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# PERSONAL SECURITY IN CIVIL LAW OF THE REPUBLIC OF AZERBAIJAN: A COMPARATIVE STUDY OF SURETYSHIP AND GUARANTEE INSTITUTIONS

**Rufat Goyushov***

**Abstract**

*This article provides a comprehensive analysis of suretyship and guarantee as two principal personal security institutions in the civil law of the Republic of Azerbaijan. The relevance of the research is determined by the increasing role of personal security mechanisms in credit relations, commercial transactions, public procurement, and international trade, where creditors seek additional legal safeguards for the proper performance of obligations. The study examines the legal nature, structural characteristics, functional purpose, and practical application problems of suretyship and guarantee, with a particular focus on the fundamental distinction between the accessory principle governing suretyship and the independence principle underlying guarantee obligations. The analysis is conducted through the prism of the Civil Code of the Republic of Azerbaijan, domestic legal doctrine, international commercial law standards, including the Uniform Rules for Demand Guarantees 758 and the Uniform Customs and Practice for Documentary Credits 600, and comparative law methodology. Special attention is paid to the legal consequences arising from the accessory nature of suretyship, such as the surety's right to invoke the debtor's objections, the dependence of the surety's liability on the validity and scope of the principal obligation, and the termination of suretyship in cases provided by law. In contrast, the article explores the autonomous and documentary nature of guarantee obligations, emphasizing their importance for rapid payment, liquidity, and legal certainty in commercial circulation. The article also critically examines a number of practical issues encountered in legal practice, including terminological confusion between suretyship and guarantee, incorrect contractual drafting, statutory limitation pitfalls in suretyship relations, judicial recharacterization of security instruments, and the difficulty of applying the fraud exception in guarantee disputes. The comparative analysis demonstrates that although suretyship and guarantee belong to the same general category of personal security, they perform different economic and legal functions and allocate risks between the parties in substantially different ways. The article concludes by proposing practical criteria for selecting the appropriate security instrument depending on the nature of the obligation, the creditor's risk expectations, the debtor's legal position, the required speed of enforcement, and the commercial context of the transaction.*

***Keywords:*** *suretyship, bank guarantee, accessory principle, independence principle, credit agreement, security of obligations, civil liability, Azerbaijani civil law.*

## *I. Introduction: Management of Credit Risks in Civil Circulation and the Role of Personal Security*

In the modern market economy, the stability of civil circulation is directly dependent on the climate of trust between economic actors and the efficiency of mechanisms ensuring the performance of obligations. The granting of bank loans, the establishment of commercial relations, and the continuity of investment flows necessitate the minimization of creditors' risks [3, Arts. 460-490]. In this context, the concept of "security" serves a dual function from both legal and economic perspectives: on one hand, it reduces credit risk; on the other, it ensures the regularity of commercial relations.

* Doctor of Philosophy in Law, Member of the Bar Association of the Republic of Azerbaijan, e-mail: rufat.goyushov@gmail.com

The Civil Code of the Republic of Azerbaijan classifies the methods of ensuring the performance of obligations into two principal categories: proprietary (real) security (pledge, mortgage) and personal (obligation-based) security (suretyship, guarantee). Whereas proprietary security is based on the allocation of a specific asset pool towards covering the debt, personal security relies on the general property liability of a third party. This very distinction determines the essence of the legal regime applicable to each category [3, Arts. 269-289, 460-490].

As noted by I. Askarov in the "Commentary to the Civil Code of the Republic of Azerbaijan", the personal security methods of ensuring the performance of an obligation primarily create an additional source of payment for the creditor's claim, introducing alongside the debtor a separate obligated subject [1, p. 740-748]. This legal construction, by ensuring diversification of credit risks, makes a significant contribution to the stability of financial markets.

Suretyship and guarantee - the primary subject of this study - each operating on distinct legal principles, rules of termination, and fields of application, serve different segments of civil circulation. A thorough understanding of these two institutions carries not only theoretical significance; it also forms an indispensable basis for the practical activities of entrepreneurs, banks, and legal professionals.

*1.1. The Economic Functionality and Historical Roots of Personal Security*

From a historical perspective, the roots of personal security trace back to the Roman law institutions of stipulatio and fidejussio. The Roman law fidejussor, unlike the debtor, emerges as a third party in the credit relationship and is personally liable with his own property in the event of non-performance of the debt. This classical construction evolved over the centuries and found its reflection in modern law.

According to the provisions of V. Sardarov's work "Civil Law Relations", personal security functions from an economic standpoint as a signalling mechanism [11, p. 92-104]. The debtor uses the authority of a third party - the surety - to inspire confidence in his own solvency. This is an important instrument that reduces information asymmetry in the credit market: a suretyship given to the creditor conveys the message that the surety is personally convinced of the debtor's integrity.

