydar Aliyev Foundation donated visual resources - books and textbooks - to the center. [26]

Moreover, the reconstruction of the center for blind and visually impaired children and young people in Sarajevo, Bosnia and Herzegovina, and its opening on June 8, 2013 under the initiative and support of the Heydar Aliyev Foundation, should be considered is a part of the international activity of the aforementioned public institution in the field of public health protection. [13, p.103; 1]

In addition to the above, the Heydar Aliyev Foundation joined the World Diabetes Day campaign in 2007 at the initiative of the UN. Member-states of the Organization celebrate November 14 as World Diabetes Day under the UN resolution. The blue color, which is the symbol of the organization, reflects the blue sky above the heads of all nations, and the magnificent buildings of cities in 155 countries where the action is held

are painted in this color. The goal is to focus public attention on diabetes, which is considered a serious threat to health worldwide, as well as to unite efforts towards its prevention. In order to warn the population about the increase in the coverage of the mentioned disease, the building of the Foundation was illuminated in blue on November 13-15, 2007. [17]

The Foundation ensures children`s participation in international competitions held in foreign countries in order to expand their worldview, and also creates a wide opportunity for children educated in similar institutions of other countries to come to Azerbaijan and get acquainted with the history and rich culture of our country. [9, p.105-107]

Development of mutual activity of non-governmental organizations and public associations in various directions in the field of education is of great importance in the context of cooperation implemented within the norms envisaged in the international treaties to which the Republic of Azerbaijan is a party. Precisely for the purpose of implementing the mentioned types of activities, as well as in the context of developing mutual relations with international partners, The Heydar Aliyev Foundation`s participation in various projects in the field of ensuring citizens right to education and taking separate measures in this field is one of the most important aspects. Undoubtedly, bilateral and multilateral cooperative relations of the Foundation are among the main points that attract attention in this matter. Because since the beginning of its activity, mutual cooperation agreements have been signed with a number of universal and regional international organizations of the world, as well as numerous institutions of individual states, and the implementation of various projects has been encouraged. For example, on December 9, 2005, the "Cooperation Agreement between the Heydar Aliyev Foundation and the UN Development Program" and related project documents were signed. The mentioned documents are aimed at providing access to information technologies for people who have lost their sight and are visually impaired. These documents were prepared in accordance with the commitment taken by the heads of state and government to provide new technologies, especially information technology, for all, according to the UN Millennium Declaration, and the National Strategy of the Republic of Azerbaijan on Information and Communication Technology. The said project, in turn, was implemented in three stages:

1) At the initial stage, it was necessary to determine the needs of blind and visually impaired people regarding information and communication technologies, and to prepare separate program projects for them to eliminate the digital gap. Even for this purpose, surveys and discussions, experience exchange, and determination of the types of equipment to be purchased are planned.

2) It was decided to perform issues in the next stage that were issues necessary for the creation of boarding schools and model information and communication technology classes for blind and visually impaired children, purchase and installation of computer equipment, localization of software, provision of access to the Internet and preparation of special educational programs.

3) Finally, in the third stage, the preparation of audio libraries, the creation of training centers, the construction of a recording studio for the conversion of the library stock into audio format and the restoration of Braille audio books in existing libraries with the help of this studio, access to the Internet, the organization of basic training courses related to information technologies, finding and obtaining information on the

Internet, etc. the issues of creating computer centers that provide services as well as the preparation of teachers and trainers who will teach in training courses, have been set as a goal. [29, p.78-81]

In August 2005, at the international conference under title of "UNESCO-Azerbaijan: a bridge to the future" held jointly by the Heydar Aliyev Foundation and UNESCO, reforms in the education system of Azerbaijan, integration into the European education system and other issues were discussed, and a Memorandum on cooperation in the field of education was signed between UNESCO and Azerbaijan. [14, p.188]

In addition, on June 18, 2007, an operational plan agreement between the Heydar Aliyev Foundation, the Government of Azerbaijan, and the United Nations Educational, Scientific and Cultural Organization (UNESCO), on the implementation plan of the "Fund-in-trust" Project, which provides for the development of vocational education in our country, has been signed. The main goal of the Project is the establishment of the Personnel Training and Training Resource Center, which includes the following under Article 1 of the Agreement:

- review and renewal of hotel (hospitality) and tourism curricula in the field of professional education;
- review and update of information and communication technology curricula in the field of vocational education;
- review and renewal of English language curricula in the field of vocational education;
- technical and vocational education.

Article 2 of the Agreement stipulates the obligations of the Government of the Republic of Azerbaijan that it includes organizational matters like technical and administrative issues, provision of meeting and office space for working groups, administrative support for national and international experts, as well as hiring instructors, and creating conditions for a Staff Training and Resource Center in the field of technical and vocational education. the Following obligations of UNESCO were included during the project with a budget of 203,400 US dollars under the Article 3 of the mentioned international document:

- provision of consulting and expert services;
- provision of appropriate equipment and materials;
- implementation of necessary measures for monitoring and implementation of the project;
- provision of other technical and administrative support for the successful implementation of the project. [24]

As a whole, education makes up 24 percent of the total volume of work included in the main activities of the Heydar Aliyev Foundation, which is active in supporting the reforms carried out in the education system of Azerbaijan, and this indicator is different from other areas (culture, health, sports, ecology, social security, etc.). Is higher than the indicator of each separately. Thus, analyzing the activities of the Heydar Aliyev Foundation regarding the realization of the right to education, the following conclusions can be reached:

- The Heydar Aliyev Foundation builds its activities on separate projects and programs in the direction of improving the educational conditions of children of all ages in Azerbaijan, and implementing the material and technical support of educational insti-

tutions. The "Children homes and Boarding Schools Development program" project, "The new school to new Azerbaijan Programme" project, "The Support to Education support" programme are clear examples of this matter. The mentioned measures are being continued not only in our country, but also in a number of foreign countries (Georgia, Pakistan).

- One of the factors determining the activity of the Heydar Aliyev Foundation in the field of education is that it carries out most of its activities in cooperation with various international organizations (UN IP, UNESCO, ISESCO, etc.) and the world's leading companies ("Microsoft", "Intel", etc.).

- The Foundation pays special attention to the education of disabled and physically challenged children and creates the necessary conditions for them to use the achievements of modern scientific and technical progress. "Cooperation Agreement between the Heydar Aliyev Foundation and the United Nations Development Program" signed on December 9, 2005, and the project documents prepared for the purpose of implementing the Agreement, as well as major repair, reconstruction and modern equipment of educational institutions attended by blind and visually impaired children supply is a clear example of the above.

In addition to the above, the Heydar Aliyev Foundation has developed cooperation with various regional international organizations and separate institutions of various states of the world in the field of education, and has taken important measures to solve the problems encountered in this direction. An example is the Organization of Science, Education and Culture of Islamic Countries (ISESCO). Thus, the cooperation between ISESCO and the Heydar Aliyev Foundation, which began in 2005, began to develop more effectively in the following years. Even as a clear example of this, Mrs. Mehriban Aliyeva, the President of the Heydar Aliyev Foundation, for her large-scale and selfless activities in various fields, including inter-civilizational dialogue, attention to children in need of care, improvement of their living conditions, education, as well as great support for the work done in the Islamic world, November 24, 2006 was awarded the title of Goodwill Ambassador of ISESCO. At the same time, it was envisaged to regulate the main principles of cooperation, develop relations in the fields of science, culture, education, as well as implement joint projects and coordinate activities in this field in accordance with the Protocol on cooperation concluded between the Foundation and ISESCO in April 2007. [14, p.150]

The mentioned trend of cooperation has also manifested itself in the development of mutual activities with the countries of the world. Thus, in accordance with the Memorandum of Understanding between the Heydar Aliyev Foundation and the US NGO - "Save the Children" (January 25, 2008) "On unifying efforts aimed at the development of children in Azerbaijan", the protection of children through physical and psychosocial assistance, providing them with the necessary care and education, as well as implementing joint activities in the field of health and quality nutrition. In March 2008, the Heydar Aliyev Foundation donated a vehicle to the Children and Families Support Center built by the "Save the Children" in Shuvelan. The center provides up to 100 children with special needs with alternative care, conducts training, and as a result, children are prevented from ending up in orphanages and boarding schools. [18]