In modern banking practice, suretyship and guarantee serve different market segments. As noted in I. Mammadov's monograph "Risk Management in Banks", suretyship functions predominantly in consumer lending and in small and medium-sized enterprises (SMEs) as a form of security grounded in personal relationships (kinship, friendship). Bank guarantee, on the other hand, is a professional financial instrument used in international trade, public procurement, and the financing of large infrastructure projects [8, p. 118-132].

*II. The Institution of Suretyship: The Accessory Principle and Legal Regime*

Suretyship is the most widespread and classical form of security in Azerbaijani civil law. Its legal construction is built upon a close connection to the fate of the principal obligation, which fundamentally distinguishes it from other forms of personal security, particularly from guarantee.

*2.1. The Concept, Parties, and Legal Characteristics of a Suretyship Agreement*

Pursuant to Article 460.1 of the Civil Code of the Republic of Azerbaijan, a suretyship agreement is an arrangement whereby the surety undertakes an obligation before the creditor to perform in whole or in part the obligation of another person (the debtor). This definition encompasses a number of important theoretical and practical aspects.

First, the question of the parties to the agreement requires clarification. A suretyship agreement is concluded between the creditor and the surety. The participation of the debtor as a party to this agreement is not a legal necessity. However, as noted in the work "Civil Law: General Part" by R.A. Goyushov, R.E. Bayramov, and Sh.B. Yusifov, a suretyship concluded without the debtor's consent may create serious evidentiary difficulties when the surety subsequently seeks to bring a recourse (counter) claim against the debtor [5, p. 279-286].

Second, the question of the gratuitous or onerous character of suretyship warrants attention. Between natural persons (relatives, friends), suretyship typically bears a gratuitous character. However, in commercial relationships - particularly in the case of del credere suretyship or professional suretyship provided by insurance companies - the surety may demand remuneration (commission) from the debtor for this service. Article 460.1 of the Civil Code of the Republic of Azerbaijan is of a dispositive nature on this matter.

Third, the intuitu personae (personal confidence) characteristic of suretyship imposes significant restrictions on its transfer. The surety assumes the obligation of suretyship based on confidence in a specific debtor, his personal character, business qualities, and reliability. When the debtor changes - i.e., when the debt is transferred to another person - the surety may refuse to remain liable for the new debtor (the Civil Code of the Republic of Azerbaijan, Art. 477.1.2).

*2.2. A Fundamental Analysis of the Accessory (Dependency) Principle*

The most fundamental characteristic distinguishing suretyship from other types of security - particularly from guarantee - is its accessory nature. The principle of "Accessorium sequitur principale" (The accessory follows the principal) constitutes the backbone of suretyship relations. I. Askarov explains the meaning of this principle in the contract law system in his commentary as follows: a suretyship obligation can never exist independently of the principal obligation, as it is organically linked to the legal fate of the principal obligation [1, p. 740-748].

The accessory principle manifests itself in four principal directions:

First, dependency in formation: The validity of the suretyship agreement directly depends on the validity of the principal obligation (the credit agreement). If the principal agreement is deemed invalid due to incapacity, defect of intent, or illegality, the suretyship agreement also automatically loses its legal force (the Civil Code of the Republic of Azerbaijan, Art. 460.2).

Second, dependency in substance and scope: The surety's liability may not be more onerous than that of the debtor (the Civil Code of the Republic of Azerbaijan, Art. 465.1). As the principal debt decreases - through installment payments - the surety's liability also diminishes proportionately. This rule serves as a substantial defense mechanism for the surety.

Third, dependency in termination: The termination of the principal obligation through performance, novation, remission, or other means entails the termination of the suretyship as well. If the principal obligation ceases to exist, the suretyship subordinate to it likewise cannot subsist.

Fourth, commonality of legal fate: Changes relating to the debtor's obligation - extension of the term, increase of interest - in principle also affect the surety. However, the legislator here applies a special mechanism to protect the interests of the surety: if such changes have been effected without the surety's consent, the suretyship is terminated (see Section 2.6).

The sole significant exception to accessority is the case of the debtor's death. Upon the death of the debtor, his debt passes to the heirs; however, the heirs' liability is limited to the share of the inheritance they have accepted. The surety, on the other hand, continues to bear the obligation to repay the debt in full (unless otherwise stipulated in the agreement). However, pursuant to an amendment to the Civil Code introduced by the Law of 19 April 2024, "In cases where the subsidiary liability of the surety is stipulated under the suretyship agreement securing an obligation, the surety's liability is suspended for the period from the date of the debtor's death until the date of acceptance of the inheritance (the Civil Code, Art. 472.4)".

*2.3. Form and Validity Requirements of the Suretyship Agreement*

Article 471 of the Civil Code of the Republic of Azerbaijan imperatively prescribes the requirement of written form for a suretyship agreement. Failure to observe the written form results in the invalidity (absolute nullity) of the agreement. The legal policy (ratio legis) underlying this requirement is called the "warning function" (Warnfunktion): suretyship is a transaction that in most cases brings no material benefit to the surety, yet creates significant financial risks.

*Does the existence of a separate "Surety" column in the credit agreement itself and a person's signature therein suffice for the conclusion of a suretyship agreement? According to the dominant position in legal doctrine, if the terms of the surety's liability (joint and several/subsidiary, amount, term) are clearly stated in that document, this satisfies the requirement of written form. However, from the standpoint of legal validity, the safest course is to conclude a separate "Suretyship Agreement".*

As emphasized in M. Babayeva's article examining the accounting principles of bank loans, suretyship agreements must exist as an integral part of the credit documentation; failing this, the security in question is also considered invalid for accounting purposes [2, p. 41-43].

*2.4. Types of the Surety's Liability: Joint-and-Several and Subsidiary Regimes*

In suretyship, the degree of the surety's liability towards the creditor may exist in two principal forms - joint-and-several and subsidiary regimes. This distinction fundamentally alters the creditor's claim strategy and the surety's defense tactics.

*2.4.1. Joint-and-Several (Solidary) Liability - The Default Rule*

Pursuant to Article 472.2 of the Civil Code of the Republic of Azerbaijan, unless otherwise stipulated by law or agreement, the surety and the debtor bear joint-and-several liability before the creditor. Joint-and-several liability means a "freedom of choice" for the creditor. When the debtor fails to perform (delays) the obligation, the creditor may demand payment of the debt from the debtor alone, from the surety alone, or from both simultaneously.

Under this regime, the creditor is relieved of the obligation to prove the debtor's insolvency or the absence of his assets before demanding payment from the surety. If the debt is due and the debtor has not paid, the creditor may directly approach the surety. It is precisely for this reason that joint-and-several liability is valued as the most advantageous option for banks. I. Mammadov characterizes this aspect as a "legal instrument for credit risk management", noting that agreements based on the joint-and-several suretyship regime significantly improve the quality of a bank's loan portfolio [8, p. 118-132].

*2.4.2. Subsidiary (Complementary) Liability*

The parties may specifically agree in the agreement that the surety will bear subsidiary liability. In this case, the surety plays the role of a "reserve player": the creditor may approach the surety only when all available legal remedies (judicial enforcement) to recover the debt from the principal debtor have been exhausted.

In subsidiary suretyship, the surety has the right to tell the creditor to "first proceed against the debtor's assets". This right, known in Roman law as beneficium excussionis (the benefit of discussion), prevents the creditor from approaching the surety as long as the debtor has even a minimal asset. This means stronger protection for the surety.

The following table summarises the principal differences between the two liability regimes:

| Characteristic | Joint-and-Several Liability | Subsidiary Liability |
|---|---|---|
| Order of claims | The creditor may directly claim from the surety. | The creditor must first approach the debtor. |
| Surety's risk | Very high. The same legal standing as the debtor. | Lower. Only to the extent of the debtor's asset deficiency. |
| Burden of proof | The burden of proof is lifted from the creditor. | The creditor must prove the debtor's lack of assets. |
| Field of application | Bank loans, commercial agreements. | Civil (non-commercial) relations - rare. |
| Legal presumption | Applied by default. | Only when specifically stipulated in the agreement. |

*2.5. Rights and Defenses of the Surety*

Although the surety bears liability for the debt, the legislation equips him with powerful legal instruments to protect him from unjust claims by the creditor. These rights flow directly from the accessory nature of suretyship.

The first defense instrument - the right to raise objections (defenses). Article 474.1 of the Civil Code of the Republic of Azerbaijan grants the surety the right to raise all objections that the debtor could raise against the creditor. These objections include circumstances such as the debt not yet being due, the debt having already been paid, the creditor's breach of obligation, defects in the goods, and the application of set-off. An important nuance is that even if the debtor himself waives these objections, the surety retains the right to raise them.

The second defense instrument - the right to information. The surety may at any time demand from the creditor information concerning the outstanding balance of the debt, accrued interest, and the payment schedule. If the creditor refuses to provide this information, the extent of the surety's liability becomes a contentious matter. This right prevents information asymmetry regarding the status of the principal debt on the surety's part. The third defense instrument - the right of recourse (subrogation). Pursuant to Article 475.1 of the Civil Code of the Republic of Azerbaijan, after the surety makes payment to the creditor, all the creditor's rights against the debtor (including other security rights - mortgage, pledge) pass to the surety to the extent of the obligation performed. This subrogation mechanism gives the surety the opportunity to recover from the debtor the amount paid, plus interest and damages suffered.