In August 2008, an agreement on cooperation was signed between the Heydar Aliyev Foundation and the Embassy of the Republic of Poland in the Republic of Azerbai-

jan. In the framework of this cooperation, with the financial support of the Heydar Aliyev Foundation and the Small Grants Fund of Poland, a new school building with 220 seats was built in Samukh district, equipped with modern equipment and put into use in August 2009. [14, p.84; 22; p.20]

The Memorandum of Understanding on cooperation in the humanitarian field signed between the Heydar Aliyev Foundation and the Embassy of the Republic of Lithuania in the Republic of Azerbaijan on July 12, 2010, stated that 20 young Azerbaijanis with special talents received the right to study at the leading universities of Lithuania free of charge that year, as well as within the framework of the mentioned document, the youth of our country it was assumed that new opportunities are created for them to study. [28]

In addition, on March 1, 2011, the Heydar Aliyev Foundation, the Embassy of the French Republic in the Republic of Azerbaijan, the State Oil Company of Azerbaijan and the Ministry of Education signed a declaration of intent regarding the construction of a French school in Baku. According to the declaration, the curriculum of the French school, starting from kindergarten, should be in accordance with the classical French model applied in the 12-year general educational institution, and the curriculum should be conducted in French in accordance with the requirements of the French national education system. The certificate of the school meeting the standards and requirements of the French Ministry of National Education will be recognized by France. At the same time, the graduates of the educational institution will have the opportunity to continue their studies in any French higher education institution according to their choice.

The construction and use of the French school in Baku is also important in terms of a number of aspects:

- The establishment of a school that allows French-speaking foreign citizens living temporarily and permanently in our country and Azerbaijani citizens to study in French meets the interests of both countries.

- The creation of a French school that will provide education according to the national curriculum of France will become an important factor in the cooperation between the two countries in the field of education, culture and linguistics.

- The establishment of a new educational institution will allow the training of high-level professionals in the future, and will further expand the opportunities for economic cooperation between the two countries. [3]

In addition to its various activities in the field of education and science, the Heydar Aliyev Foundation is also doing certain things in the direction of showing special respect for the book, which is considered a source of knowledge, as well as increasing people's interest in books, especially school-aged children. As an example, the "Pushkin Library" Foundation of the Russian Federation donated about 800 books to the Heydar Aliyev Foundation and held a special ceremony in February 2006 in this regard. [30]

The problem of environmental protection, which is considered an important factor in the field of protecting the health of the population, is also considered a part of the mutual cooperation relations of the Heydar Aliyev Foundation. As an example, the "Memorandum of Understanding on the mobilization of Azerbaijani youth in preparation for the Rio+20 conference to be held in 2012" signed between the Heydar Aliyev Foundation and the United Nations Development Program on October 21, 2011 can be

cited. The purpose of the mentioned document is to encourage the participation of young people in the preparation process for the UN Conference on Sustainable Development held in Rio de Janeiro, Brazil in 2012, including creating conditions for taking into account the opinions of young people regarding the elimination of the deficiencies that have appeared in this direction. [2]

Thus, the activity of the Heydar Aliyev Foundation, especially the role of the protection of public health, protection of human and civil rights and freedoms in this direction, can be expressed in the following provisions:

- The Heydar Aliyev Foundation is working hard for the successful implementation of the honorable mission undertaken by the great leader in the way of studying, promoting and conveying the National Leader`s philosophy of life and activity, scientific-theoretical heritage, ideology of Azerbaijaniism to future generations. [29, p.46-65]

- Since its establishment, the Heydar Aliyev Foundation has been promoting people`s health, training and education of the young generation, the progress of our national culture, the cleanliness of the ecological environment, solving social problems, improving the living conditions of children deprived of parental care, increasing attention to citizens who need special care, and conveying the truths of Azerbaijan to the world and implementing successive projects in other areas. [5, p.15]

- The measures carried out by the Heydar Aliyev Foundation in the field of health care serve to protect the physical health of our people and the national gene pool, and at the same time, improve the moral and psychological condition of the citizens of Azerbaijan. [6, p.20]

- The Heydar Aliyev Foundation acts as a reliable defender of human and civil rights and freedoms with the global projects it implements, tries to contribute to the comprehensive development of our republic and the acceleration of the civil society building process, as well as strives to solve the problems of citizens at the possible level and mobilizes its capabilities in this direction. [16, p.28-30]

At the same time, the implementation of charity events in foreign countries within the framework of the "Support to Education" Project, as well as providing comprehensive assistance for the education of people living in difficult conditions, is considered one of the priority areas of the Heydar Aliyev Foundation`s activity, and is considered a clear example of giving high value to a person and his future education. Thus, within the framework of the project, the school for girls in the Rara area of Muzaffarabad, which was rendered unusable by the earthquake that caused numerous casualties and great destruction in Pakistan in 2005, was rebuilt within the framework of the "Education Support" Project. The new educational institution, built in a short time, has 10 special classrooms that meet modern requirements, laboratories, subject offices, a library, a computer room and a sports field. Located in a difficult mountainous terrain, the educational institution is equipped with equipment that enables high-level teaching. The school, where more than 650 students study, was provided with visual aids, as well as publications about Azerbaijan. [19; 23]

The activity geography of the Heydar Aliyev Foundation has already exceeded the borders of our country and this process continues. [5, p.15] The implementation of various projects in many countries of the world is an indicator of the growing reputation of the Foundation in the international world. As a clear example of the mentioned, there

was the measures taken on the initiative of the Heydar Aliyev Foundation like that providing humanitarian and medical assistance to people affected by the earthquake that occurred in Muzaffarabad, Pakistan in 2005, as well as organizing a medical examination for children in an orphanage in Islamabad within the framework of a series of humanitarian aid held in Pakistan in May 2012, vaccinating them against hepatitis B virus, conducting free examination for the disabled at the "Akbar Kare" Cerebral Palsy Institute in Peshawar, and open heart surgery for women and children in Ghazni Laki Marwat, Khyber Pakhtunkhwa province.

Also, provision of an ambulance equipped with a special blood transfusion and small laboratory, as well as two thousand blood transfusion packages, construction of a new building of the eye hospital of the said province, and provision of financial assistance for the operation of indigent patients suffering from eye diseases in June 2012 to the Hamza Charitable Foundation, which includes several hospitals in Pakistan`s Pakhtunkhwa province that treat patients suffering from thalassemia, hemophilia and blood cancer, as well as the donation of "Desferal" preparations to the Institute of Hematology and Transphysiology of Georgia in 2005 and providing financial support to the Rostropovich-Vishnevskaya Foundation in 2011 for the implementation of the program "Diagnosis of pregnant women for hepatitis B and HIV and prevention of hepatitis B virus in newborns" by the Rostropovich-Vishnevskaya Foundation in 2011 on behalf of the Foundation, serve to further expand and deepen international cooperation between countries.

Taking into account the above, the following conclusions can be reached regarding the activities of the Heydar Aliyev Foundation in the field of public health protection:

- The Foundation supports the measures implemented by the state in the direction of protecting the physical health and improving the psychological state of the population, and serves to expand them. It directs the attention of the country's citizens and the international community to the solution of serious problems arising in the health of people within the framework of the provisions established in the sectoral legislative acts and the international treaties to which Azerbaijan is a party.

- The Heydar Aliyev Foundation`s activity in the field of protecting people`s health takes the main place in the treatment and examination of the low-income population, including citizens in need of special care, children and adolescents. Providing special care to people suffering from thalassemia and children with diabetes, activities aimed at creating all kinds of conditions in the country for this purpose, providing patients with medicines and other necessary supplies are a clear example of what is said.

- The main goal of the Foundation`s activities is not only to take measures aimed at protecting the health of the country's citizens, but also to ensure the human health factor outside the country's borders is the priority task of the organization. Thus, the Foundation`s charity actions in Pakistan, Georgia, South Sudan, Bosnia and Herzegovina, Romania, the Russian Federation and other countries, as well as the organization of examination and treatment of the population suffering from serious diseases, are the main indicators of its international activity. From this point of view, it would be more appropriate to consider the Heydar Aliyev Foundation not just as a public organization, but as an "internationalized" (even international) non-governmental organization.