As also noted in A. Talibova's research on mortgage law, the subrogation mechanism in accessory security institutions is of decisive importance for the harmonious regulation of the creditor-surety-debtor triangle [12, p. 31-33].

*2.6. Termination of Suretyship*

The termination (extinguishment) of suretyship is one of the areas most frequently giving rise to disputes in legal practice. In addition to the general grounds of termination (performance, expiry of term), Article 477 of the Civil Code of the Republic of Azerbaijan provides for specific grounds applicable to suretyship.

The first specific ground - modification of the obligation to the detriment of the surety. If the creditor and the debtor modify the terms of the agreement without the surety's consent, and this modification results in an increase of liability (increase of the interest rate) or a deterioration of the surety's position (extension of the term - increase of risk over time), the suretyship is terminated. Azerbaijani court practice takes a strict position on this matter: if the bank and the debtor have extended the term of the loan by an additional agreement and the surety has not signed it, the suretyship may be terminated in its entirety.

The second specific ground - transfer of the debt to another person. Since suretyship bears the intuitu personae character, when the debtor changes, the surety may refuse to remain liable for the new debtor. The surety assumed the obligation based on confidence in a specific debtor, not an unknown third party.

The third specific ground - the creditor's refusal to accept performance. If the debtor wishes to pay the debt on time, but the creditor refuses to accept it for any reason - for example, with a view to increasing late-payment charges - the suretyship is terminated.

The fourth specific ground - expiry of the term. The critical rule in Article 477.4 of the Civil Code of the Republic of Azerbaijan: if the suretyship agreement does not specify a term (or contains an indefinite expression such as "until the principal debt is fully repaid"), the creditor must bring a claim against the surety within one year from the date the principal obligation became due. Furthermore, if the term for performance of the principal obligation is not indicated and cannot be determined, or can be determined from the moment of demand, the suretyship is terminated if the creditor has not brought a claim against the surety within two years from the date the suretyship agreement was concluded. If these time limits have passed, the suretyship is terminated. This provision is a preclusive (cut-off) time limit designed to deter creditors from passivity.

*III. The Institution of Guarantee: Independence, Abstraction, and International Trade*

Guarantee (bank guarantee), unlike suretyship, is a more flexible, swift, and powerful financial instrument responding to the dynamic demands of modern commercial circulation. The key conclusion arising from S.M. Sabzaliyev's article examining the legal regime of bank loans is that as the frequency of modern financial-credit relations increases, traditional accessory security methods are compelled to cede their place to independent instruments such as guarantee [10, p. 6].

*3.1. The Legal Nature of Guarantee: The Independence Principle*

Pursuant to Article 478 of the Civil Code of the Republic of Azerbaijan, a guarantee is a written undertaking given by the guarantor (bank), at the request of another person (the principal), to that person's creditor (the beneficiary), whereby the guarantor undertakes to pay a specified sum of money to the beneficiary upon presentation of the beneficiary's payment demand.

The fundamental characteristic distinguishing guarantee from suretyship is the independence (autonomy) principle. This principle encompasses two aspects:

The first aspect - abstraction: The guarantor's obligation to the beneficiary is independent of the principal obligation whose performance is being secured. That is, the invalidity of the principal agreement, the repayment of the debt, or the existence of a dispute in no way affects the guarantor's obligation.

The second aspect - documentary character: If the documents are in order, the guarantor must pay. The International Chamber of Commerce Uniform Rules for Demand Guarantees (Uniform Rules for Demand Guarantees 758 - a set of uniform rules governing demand bank guarantees in international trade, in force from 01.07.2010) have consolidated this principle as an international standard, while the Uniform Customs and Practice for Documentary Credits 600 Rules (Uniform Customs and Practice for Documentary Credits - the set of uniform rules governing the payment obligation documents of letters of credit used in international trade, in force from 01.07.2007) have regulated letter-of-credit relations on the same principle [7, Arts. 5, 19; 6, Arts. 2, 7].

Let us illustrate the practical difference with an example: Company "A" (Principal) purchases contractual services from Company "B" (Beneficiary), and a bank (Guarantor) issues a guarantee. Company "A" claims the services were defective. In suretyship, this objection would be valid and the surety could halt payment. In guarantee, however, this objection is entirely irrelevant: if the documents are in order, the bank must pay. The bank does not involve itself in the details of the principal agreement.