- The Heydar Aliyev Foundation attaches special importance to international cooperation in its activities. In the context of the membership of the Republic of Azer-

baijan in various universal and regional international organizations, as well as in the context of the expansion of bilateral relations with individual countries, the Foundation constantly pays attention to the development of its interaction with international and domestic institutions, including non-governmental organizations, through the conclusion of numerous agreements. Within the framework of this cooperation, various projects are implemented in order to protect the health of the population, modern medical equipment, facilities and technical means are used in the development of health care, as well as treatment of people suffering from serious diseases in advanced medical institutions of foreign countries is organized. In addition, the Foundation`s representative offices in foreign countries have a leading position in expanding and deepening the organization`s international cooperation.

The activities of the Heydar Aliyev Foundation in the field of health protection of the population, at the same time, the right of people to the protection of health established by Article 41 of the Constitution of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan "On Protection of the Health of the Population" dated June 26, 1997 and other legislative acts, as well as this stipulates the provision of other subjective opportunities arising from law. The activity of the Foundation in this field is complex, it includes theoretical and practical directions, as well as the further acceleration of measures implemented by the state by providing assistance to health institutions with advanced equipment and technology.

In addition, the Heydar Aliyev Foundation made a valuable contribution to the development of education and science in Azerbaijan by acting as an organizer of a number of international events aimed at educational problems, as well as conducting scientific research in separate fields. For example, I International Conference on "Medicine and Pharmacy in Medieval Manuscripts" (June, 2006) organized the Heydar Aliyev Foundation and the Washington Sciences Academy in connection with the study of the history of medicine, the exchange of ideas about it, and the discovery of historical facts in the said field. Lectures were delivered on "Baku manuscripts collection in UNESCO World Memory Program", "Translation of medicinal texts in Middle East in middle ages", "On medieval Azerbaijani doctors and their manuscripts" and other themes, ideas were exchanged on the history of medicine and pharmacy at the event which was gathering delegations and representatives from USA, Germany, United Kingdom, Belgium, Bahrain, Estonia, Georgia, Iran, Israel, Egypt, Russia, Syria, Turkey, Ukraine, Greece and etc. and a number of international organizations (UNESCO, World Medical Historians Association, England Medical History Association, Turkey Medical History Association, Azerbaijan Medical Historians Union, Washington Sciences Academy, Azerbaijan National Sciences Academy, International Pharmaceutics History Association, International Islam Medicine Association and etc.). During the event, it was informed 364 of nearly 11,000 manuscripts at Manuscripts Institute of Azerbaijan National Sciences Academy cover medicine. 3 of them that are of special importance are in UNESCO World Memory Program International List. These are 13th part of multivolume work "Al-Megalat as-Selasun" ("On surgery and tools") of Abulgasim Zahravi of XI century, 2nd volume of book "Al-Ganun fit Tibb" ("Laws of medicine") of Abu Ali ibn Sina, that was copied in Baghdad in XII century and manuscript "Zahireyi-Nizamshah" ("Resources of Nizamshah") written in XII century by Rustam Jurjani that was copied in XVII century. These samples of cultural heritage that are universal wealth and

were copied by popular penmen of the time are protected at Manuscripts Institute [11, p.42-57; 14, p.191-193; 24].

In the implementation of international cooperation in various fields of public life by the Heydar Aliyev Foundation, at the same time, the activity of its representative offices located in foreign countries should be considered as a special direction. As an example can be shown like numerous measures implemented at different times in the direction of establishing cooperation with the ethno-cultural component school No. 157 in Moscow, supplying it with material and technical equipment, enriching its library with Azerbaijani publications with the support Representative Office in Russia, and a charity event for 300 disabled children organized by the same Representative Office together with the All-Russian Public Youth Organization "World of The Hearing Impaired" in February 2008 [8], the signing of a cooperation agreement between the Heydar Aliyev Foundation and the Russian National Library in February (2008) [15], building close cooperation between Foundation`s Representative Office and some scientific institutions such as Cluj-Napoca State University, Ovidius University of Constanța, Bucharest State University since 2007 [14, p.168-173].

The wide-ranging activities of the Heydar Aliyev Foundation in different directions, as well as the hard work and charitable activities of the First Vice-President of the Republic of Azerbaijan, President of the Foundation Mehriban Aliyeva in the field of protecting the health of the population, have been widely enlightened in the mass media of the world countries, as well as she has been awarded by various international organizations and public associations. Thus, her awarding of a number of awards (or prizes) like that the Order of Ruby Cross of the International Charity Foundation "Philanthropists of the Century" (2005) for her philanthropic activity in the field of healthcare [10, p.42-49]; Islamic Cooperation Youth Forum Prize "for Global Promotion of Dialog Among Civilizations" (2007) [11, p.38-39] for her large-scale activities, important projects implemented in education, healthcare, culture, ecology and other fields as the president of the Heydar Aliyev Foundation, her active endeavors in international organizations such as UNESCO and ISESCO, inter-civilizational dialogue cooperation and valuable contribution to the convergence of different religions; the prize of Ihsan Doghramajy Family Health Fund (2007) [27] as the World Health Organization's High Prize for her exceptional highly valued activities in the protection and promotion of maternal, child and family health; the "Prix de la Fondation" Prize (2012) [21] of the Crans Montana Forum for her extensive activities in the fields of education, health, culture and sports on a regional and global scale; Golden Heart International Award (2007) [16, p.28-30] by the support of the Russian Red Cross, Golden Heart Charity Foundation, ITAR TASS Information Agency, the Government of the Russian Federation, the Council of Federation of the Federal Assembly of the Russian Federation, the Moscow City Government, Commission on UNESCO Affairs of Russia for high achievements in the sphere of serving supreme ideals of the mankind and etc., should be considered by the international community as an appreciation for the intense activity of the Foundation.

In addition, Mrs. Mehriban Aliyeva was granted "Turkish World Love and Friendship Envoy of Year Award" one of People in Top-2005 awards founded by "Kanal 7" TV Channel and First Business Journal of Türkiye in 2005, and the National Hero Chingiz Mustafayev Foundation and the ANS Group of Companies announced her

"'Person of the Year 2005" for her services to the development of the education system of the country, protection of the national and cultural heritage, the works she has done for a positive image of Azerbaijan in the world, organization and realization of the World Rhythmic Gymnastics Championship in Azerbaijan, as well as the philanthropic activity. [10, pp.,91-101, 119-120]

At the same time, the direction of strengthening intercultural relations, which is one of the important aspects of multiculturalism, takes a special place in the deliberate and systematic activity of the Foundation, such as "Expanding the Role of Women in Cross/Culture Dialogue", "Dialogue of Cultures in Globalization", "Peaceful coexistence in a multicultural world", "Azerbaijan - A Land of Tolerance" projects are a clear proof of this matter. [4]

Along with this, it would be appropriate to mention the important services of the Heydar Aliyev Foundation in the field of promotion of Azerbaijan. Hundreds of such activities can be cited as a clear examples like that ssolemn ceremony dedicated to the 100th anniversary of the outstanding Azerbaijani scientist, academician Yusif Mammadaliyev held at the residence of UNESCO in Paris (2005), A Day of Azerbaijan was held at UNESCO under the name of "Azerbaijan: at the intersection of cultures and civilizations" (2006), Scientific conference "Khojaly genocide and realities of 1915 events" was held in Berlin (2008), Inauguration of the "Azerbaijani Room" takes place in the headquarters of FAO in Rome (2018), foundation of a building of the Culture and Education Centre to be constructed in Moldova with the Heydar Aliyev Foundation's support (2018), An international conference on "Nasimi poetry – anthem to human: synthesis of moral and cultural values of the East and West" and inauguration of a statue erected to great Azerbaijani poet Imadeddin Nasimi that was held in Moscow (2019), An Azerbaijani pavilion created by the Heydar Aliyev Foundation in China's Ancient Residences Cultural Park was inaugurated and Inauguration of Azerbaijani carpets took place at the headquarters of UNESCO with the organizational support of the Heydar Aliyev Foundation (2021), an exhibition entitled "Works from the collection of the Tretyakov Gallery" by People's Artist Tahir Salahov was inaugurated at the New Tretyakov Gallery and the exhibition "Azerbaijani carpets: new vision" taken place in Moscow in the framework of the Days of Azerbaijan (2022), the carpet "Friendship" was presented in the Azerbaijani pavilion at Dubai Expo 2020, the exhibition "Seven Beauties" dedicated to the 880th anniversary of Nizami Ganjavi was inaugurated and the foundation of a statue of Uzeir Hajibeyli was laid in Saint Petersburg and etc. [33]

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Asmar Aliyeva. Some Characteristics of Tax Avoidance Problem in Modern National and International Tax Law: International Agreements and National Legislature. International Law and Integration Problems, 2022, №1 (64), pp.42-48

SOME CHARACTERICTICS OF TAX AVOIDANCE PROBLEM IN MODERN NATIONAL AND INTERNATIONAL TAX LAW: INTERNATIONAL AGREEMENTS AND NATIONAL LEGISLATURE

Asmar Aliyeva*

Abstract

The erosion of the tax base and the problem of profit shifting is one of the most serious problems faced by international and national tax law in modern times. According to the reports of the US Internal Revenue Service and the Organization for Economic Cooperation and Development (OECD), due to these reasons, every year the countries of the world lose 100-240 billion US dollars in tax revenues

In order to solve this problem, from the middle of the last century, economically developed countries began to make amendments in their national legislation. For example, the 1961 United States, 2015 United Kingdom Laws on Controlled Foreign Companies can be cited here. However, since this problem usually covers the tax jurisdiction of several states, the states concluded that it is not effective enough to fight it unilaterally and started intensive international cooperation in this direction. The most fruitful result of this cooperation is the 2015 BEPS project, a joint effort of the G20 and the OECD. BEPS is a tax strategy document that includes 15 measures to combat base erosion and profit shifting. States wishing to become members of the project must undertake to join at least 4 (5th, 6th, 13th and 14th) minimum standard measures out of those 15 measures and adapt their national legislation to these standards. Azerbaijan joined the BEPS Inclusive Framework in the form of an exchange of letters in October of this year. However, we want to inform you that the process of adapting the norms of our national tax legislation to the conditions of the BEPS project has been carried out for several years. An example of this is Articles 14-1 Transfer Pricing, 14-2 Controlled Foreign Company added to the Tax Code.

Keywords: *tax law, tax avoidance, tax base erosion, profit shifting, BEPS Inclusive Framework, FATCA*

Today one of the biggest problems faced by the countries of the world in their administration is taxpayers hiding their tax bases or evading taxes by shifting them to other countries with soft tax policies. In recent times, states have come to the conclusion that it is ineffective to struggle unilaterally with this problem, and strive for more cooperation. To better explain how serious the problem is, it would be better if we clarified the matter from the beginning.

Taxes are the most important sources of income in our modern world that provide the budget of every state with income. In countries with a market economy, the share of taxes in budget revenues is 90-95%. Thus, states are heavily dependent on taxes to finance their activities. Therefore, one of the main goals facing each state is to minimize tax evasion by individuals and legal entities in society, and to increase tax discipline in order to collect the planned tax amount. [2, p.35]

What is tax violation? Here we want to emphasize two terms that are close to each other and are often expressed in the same way in our mother tongue. Two forms of tax violation are possible in modern tax law. It is expressed in English as "tax avoidance"

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and "tax evasion". Tax evasion is an act that looks completely legal due to its outward signs, does not violate any legal norms, and is expressed by the ability to avoid paying taxes by using loopholes in the legislation and benefit packages.

Tax evasion is a violation of tax legislation. It is easier to deal with it, where the taxpayer clearly violates the tax law and any measure of responsibility provided by the legislation is applied to him. The most difficult question before the states is to be able to detect cases of "tax avoidance" and to fight against it, because there is no violation of norms, therefore, it is not possible to apply any responsibility measures to the taxpayer, but the state budget has also lost a large amount of taxes. [3, p.30]

According to the reports of the Organization for Economic Cooperation and Development, states lose tax revenues in the amount of 100-240 billion US dollars over the world every year. States have been struggling with this problem at the domestic level for several decades, and in this regard, their domestic legislation provides for severe penalties. For example, Controlled Foreign Company acts were adopted in USA in 1961 and UK in 2015. [3, p.535] However, at the current level of development of world economic relations, this struggle is impossible without the cooperation of states.

In this article we are planning to inform you about this international cooperation and legal acts signed as the result of this cooperation. BEPS (Base Erosion and Profit Shifting) project, FATCA and CRS are the most effective ones.

The Foreign Account Tax Compliance Act, abbreviated as FATCA, was passed by the US Congress on March 18, 2010 and came to force on January 1, 2013. This Act requires U.S. citizens and other taxpayers to disclose to the US Internal Revenue Service (IRS) information about their financial accounts in other countries and about their clients from foreign financial institutions. The main purpose of FATCA is to struggle with tax evasion by US taxpayers and increase federal tax revenues. Under U.S. tax law, all U.S. citizens and those who have a permanent residence in the United States but live abroad are liable to personal income tax in the United States and are required to file and pay income on all types of income. U.S. government believe that the US Treasury loses up to $ 100 billion in taxes each year on tax evasion and remittances, including offshore zones, that are transferred abroad or obtained without being brought into the United States at all. As the result in 2010 the United States has enacted a new law, FATCA that criminalizes financial institutions that embezzle tax-concealed funds in a foreign country in conjunction with tax evaders. Under FATCA, individuals who are considered US taxpayers must report their foreign accounts and other financial assets to the IRS with their US tax returns. Foreign financial institutions, including banks, must provide the U.S. Internal Revenue Service (IRS) with information about U.S. taxpayers who have opened accounts with them, including their names, tax identification numbers, addresses, account balances, and payments into and out of the account. . Beginning on July 1, 2014, financial institutions of any country that do not comply with the law, i.e., do not cooperate with the IRS, will be subject to severe sanctions, and payments made through correspondent accounts at financial institutions in the United States and other countries that have accepted the obligation to comply with FATCA. 30 percent tax must be deducted at the source of payment by the financial institution where the correspondent account is located and transferred to the IRS. As it is known, since the vast majority of payments made in US dollars around the world are made through correspondent accounts in banks located in the United States, the United States has real opportu-

nities to apply legal sanctions against any non-cooperative foreign financial institution. In 2014, Azerbaijan and USA signed an agreement and thus agreed to exchange information about taxpayers of each other.

Opinions about the legal nature of the FATCA document are quite contradictory, and this document is not unequivocally received by lawyers and politicians around the world. In effect, FATCA imposes an obligation on the other sovereign state to report to it. Therefore, when the US government sends an invitation letter to countries to join the FATCA document, it shows that it understands this difficulty and proposes to close it in the form of an intergovernmental agreement.

The US government offers two models for countries to join FATCA. Model 1 envisages the transmission of relevant information by the financial institutions of another state to the IRS, not directly, but in a centralized manner, through the designated competent authority of that state. The financial institution registers on the IRS portal. If a financial institution operates in "Selected Intermediary" (FI) status, it withholds a 30 percent withholding tax on U.S. source income paid to financial institutions listed as "non-operating" financial institutions. This model has two forms called Model IGA1A and Model IGA1B. According to the agreements concluded by the IGA1A Model, mutual information exchange is carried out between the United States and another state, that is, the US side also provides information about the accounts of taxpayers of the other state in the US financial institutions to the competent authority of that state, while according to the agreements concluded based on the IGA1B Model, the information transmitted to the United States only by that state.

Model 2 of the Intergovernmental Agreement provides for data to be submitted directly to the IRS by financial institutions themselves by registering on the IRS electronic portal. The main characteristics of this model are as follows:

1. Domestic legislation is not amended, but an intergovernmental agreement is concluded to implement FATCA requirements.

2. By registering on the IRS portal, the financial institution acts practically entirely according to the requirements of the FATCA law.

3. A financial institution is subject to a 30 percent withholding tax on U.S. source income paid to financial institutions on the list of "Non-Applicable" financial institutions.

4. The financial institution requires US customers to waive their right to bank secrecy and closes the account if they don't agree.