*3.2. Structural Elements and Parties of the Guarantee*

The tripartite structure of guarantee relations encompasses three independent legal relationships simultaneously. The first is the principal agreement - between the Principal and the Beneficiary (e.g., a construction contract). The second is the agreement on the issuance of the guarantee - between the Principal and the Bank, determining the bank's service fee and recourse terms. The third is the guarantee obligation - the Bank's unilateral undertaking towards the Beneficiary.

Based on the analysis of the legal regime of banking operations in Z.F. Mammadov's work "Foundations of Banking Activity", guarantees issued by banks are, by their legal nature, off-balance sheet obligations, but may significantly affect the bank's liquidity and capital adequacy [9, p. 276-282].

*3.3. Types of Guarantee: International Classification*

In international commercial practice, the following principal types of guarantee are widely used:

| Type of Guarantee | International Term | Principal Function | Payment Amount |
|---|---|---|---|
| Tender Guarantee | Bid Bond | Ensures that the participant does not withdraw from the contract after winning the tender. | 1–5% of the tender offer |
| Performance Guarantee | Performance Bond | Ensures that the contractor performs the work on time and to quality. | 5–10% of the contract value |
| Advance Payment Guarantee | Advance Payment Guarantee | Ensures refund of the advance paid by the client (if work is not performed). | 100% of the advance amount |
| Payment Guarantee | Payment Guarantee | Ensures the buyer's payment for the goods in the creditor's favour. | 100% of the goods value |

| Type of Guarantee | International Term | Principal Function | Payment Amount |
|---|---|---|---|
| Warranty Guarantee | Warranty Bond | Ensures rectification of defects arising after the object is handed over. | 3–5% of the contract value |

*3.4. Payment Mechanism: "On-Demand" and "Conditional" Guarantee*

The strength of a guarantee is directly dependent on its payment terms. In this respect, two principal models are distinguished:

The first model - on-demand guarantee. This is the most powerful instrument for the beneficiary. It suffices for the beneficiary merely to write to the bank: "Pay me the money; the principal has breached the obligation". No court order, expert opinion, or specific proof is required. Under the Uniform Rules for Demand Guarantees 758 Rules, this is the standard form in international trade [7, Art. 5]. This model is functionally equivalent to a cash deposit at the bank for the beneficiary, while not freezing the principal's working capital.

The second model - conditional guarantee. Here, the beneficiary must submit a document confirming the breach of the obligation (e.g., an arbitral award, an independent engineer's report, a compliance certificate) in order to receive payment. This model better protects the principal's interests, but makes it more difficult for the beneficiary to receive payment.

*3.5. The Principle of Irrevocability of Guarantee and Termination*

Unless otherwise stipulated in the guarantee, it is irrevocable. The guarantor (bank) may not unilaterally withdraw the undertaking it has given. This principle follows from Article 481 of the Civil Code of the Republic of Azerbaijan and is consistent with the fundamental rules of international commercial law.

The beneficiary's right of claim, unless otherwise agreed, may not be transferred (assigned) to a third party. Termination occurs in three cases: (1) upon payment of the amount to the beneficiary; (2) upon expiry of the term; (3) upon the beneficiary's waiver.

An important distinction: unlike suretyship, the fact of repayment of the principal debt does not automatically terminate the guarantee. If the debtor has repaid the debt but the guarantee is still in force, and a dishonest beneficiary demands payment from the bank, the bank is technically obliged to pay. The debtor may subsequently bring a claim against the beneficiary for "unjust enrichment" and recover the money through court proceedings, but this route is lengthy and costly.

*3.6. The "Fraud Exception" - Limits of Independence*

The sole globally recognised exception to the independence of a guarantee is "manifest fraud". If it is proven by clear and irrefutable evidence that the beneficiary's demand is fraudulent (e.g., no contract exists at all, documents have been falsified), the court may order the bank to suspend payment (injunction). This standard is recognised identically in English law, German law (Missbrauchseinwand), and the International Chamber of Commerce Uniform Rules for Demand Guarantees 758 [7, Art. 19].

However, the burden of proof is exceptionally high. A mere claim that "the quality of work is poor" does not constitute fraud - this is a commercial dispute. For the court to grant an injunction, fraud must be proven prima facie (clearly apparent at first sight). And even if it becomes known to the guarantor before payment of the beneficiary's demand that the principal obligation secured by the guarantee has been fully or partially performed, has been terminated on other grounds, or is invalid, the guarantor must immediately notify the beneficiary and the principal. Following such notification, the guarantor must pay the demand received again from the beneficiary (the Civil Code Art. 486.2).