5. The financial institution reports to the IRS directly through its designated person. [6]

With the conclusion of the FATCA agreement, Azerbaijan has made certain changes in its legislative acts. The first of these is the addition of a type of tax monitoring inspection in financial institutions to Article 36 of the AR Tax Code. According to Article 36.7 of the Code, the tax authority may conduct tax monitoring in financial institutions in order to ensure compliance with the requirements of the international agreements to which the Republic of Azerbaijan is a party, which provides for the exchange of tax and financial information. We are talking about the FATCA agreement here. Then in the article 60 of AR Tax Code, it is written that all banks and other financial organizations have the obligation to obey rules of international agreement which are signed by Azerbaijan and pass information about the transactions of persons and

entities. In case they do not pass this information, they shall be fined by Tax Code. In addition, in order to ensure the implementation of this agreement, on June 20, 2014, by the decision of the Cabinet of Ministers of the Republic of Azerbaijan, the "Limits and Rules for providing information on the financial transactions of legal and physical entities of foreign states to the competent authorities of these states" was adopted.

What is CRS? CRS-Common Reporting Standard system, developed in 2014 within the framework of OECD. Its main difference from FATCA is that it is not a bilateral, but a multilateral information exchange system. The exchange of financial information is carried out on the basis of the multilateral Convention of the Council of Europe and the OECD "On Mutual Administrative Assistance in Tax Matters". Azerbaijan signed this Convention in 2003, and the Protocol on amendments to it in 2014. The Convention allows the exchange of information for tax purposes with more than 100 countries.

In the "Directions of tax reforms to be carried out in 2016", approved by the Decree of the President of the Republic of Azerbaijan dated August 4, 2016, it is envisaged to conclude intergovernmental agreements for the automatic exchange of financial information with other states in order to ensure transparency in the taxation of income earned outside the country's borders. As an implementation of that Order, a statement on joining the "Multilateral Agreement between competent authorities on the automatic exchange of information on financial accounts" was signed, and according to this statement, the application of CRS in Azerbaijan began on July 1, 2017, and from this date, applications to financial institutions to open accounts must determine the tax residency status of each legal and physical person (by filling out a self-assessment questionnaire).

The above-mentioned agreements help states to compensate tax amounts that their taxpayers try to avoid from their budgets in modern times, but there is no doubt that it is the most effective international cooperation-BEPS project today in the struggle against tax base erosion and profit shifting.

BEPS is a tax planning strategy. Its documents also show that the BEPS project was created to overcome the reduction of the taxation base through the transfer of profits to low-level or tax-free countries with minimal or no economic activity, or through passive income such as interest or royalties.

It would not be bad if we talk a little about the conditions that led to the creation of BEPS. In 2012, at the next summit of the G20 countries in Mexico, one of the main topics of discussion is the world economic crisis. In order to alleviate the consequences of the crisis as much as possible and reduce the budget deficits of the states, it is decided to join efforts in the fight against tax evasion and fight against cases of erosion of tax bases and transfer of profits to tax-free jurisdictions. At the Turkish summit held in 2015, more than 60 countries agreed to approve 15 action plans called the BEPS package. At the next stage, the Organization for Economic Co-operation and Development (OECD) and the G20 countries create the BEPS inclusive framework. The main objective of creating an Inclusive Framework is to create equal opportunities for all countries to participate in the process of improving the BEPS standards. In 2017, a multilateral convention was signed within the framework of the OECD. Today, more than 90 jurisdictions have adopted this convention as part of their legal system. [4]

Currently, more than 141 countries and jurisdictions have signed up to the BEPS Inclusive Framework. Member states joining the framework should join as many as

possible of the 15 action plans and make relevant changes in their legislation. However, 4 of 15 actions are considered mandatory for membership, and these essential measures are those in bold in the list below:

1. Tax problems and features of taxation in the era of digital economy;
2. Neutralization of hybrid schemes;
3. Increasing the effectiveness of controlled foreign company regulations;
4. Struggle with the reduction of the tax base during interest payments and other financial transactions;
5. Harmful tax practices;
6. Abuse of double taxation agreements;
7. Permanent establishment;
8. Transfer pricing in the sphere of intangible assets;
9. Preparation of rules for determining the transfer pricing in the area of risks and capital;
10. Determination of the transfer pricing in other high-risk transactions;
11. Improvement of information collection and analysis methods related to the erosion of the taxation base and the transfer of profits;
12. Inclusion of rules for detection of the application of aggressive tax planning;
13. Optimization of the conditions of documentation of transfer pricing determination and accountability by states;
14. Increasing the efficiency of dispute resolution mechanisms related to interstate tax issues;
15. Preparation of a multilateral convention model on international taxation issues. [4]

In the sphere of cooperation with the BEPS Inclusive Framework, an agreement was signed between Azerbaijan government and OECD in the form of an exchange of letters on November 26, 2021 and July 1, 2022. The draft law approving the agreement was approved by a presidential decree on October 26, 2022. Thus, since October of this year, Azerbaijan has become a part of the BEPS Inclusive Framework as an associate member. Associative membership means full participation on the same level as OECD members in the work carried out by the IF and its subsidiaries in the direction of BEPS. [5]

What is meant by full participation on par with OECD members?

- To be invited to all the issues put on the agenda of the BEPS meetings of the IF and its subsidiaries;
- Participation in decision-making on all outcomes related to the BEPS project;
- Opportunity for representatives to be elected to the governing bodies of the BEPS project.

By joining the BEPS project, our country must adapt its tax legislation to the 15 standards listed above, which include 4 minimum standards, in addition to the "Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy" adopted at the virtual meeting of 135 members of the BEPS Inclusive Framework on October 8, 2021.

What will be the advantages of joining the BEPS project for us? More flexible legal means in the struggle against tax evasions. Even before joining the BEPS project, we have started to add the provisions provided for in the BEPS project to our national legislation. These include the transfer pricing institution provided in Article 14-1 of the AR Tax Code, the controlled foreign company institution provided in Article 14-2, (1)

etc. In addition, the list of countries and territories with concessional taxation was approved by the presidential decree, and another example was last year, clarifications were made to the concept of the institution of permanent representation, which corresponds to the requirements of the 7th measure provided in the BEPS project. [1]

Transfer pricing was included in the tax legislation of Azerbaijan by the Law on making additions and changes to the Tax Code of the Republic of Azerbaijan dated December 16, 2016. Perhaps this was due to the adoption of the BEPS project. It is very important to say that, three of the BEPS actions are dedicated to transfer pricing. What is the transfer prizing? - Article 14-1 of the Tax Code of AR refers to the transfer prizing - the price determined during the transactions between the persons specified in Article 14-1.2 of this Code and determined in comparable transactions between independent persons under the same conditions. To understand the transfer price, it is important that we clarify the following 3 terms:

- Controlled transactions
- Related persons
- Arm's length principle

A controlled transaction is one in which there is a high risk of transfer pricing and it must be determined whether it exists. Interrelated persons are persons who have a share in each other's property or may influence each other's commercial activities in some other form, and it must be determined whether the arm's length principle is preserved or not, whether there is a transfer price or not. The list of related parties is usually determined by national tax legislation. Article 18 of the Tax Code of the Republic of Azerbaijan defines interconnected persons as natural persons and (or) legal entities that can directly influence the economic results of their relationship activities or the activities of the persons they represent, and define their characteristics as follows:

- If a person directly or indirectly participates in another person's property (authorized capital) and his participation share or voting rights is at least 20 percent;
- A person is subordinate to another person due to his official status, or a person is directly or indirectly under the control of another person;
- Persons are directly or indirectly controlled by a third party;
- Persons directly or indirectly jointly control a third person;
- Family members. [1]

But what is the arm's length principle? The arm's length principle is that the terms of transactions between parties should not differ from transactions between independent parties. That is, the essence of this principle is that the terms of the contract concluded between two related persons must be the same as the terms of the same type of contract concluded between unrelated persons. Article 14-1.2 of AR Tax Code lists the transactions between which the taxes can be calculated based on the transfer price. We would like to note that transfer pricing in recent times is not limited to contracts between related parties. But how are the rules for determining the transfer price determined? There are two international documents on this-UN transfer pricing rules for developing countries and OECD rules of the same name. As for the national legislation, transfer prizing determination is regulated in addition to the above-mentioned international documents by the "Rules for determination and application of transfer prices" approved by the Decision of the Board of the Ministry of Taxes of the Republic of Azerbaijan dated January 27, 2017.

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THE DEVELOPMENT OF WOMEN'S RIGHTS IN INTERNATIONAL LAW

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Abstract

This article is widely circulated in connection with the importance of progress in the development of women's rights in the event of the emergence of law. Despite the fact that human rights as universal voters recognize that they omnipotently pass laws, universal access to international agreements. This article is devoted to the formation of international law in relation to women's rights, i.e. International Convention on the Elimination of All Forms of Discrimination against Women including UN Women which is the UN organization delivering programmers, policies and standards that uphold women's human rights as well as the Istanbul convention is acceptable.

Keywords: *Gender equality, Women's human rights, CEDAW, Istanbul Convention, Forms of Discrimination*

It is worth noting that philosophical views [1] and an understanding that limits the role of a "woman" as a wife and mother and does not consider them as a person under the influence of traditions and religious rules led to creation of norms that included the inequality of women and men.

As we know, at the beginning of the 20th century, in the First and then in the Second World War, mankind suffered huge losses in all respects. Global and regional organizations were created in order to eliminate the devastating consequences of the war after the Second World War, and to ensure peace and overall development in the world. The largest of these organizations is the United Nations which was established in 1945. The Declaration of Human Rights, which introduced universal standards to ensure equal rights for all, was prepared by the United Nations, which Islamic countries are also members of. The work carried out within the framework of the United Nations in the field of women's rights, the starting point of which is human rights, has been gaining momentum since the 1970s.

In fact, the work that is carried out to ensure equality between women and men in the country also helps in the development of democratization of this country. [2] Decisions were taken at the international level to eliminate discrimination against women in the social, legal, economic, political, cultural and other fields. An important decision was adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women on December 18, 1979.

The Conventions, which were prepared with the aim of directly empowering women and advancing women's rights in the field of international law, support abolition of discrimination on the basis of sex in the domestic legislation of the states that have ratified these documents, and realization of equality.

In addition to human rights conventions, ratification of two fundamental conventions on women's rights in international law, by Islamic States as well, has become the driving force behind elimination of gender discrimination in law and life, as well as prevention of violence against women in those countries. It is this article that will examine the impact of the Convention (CEDAW) on the legislation of the state's parties. [3]

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1. Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women is one of the eight core UN human rights conventions. The Convention expressly establishes universal human rights standards for "women" and provides for abolition of all forms of discrimination, regardless of women's marital status.

A) Document Preparation

The Commission on the Status of Women, created in 1946 to prevent gender inequality, prepared many international declarations and conventions, primarily to regulate the legal status of women at the level of equality. For example:

- The Covenant on the Political Rights of Women of 1952;
- Convention on the Nationality of Married Women, 1957;
- The Declaration on the Elimination of Discrimination against Women in 1967 was prepared by the Commission on the Status of Women.

In the early 1970s, the CEDAW Commission began a comprehensive study to determine position and problems of women in the world and to find universal solutions to women's problems. As a result of these studies, it was revealed that discrimination against women in various aspects and manifestations persists in member countries.

In 1972, in its Decision 3010, the United Nations General Assembly has proclaimed 1975 International Women's Year in order to eliminate discrimination and realize the principle of equal rights for men and women. [4]

The same year, the first World Conference on Women was held in Mexico City. The conference proclaimed the UN Women's Decade for Equality, Development and Peace till 1985 and decided to convene a second world women's conference to monitor and review developments in that decade. Two years after the 1st World Conference on Women, in 1977, the United Nations established the March 8 World Organization of Working Women.

Women's rights are "universal" rights that every woman has as an "individual". However, experience has shown that these rights are violated systematically, because of the gender of women too.

B) Purpose of the Convention

The Convention on the Elimination of All Forms of Discrimination against Women stipulates that women have rights as "persons" and is based on the prevention of discrimination against women. The Convention emphasizes that women have equal rights both in law (de jure) and in practice (de facto) on gender equality. In this regard, it is a legal framework that includes guiding rules for changing the traditional models.

C) Contents of the Convention

a) Obligations of States Parties: in accordance with the Convention, in order to eliminate discrimination against women, secure the comprehensive development and advancement of women in all fields, including political, social, economic, educational and cultural field, to ensure that they enjoy rights and fundamental freedoms on an equal footing with men and that these rights are equal. To this end, the States Parties are obliged to ensure use of such rights within their own jurisdictions, they are obliged to amend all legal norms, especially the Constitution and fundamental laws such as the Civil Code, the Criminal Code, the Labor Law, and to establish institutions and organizations to protect the rights of women (Article 3).

b) Method for elimination of discrimination: Article 4 of the Convention; It was recognized that adoption by the States Parties of "temporary special measures" aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the Convention.

The purpose of this article is not only legal equality, but also implementation of an equal opportunity policy that allows use of equal rights. The way to achieve this is to pursue a policy of affirmative action [5] until the injustices that have existed throughout history and led to unequal status of women are eliminated. For example, a "gender quota" should be established to ensure equal participation in certain professions, educational institutions, business levels, decision-making mechanisms or political parties.

c) Changing traditional prejudice and mentality: Article 5 of the Convention is regulated to remove obstacles that lead to stereotypical roles of women and men, prejudices based on male superiority and discrimination "brought about by the marital status of women".

In addition to the general obligation imposed by Article 5, the Convention also establishes that "the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmers and the adaptation of teaching methods" with regard to education (Article 10/c) was identified as a specific obligation incumbent on the states parties.

d) Other Convention rules:

States Parties shall take all appropriate measures:

- "To suppress all forms of traffic in women and exploitation of prostitution of women" (Article 6);
- "To eliminate discrimination against women in the political and public life of the country" (Article 7);
- "To ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations" (Article 8);
- "To acquire, change or retain their nationality. They shall ensure, in particular, that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, renders her stateless and or force upon her the nationality of the husband" (Article 9);
- "To ensure to them equal rights with men in the field of education, choice of profession and art" (Article 10);
- "To eliminate discrimination against women in the field of employment" (Article 11);
- "To eliminate discrimination against women in other areas of economic and social life" (Article 13);
- "Shall accord to women equality with men before the law" (Article 15);
- "marriage and family relations" (Article 16)

There had been taken measures to eliminate discrimination against women. [6]

Istanbul Convention

As we mentioned above, the first international document on prevention of violence against women is the Declaration on the Elimination of Violence against Women adopted by the 32nd UN General Assembly on December 20, 1993.

The Council of Europe, which Turkey is also a member of, has carried out extensive research on prevention of violence against women. Recommendation Rec(2002)5 adopted by the Committee of Ministers of the Council on April 30, 2002 was used to raise awareness.

This is an important document [7]. The Recommendation and its annex include public informing of violence against women; (1) in-service training for judiciary, police, forensic and social workers; Measures have been taken to: open shelters to ensure the safety of victims of violence; (2) prevent child marriages; (3) receive support from the media.

A comprehensive regulation prepared by the Council of Europe to combat violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The Convention was opened for signature at the meeting of the Committee of Ministers of the Council of Europe on May 11, 2011. For this reason, it is known in the international arena as the Istanbul Convention. Turkey was the first country to sign and ratify the Convention. On August 1, 2014, after ratification by ten states, which at least eight are members of the Council of Europe of, it entered into force in accordance with Paragraph 2. As of 2022, the Convention has been ratified by 39 states and signed by 46 states. The European Union has also formally signed the Convention.

A) Objectives of the Istanbul Convention

By creating a legal framework for combating violence against women, the Convention covers prevention, protection, prosecution and policy to comprehensively establish support mechanisms for victims of violence.

The Convention states:

- "violence against women" shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, whether occurring in public or in private life;

- After the phrase "gender shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men", "gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately". The most important feature of the Istanbul Convention is that it requires states to create institutional mechanisms in the field of preventing and combating violence, and there is a monitoring mechanism called GREVIO, which is created for monitoring.

B) Monitoring Mechanism

The most important aspect supporting the sanctioning force and binding nature of the treaty is the mechanism of control provided for by it (Article 66). In order to ensure full implementation of the Convention by the participating States, a monitoring mechanism has been established within the Council of Europe called the "Group of Experts on Action against Violence against Women and Domestic Violence". GREVIO asks questions to be answered in order to monitor and oversee implementation of the Convention.