*IV. Comparative Legal Analysis of Suretyship and Guarantee*

Although suretyship and guarantee are both members of the same legal family - personal (obligation-based) security - the differences between them are fundamentally profound. These differences manifest not only terminologically, but also in terms of economic function, legal regime, risk allocation, and the scope of contractual freedom.

| Criterion | Suretyship | Guarantee |
|---|---|---|
| Principal rule | Accessority (dependency): shares the fate of the principal debt. | Independence (autonomy): isolated from the principal debt. |
| Objections | The surety may invoke all of the debtor's objections. | The guarantor may not invoke objections arising from the principal agreement. |
| Speed of payment | Low: proof is required; subject to dispute. | High: document is sufficient; paid immediately. |
| Risk allocation | Risk is balanced between the Creditor and the Surety. | Risk is entirely borne by the Principal. |
| Subject | Natural or legal person. | Typically banks and insurance companies. |
| Form requirement | Written form is mandatory (The Civil Code of the Republic of Azerbaijan, Art. 471). | Written form is mandatory (The Civil Code of the Republic of Azerbaijan, Art. 478). |
| Right of recourse | Subrogation - automatic transfer of rights. | Contractual recourse. |
| International standard | National legislation (The Civil Code of the Republic of Azerbaijan). | International Chamber of Commerce Uniform Rules for Demand Guarantees 758, UCP 600 rules. |
| Revocability | Possible in circumstances determined by law. | In principle, irrevocable. |

*4.1. Selection Strategy and Comparison of Legal Positions*

The choice between suretyship and guarantee varies depending on the legal position of the participating party. Let us examine this issue through the lens of three subjects.

The creditor's (beneficiary's) position: A creditor in a strong negotiating position - such as a state procurement agency or a large oil company - will always require an on-demand bank guarantee. This is practically equivalent to a cash deposit. According to I.N. Mammadov's study on risk management in banks, a bank guarantee is considered the most efficient instrument in terms of payment mechanism for minimizing credit risks [8, p. 118-132].

The debtor's (principal's) position: For the debtor, suretyship is more advantageous. Because if a dispute arises, the surety may halt payment and contest in court that "the work has been done; payment should not be made". In guarantee, however, the money is paid out immediately, and recovering it subsequently entails years of court proceedings.

The bank's position: Banks prefer guarantees, as these are off-balance-sheet operations that generate commission income. As noted in Z.F. Mammadov's research on banking activity, guarantee operations are an integral component of the modern bank's business model [9, p. 276-282].

*V. Practical Problems Arising from Court Practice*

In Azerbaijani legal practice, a number of specific problems are observed in the application of suretyship and guarantee institutions. These problems carry great significance not only from a procedural standpoint, but also from the perspective of substantive law.

*5.1. Terminological Chaos and Recharacterization*

A problem frequently encountered in practice is the discrepancy between the title of a document and its content. The parties write "Letter of Guarantee" as the title of the document, but the conditions within the text bear an accessory character: "If the debtor fails to pay the debt and there is a court order to that effect, I will pay" The court looks not at the name of the document, but at its legal content. If the obligation is dependent on the principal debt and there is a right of objection, the court will characterise it as suretyship.

This "terminological chaos" (recharacterization) creates extremely detrimental consequences for the creditor who believed he had received a "Guarantee": he cannot receive prompt payment and is forced to engage in a lengthy dispute through court proceedings. R.A. Göyüşov's research on the enforcement of pledge obligations characterizes this problem as a "legal design defect". To avoid "terminological chaos", the wording in the text of the document is of paramount importance. If the document is a guarantee, the following must necessarily be included in the text: "This obligation is independent of the principal agreement, is not related to any dispute between the parties, and shall be paid upon the beneficiary's first written demand" [4, p. 12-16].

*5.2. The "Statute of Limitations Trap" in Suretyship*

The one-year rule in Article 477.0.4 of the Civil Code of the Republic of Azerbaijan, is the greatest "trap" for banks. There are numerous court discussions on this matter in Azerbaijani legal practice. The term of the suretyship in the credit agreement must be clearly indicated (as a date). The expression "until the credit is fully repaid" is not considered a specific term according to court decisions - in the presence of this expression, the one-year preclusive (cut-off) period applies.

Let us examine an example where the term of the credit agreement is three years. If the debtor fails to make payments from the very first day, the period within which the creditor may approach the surety is one year from the date the payment became due (the first month). If the creditor allows that one year to lapse, the suretyship is terminated, even though the credit agreement may still be ongoing. The essence of this provision is to encourage creditors towards active management, and to place the consequences of passivity upon the creditor.