Conclusions

In conclusion, it should be noted that there is a need for multidimensional planned research, especially in the field of education, in order to form a mentality of gender equality in Islamic countries. When we look at the legal aspect, the discrimination that women face in claiming their rights and in the judicial system stems from a male-dominated perspective, although equal rights are recognized in the laws. For this reason, informing those who will work in law enforcement, especially judges, prosecutors and lawyers, about human rights during their legal education and internship will make a significant contribution to solving the problem. In this article, the purpose of which is to highlight the process of formation of women's rights, brief information was provided on the two main conventions that are aimed at protecting women's rights, namely: CEDAW and the Istanbul Convention. Gender equality is a matter of democracy. Therefore, in order to achieve the goals of democratization and sustainable development, it is necessary to establish gender equality in all spheres of life.

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REGİONAL HUMAN RİGHTS PROTECTİON MECHANİSMS

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Abstract

After the World War II, with the establishment of the United Nations, important steps were taken in protecting human rights and ensuring gender equality across the world. In particular, in the last 50 years, the deepening of the globalization process and international economic integration, as well as the expansion of cultural and political relations, made it possible for women to be more closely involved in social and political processes. In all states, to one degree or another, the legal framework for the protection of women's rights and the provision of gender equality was formed, and mechanisms were created for the implementation of these laws. As a result of global, regional, and national policies pursued for the protection of human rights, including women's rights, and ensure gender equality, women in most countries of the world are now closely involved in economic, political, and social life on an equal footing with men.

Keywords: *human rights, women's rights, European Court, Commission for Gender Equality, regional mechanism, OSCE agreement with Azerbaijan.*

One of the most important values achieved by modern civilization is related to the protection of human rights. As a result, the problems in this field in the world today are global problems rather than internal problems of individual countries. The expansion of international cooperation, in particular, the establishment of the UN, allowed the creation of the necessary mechanisms for the protection of human rights. Every country is internationally responsible for people whose rights are violated. Modern human rights mechanisms allow complaints to be filed through local, regional, and international mechanisms for violations of rights. The UN mechanisms for the protection of human rights, including women's rights, are extensive and effective. In addition to these mechanisms, there are also regional and national ones. Regional and national mechanisms are formed on the basis of principles determined by international mechanisms and cannot reduce their requirements. On the contrary, the practice of implementing more effective measures through regional and national mechanisms for the protection of human rights is possible and exists.

Regional mechanisms for the protection of human rights are important from the point of view of making more flexible appeals in cases of rights violations and taking regional specificity into account. Regional mechanisms are resorted to when national mechanisms do not justify themselves. At present, there are regional mechanisms covering European countries, African countries, Caribbean countries, and American countries and providing for the protection of human rights. As we mentioned, regional mechanisms are more flexible than UN mechanisms and take into account the specificities of the region. On the other hand, such mechanisms take into account not only the protection of human rights but also the attitude of a specific citizen toward society. Among the regional mechanisms currently protecting human rights, including women's rights, we can point to the Council of Europe (CoE), the Organization for Security and Cooperation in Europe (OSCE), the Commonwealth of Independent States (CIS), the African Union, the Organization of American States, and the Organization of Islamic

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States. Since the research is conducted on the example of Azerbaijan, we will get acquainted with the mechanisms of protection of human rights, including women's rights, within the framework of the Council of Europe, the OSCE, the CIS, and the Organization of Islamic States.

The human rights protection mechanism within the framework of the EU provides for the implementation of the European Convention on Human Rights. This international treaty, which was adopted by the newly created Council of Europe in 1950, but entered into force on September 3, 1953, regulates the protection of human rights and political freedoms in Europe. It is on the basis of this Convention that the European Court of Human Rights (ECtHR) was established. The scholars, Andreadakis, S. [1], Helfer [2], for example, note that the ECtHR has influenced the legal systems of member states in a short period of time as an effective mechanism in the field of human rights protection.

It should be noted that the Convention was essentially formed in response to the threat to the protection of human rights as a result of the spread of communist ideology in Eastern European countries during World War II and the subsequent period.

The CoE structure is primarily composed of six bodies: 1) the Committee of Ministers; 2) the Parliamentary Assembly; 3) the European Congress of Local and Regional Authorities; 4) the ECHR; 5) the Human Rights Commissionerate; and 6) the Conference of INGOs. In addition to these bodies, 1) the General Secretary of the Council and 2) the Deputy Secretary General are included in the organizational structure of the Council. It should be noted that the main office of the JSC is located in Strasbourg, France. The Committee of Ministers is the main decision-making body of the CoE. Foreign ministers of member states or their permanent representatives gather here. The second most important body in the Council of Europe is the Parliamentary Assembly. Representatives determined by the parliaments of each member state are represented in this body. Another important body is the Congress of Local and Regional Authorities. 636 members representing more than 200,000 local and regional authorities gather here to discuss democratic changes and the development of self-government institutions at the local and regional level. This body operates mainly based on the principles of the European Charter on Local Self-Government. The ECHR, which is the subject of our research, is a body that operates permanently and serves to protect the rights of the citizens of the member states stipulated by the European Convention on Human Rights. Another body that is directly related to human rights is the Human Rights Commissioner of the Republic of Azerbaijan. As stated by Dunya Mijatovic, Commissioner for Human Rights of the Council of Europe "Today, the system of human rights protection in Europe is one of the most advanced in the world. The European Convention on Human Rights, the Court, the different monitoring mechanisms and institutions, as well as my Office, work to ensure that States uphold their obligations to protect, respect and fulfil human rights. However, structural shortcomings and a lack of political will still hinder the full realization of human rights". [3]

The EU Commissioner for Human Rights is different from the ECHR and is a non-judicial institution. This body was established in 1999 and works to raise awareness of human rights and instill respect for human rights in member states. The powers of the Commissioner for Human Rights are defined in CoE Resolution No. 50 (99) on the Commissioner for Human Rights [4]:

promote education in and awareness of human rights in the member States and contribute to the promotion of the effective observance and full enjoyment of human rights in the member States;

promote education in and awareness of human rights in the member States;

identify possible shortcomings in the law and practice;

facilitate the activities of national ombudsmen or similar institutions in the field of human rights;

provide advice and information on the protection of human rights in the region.

Within the premises of the Council of Ministers, the Gender Equality Commission (CGE) also operates. The CGE was created to ensure that gender equality is mainstreamed in all Council of Europe policies and to bridge the gap between commitments made at the international level and the reality of women in Europe. The members of this commission are appointed by the member states. The Commission advises other bodies of the Council of Europe and member states on ensuring gender equality. The CGE supports the implementation of the six objectives of the Council of Europe Gender Equality Strategy for 2018-2023. The CGE has wide powers. For example:

To ensure the follow-up of the relevant decisions taken at the 131st Session of the Committee of Ministers (Hamburg, May 21, 2021) and to contribute to the implementation of the main strategic priorities related to its special area of expertise;

Monitor and support the implementation of the Council of Europe Gender Equality Strategy (2018-2023), prepare the Gender Equality Strategy (2024-2029), and monitor and support its implementation;

Conducting legal and political analyses in member states, including on the basis of the findings of monitoring mechanisms, as well as conducting exchanges on trends, development, and good practices;

To conduct needs assessments and make proposals for general policy development, including the determination of key issues and standards for member states within their jurisdiction; and etc.

After Azerbaijan gained independence in 1991, the process of integration into the global world, including Europe, intensified. Since 1993, when National Leader H. Aliyev took over the leadership of the country again, the integration of Azerbaijan into the European family has accelerated. The decrees signed by H. Aliyev on July 8, 1996, "On measures to implement the cooperation program between the Council of Europe and the Republic of Azerbaijan," on January 20, 1998, "On measures to deepen cooperation between the Council of Europe and the Republic of Azerbaijan," and the decree of May 14, 1999 on measures to deepen cooperation between the Republic of Azerbaijan and the Council of Europe and protect the interests of the Republic of Azerbaijan in Europe" played an important role in the integration of our country into the Council of Europe. Since January 2001, Azerbaijan became a full member of the Council. Along with political and economic dividends, Azerbaijan's CoE membership was of great importance in aligning Azerbaijani laws on human rights protection and gender equality with European standards. As a full-fledged member of the CoE, the ratification of the Conventions adopted by the Council by Azerbaijan created wide opportunities for the protection of women's rights and ensuring gender equality in our country.

The International Conference of Non-Governmental Organizations is an institution that includes more than 400 organizations. This Conference conveys the voice of

the civil societies of the member states to the Council of Europe. All bodies of the CoE are not only independent, but also interconnected. For example, the issue related to complaints referred to the ECHR is referred to the Committee of Ministers in the implementation phase. Or the CoE works in close cooperation with the Committee of Ministers of the Parliamentary Assembly.

As a regional mechanism, the European Convention on Human Rights enables the protection of the rights of more than 840 million people in 47 countries of the Council of Europe. The articles of the Convention are in full compliance with the UN Universal Declaration of Human Rights. However, despite the rapid consideration of regional peculiarities and changes related to human rights and speeding up the solution of the problem made the adoption of such a document necessary. The experience of protecting human rights in the last 70 years shows that "regional cooperation in the field of human rights complements the forms of universal cooperation and, in some aspects, ensures the protection of basic rights more effectively.[5, p.152] On the other hand, "regional legal systems are closest to the structure of society; they clearly reflect the ethnic, confessional, and socio-cultural characteristics of the united community." [6, p.15] The executive, legislative and judicial authorities of the countries acceding to the Convention are oblidged to protect the rights defined in the Convention. The citizens of these countries can apply to the ECHR, provided that they use all the mechanisms related to the protection and restoration of their rights in their country.

Another important difference between the regional mechanisms for the protection of human rights, especially the ECHR, and the UDHR is the existence of legal mechanisms for the application of the former in specific cases. Thus, in cases of violation of any article of the ECHR, there is an opportunity to apply to the European Court of Human Rights (ECHR). All citizens of Member States can take advantage of this opportunity. The implementation of the ECHR is monitored by three bodies of the Council of Europe, namely the Committee of Ministers, the Commissioner for Human Rights, and the ECtHR. This convention is dynamic and is constantly being improved by additions to it.

As it was earlier noted, the European Union citizens can apply to the ECHR in case of the violation of their rights. However, the application procedure is not that simple. First of all, it should be distinguished as to which violation of law should be referred to the ECtHR. That is, the ECtHR can only hear cases related to violations of the ECHR and its Protocols. On the other hand, the Court has the authority to hear cases about alleging violations against a state party. The ECHR can be applied when one of the rights guaranteed by the ECHR and its Protocols, such as "right to life", "right to a fair trial (civil and criminal limb)", "right to respect for private and family life", "freedom of expression", "freedom of opinion, conscience and religion", “right to an effective remedy", "right to peaceful enjoyment of property," and "right to free elections" are violated. The Convention and its Additional Protocols prohibit

1) torture and inhuman or degrading treatment or punishment;

2) arbitrary and unlawful detentions;

3) discrimination in the exercise of the rights and freedoms defined in the Convention;

4) collective expulsion of aliens;

5) death penalty;

6) the expulsion of a citizen from the country or denial of entry to the country due to his attitude towards his country.

Some scholars point out that there are some problems with the activity of the ECtHR. For instance, according to Maša Marochini [7], "despite the fact that the Convention system is the most effective system in terms of ensuring, there are some problems in the individual protection of civil and political rights." One of the biggest problems is the overloading of the court. In 2012, the number of applications increased by 1% compared to 2011 and reached 65,150. This growth continues. Protocol No. 14 to the Convention allowed the sitting a single judge. The expansion of the powers of the three judges' committee was also an important change".

The 2018 Report on the activities of the European Court of Human Rights also mentions the large number of applications and their continued growth. However, the number of applications in 2018 was 56,000, a significant decrease from 2011 and 2012. An interesting fact is that among the applications, there are more from Russia, Romania, Ukraine, Turkey, and Italy, and there is also the name of Azerbaijan. Simplifying procedures, expanding language skills, and increasing the number of lawyers familiar with ECHR procedures have a certain effect on the number of such applications [8].

The protection of women's rights and gender equality are of particular importance in the activities of the CoE regarding human rights. The Council of Europe and its relevant bodies have also developed certain standards related to women's rights and gender equality. According to Article 1 of the European Convention on Human Rights, which is called "Obligation to Respect Human Rights", "High Contracting Parties ensure the rights and freedoms defined in Section 2 of this Convention for everyone under their jurisdiction" [9]. This article establishes that people have equal rights regardless of gender, race, and other differences.

The Convention against Trafficking in Human Beings, adopted by the Council of Europe in Warsaw in 2005, aims to prevent and combat trafficking in women, men, and children. This Convention is also important in the development, implementation, and evaluation of measures to promote gender equality under this binding document. In Article 1 of the Convention, "combating and preventing human trafficking by ensuring gender equality" is listed among other goals. There is also an independent monitoring mechanism to assess how the provisions of the Convention are being implemented by member states.

Taking into account the recommendations of the CoE Committee of Ministers addressed to the Member States, as well as the recommendations of the PACE, Article 6 of the Convention stipulates that in order to eliminate the demand that creates conditions for all types of exploitation that lead to human trafficking, and especially the exploitation of women and children, each party must implement and strengthen legal, administrative, educational, social, cultural, and other measures.

The Convention considers measures to protect and promote the rights of victims of human trafficking by ensuring gender equality. Paragraph 1 of Article 10 of the Convention, which is called "Identification of the victims" states that "Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organizations, so that victims can be identified in a

procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention".

Article 6 of the Convention envisages "preventive measures, including educational programs for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being".

Another important document adopted by the Council of Europe in the field of protecting women's rights and ensuring gender equality is the "CoE Convention on preventing and combating violence against women and domestic violence" (the Istanbul Convention). A two-pillar monitoring mechanism is envisaged for the evaluation of the implementation of the Istanbul Convention.

As a regional mechanism, the CoE Council of Ministers has prepared various recommendations for the Member States to protect women's rights and ensure gender equality. For example, Recommendation No. (79)10 requires Member States to adapt their national legislation and regulations to international standards regarding women migrants. The document recommends to take measures to provide the necessary information to migrant women, to prevent discrimination against them at work, provide for their socio-cultural advancement, to provide access to vocational training, and other various trainings.

According to recommendation No. R (85)2 of the Committee of Ministers, Member States are advised to create a system of legal remedies against sex discrimination. This system should implement and strengthen measures to promote equality between women and men. These and many other Committee of Ministers Recommendations are important for the protecting women's rights, increasing the role of women in the life of society, especially in political and economic life, and ensuring gender equality in society.

One of the important regional mechanisms for ensuring the protection of women's rights and gender equality is the OSCE. As a regional organization, the OSCE brings together 57 countries. The issues related to the security and cooperation of member states, including military-political, economic, and environmental issues, as well as human rights issues, are discussed within the framework of this organization. OSCE decisions are made on the basis of consensus among member states with the same rights.

In the management structure of the OSCE, decision-making bodies and executive bodies are distinguished. Regional offices and some OSCE-related bodies also play an important role in the activities of the OSCE. The function of ensuring human rights and gender equality in the structure of this organization is carried out by the "Democratic Institutions and Human Rights" Office of the OSCE, located in Warsaw. This Office supports democratic elections, protection of human rights, the rule of law, tolerance, non-discrimination, and Roman law in Member States.

In the first years of cooperation between Azerbaijan and the OSCE (Security and Cooperation Treaty in Europe until 1995-OSCE), the main focus was on the fact of occupation of large areas of Azerbaijan as a result of Armenia's military aggression and that hundreds of thousands of people lived as refugees and displaced people. Within the frame of this cooperation, the provision of gender equality and protection of women's rights were also issues of priority along with this problem. The Government of

Azerbaijan and the OSCE ODIHR have signed a Memorandum of Understanding in 1999. However, unfortunately, the agencies of the OSCE, especially the Minsk Group have not taken any specific measures for the restoration of the rights of hundreds of thousands of Azerbaijani women and children, violated in this armed conflict. In 2020, under the leadership of victorious Supreme Commander-in-Chief I. Aliyev, the Azerbaijani Army returned the occupied lands of Azerbaijan, putting an end to the injustice that had prevailed for nearly 30 years.

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