*5.3. Matrimonial Property and Reduction in Real Value of Suretyship*

When a natural person acts as surety, his obligation bears a personal character. However, at the enforcement stage, when proceeding against the surety's assets, a serious problem arises: if the assets were acquired during marriage, the spouse's share (the general rule being 50%) is untouchable. This in practice halves the real value of the credit secured by suretyship. In modern Azerbaijani banking practice, in order to insure against this risk, the notarial consent of the surety's spouse is now also required.

*5.4. The Problem of Burden of Proof in Fraud Claims under Guarantee*

The greatest difficulty in the implementation of the independence principle is the application of the "fraud exception". In Azerbaijani court practice, the majority of Principals who attempt to halt payment under a guarantee fail to obtain an injunction from the court. This is because, as also noted in A. Talibova's research on accessory obligations, "claiming that one is in the right" is an entirely different legal task from "proving that the beneficiary is fraudulent" [12, p. 31-33].

*VI. Comparative Law Perspective: European and International Standards*

The provisions of Azerbaijani civil law on suretyship and guarantee are grounded in the Continental European legal tradition, particularly in German and French civil legislation. This comparative aspect provides important context for the harmonisation of the Azerbaijani legal system with international standards.

In German law (Bürgerliches Gesetzbuch, §§ 765–778), suretyship fully bears an accessory character. The German legal doctrine's concept of "akzessorisches Sicherungsrecht" is the model closest to the suretyship regime of the Civil Code of the Republic of Azerbaijan. Subsidiary liability is fully consistent with the German law institution of Einrede der Vorausklage (the right to demand that the debtor be taken to court first).

As regards guarantee, the United Nations Commission on International Trade Law (United Nations Commission on International Trade Law) "United Nations Convention on Independent Guarantees and Stand-by Letters of Credit" of 1995 (entered into force on 01.01.2000) has elevated the independence principle to the status of an international norm [13, Arts. 2, 6, 19]. The International Chamber of Commerce Uniform Rules for Demand Guarantees 758 Rules have been accepted since 2010 as the most widely applied standard for international trade guarantees.

The conclusions of the comparative law section of the textbook "Civil Law: General Part" by R.A. Göyüşov, R.E. Bayramov, and Sh.B. Yusifov demonstrate that the system of obligation law in the Civil Code of the Republic of Azerbaijan, while grounded in the European continental model, also incorporates a number of original elements [5, p. 279-286]. This originality manifests itself both in the termination mechanisms of suretyship and in the regulation of guarantee.

*VII. Conclusion*

The research conducted demonstrates that suretyship and guarantee - the obligation-based personal security methods in the civil law of the Republic of Azerbaijan - constitute two distinct regimes that are fundamentally different in legal terms, yet functionally complementary. Understanding this distinction is of utmost importance for legal practice.

The scientific novelty of the article consists in the systematic separation of suretyship and guarantee not merely by terminology, but by their legal nature, risk allocation model, payment mechanism, and procedural consequences. The practical significance of the research lies in the proposed criteria that may assist banks, entrepreneurs, lawyers, and courts in correctly qualifying security documents and preventing future disputes arising from defective contractual design.

Suretyship is a classical institution built upon the accessory principle, binding the fates of the debtor and the surety to one another, rich in strong defense mechanisms. It is grounded in personal relations and trust; it tends to protect the debtor and the surety and to confine the creditor's claims within a certain legal framework. The accessory character of suretyship represents both its greatest protection (defense against the creditor's unjust claims) and its greatest weakness (prolongation of judicial disputes).

Guarantee, on the other hand, is a modern financial instrument built upon the independence principle, serving the speed, liquidity, and security requirements of commercial circulation. It ensures the immediacy of payment by "setting aside" disputes; it protects the interests of the creditor (beneficiary) from the fate of the principal obligation. However, as the flip side of this strength, for the principal, the guarantee is the "sharp edge of the sword": even if faced with injustice, the money is immediately paid out, and recovering it requires lengthy court proceedings.

From a practical standpoint, the following recommendations are put forward in the article:

1. At the stage of contract documentation, the appropriate type of security should be selected based on the parties' economic position, risk appetite, and the speed of claim criterion.
2. Clearly indicating the term in the suretyship agreement as a full date prevents creditors from falling into the one-year preclusive period "trap".
3. Clearly reflecting the characteristics of independence in the content of a document called a "Guarantee" (independence from the principal debt, payment upon first demand) prevents terminological chaos (recharacterization).
4. Obtaining notarial consent from the spouses of natural person sureties prevents the practical halving of the real economic value of the suretyship.

In conclusion, as rightly noted by I. Askarov in his Commentary to the Civil Code of the Republic of Azerbaijan, the institutions for securing the performance of obligations constitute the foundation of the economic infrastructure of the civil law system [1, p. 740-748]. A precise legal understanding of suretyship and guarantee institutions, together with competent contract design, is the most reliable prophylactic measure against future lengthy judicial disputes and financial losses.

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# LEGAL ASPECTS OF PROTECTING CULTURAL HERITAGE SITES AND HISTORICAL MEMORY OF THE VICTORY IN THEGREAT PATRIOTIC WAR OF 1941-1945

**Ihar Martynenka***

**Abstract**

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*The article discusses the legal protection of historical memory and the truth about the events of the Great Patriotic War of 1941-1945, which are relevant for the current period of international relations. The article provides statistical data on the genocide of the Soviet people during this period, which allows for the formulation of proposals for improving legislation. The author defends the concept of cultural genocide, which allows for a revision of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The purpose of this article is to inform the scientific community about the new legislation on the protection of historical memory and truth, and to foster patriotism by emphasizing the importance of all nations' participation in the fight against fascism and the prevention of the rehabilitation of Nazism.*

***Keywords:*** *legal protection, cultural heritage sites, victory in the Great Patriotic War, legal means of preventing the rehabilitation of Nazism, historical truth and its protection.*

*I. Introduction*

In 2026, the 85th anniversary of the outbreak of the Great Patriotic War of 1941-1945 is being commemorated, drawing particular attention to the protection of historical truth and the memory of those events. This is entirely understandable: during the Great Patriotic War, the Soviet Union lost approximately 27 million lives [1].

These losses indicate, first, the exceptionally fierce nature of the hostilities; second, that the enemy failed to observe international legal instruments with regard to Red Army soldiers and their commanders (i.e., the war was not conducted in accordance with conventional rules); and third, that the punitive and highly sophisticated campaigns of extermination against the civilian population carried out by the occupiers demonstrate not only a disregard for international humanitarian law, but also what would have awaited the USSR in the event of defeat [12].

On the territory of the Byelorussian Soviet Socialist Republic, 578 concentration camps and other places of forced detention were established [6], where a significant number of compatriots were exterminated through the creation of unbearable living conditions. In the course of the criminal investigation into the genocide of the Belarusian (Soviet) people during the Great Patriotic War of 1941–1945, 166 previously unknown sites of extermination and burial of civilians and prisoners of war have been identified in Belarus alone, more than half of them mass graves [5]. During the years of the Great Patriotic War, human losses on the territory of Belarus exceeded 3 million people.

To repel the fascist invasion, the entire country united. The Azerbaijani people, alongside other Soviet citizens, fought for victory over Nazi Germany and thus made a significant contribution to the Victory. With a total population of 3.4 million (as of 1941),

* Doctor of Laws, Professor, Head of the Department of Civil Law and Procedure, Grodno State University named after Yanka Kupala, Grodno, Republic of Belarus, e-mail: i.martinenko@grsu.by

about 640,000 people from the Azerbaijan SSR were conscripted to the front. Nearly one-fifth of the republic's population fought on the battlefields, including 10,000 women and 40,000 volunteers. More than 300,000 USSR citizens drafted from Azerbaijan were killed in combat. In Baku and throughout the republic, 76 military hospitals were in operation [2].

Between 1941 and 1945, Azerbaijan produced 130 types of weapons and ammunition, including shells for the legendary "Katyusha" rocket launchers. The republic served as the principal supplier of oil and petroleum products to the front. The people of Azerbaijan maintained the railways, worked actively in the chemical industry, produced military uniforms, and contributed in many other ways. As experts note, Azerbaijan received a large number of wounded soldiers and evacuated civilians from other regions of the USSR [3]. In the struggle against fascism, 121 residents of the Azerbaijan SSR were awarded the title of Hero of the Soviet Union (including Hazi Aslanov, twice - in 1942 and 1991), and 30 individuals became full recipients of the Order of Glory of all three classes [10].

The Victory was a common one. However, in recent years, there has been an intensification of efforts by unfriendly states to discredit it, to strip it of its heroic significance, and even to rehabilitate Nazism. This must not be allowed. In this regard, it is important to consider the possibilities of legal protection of historical memory and the truth about the events of the Great Patriotic War. The Belarusian experience may be of particular interest in this respect. In the Republic of Belarus (formerly the the Byelorussian Soviet Socialist Republic), a country that suffered greatly during the Great Patriotic War, numerous memorials have been erected to preserve the memory of the fallen, and museums house valuable artifacts attesting to the greatness of the Soviet people's feat. Recognizing the importance of preserving monuments of military history for present and future generations, state programs have been adopted aimed at the conservation, restoration, and promotion of historical and cultural heritage sites.

*II. Legal Protection of Historical Memory and Countering the Rehabilitation of Nazism: The Belarusian Experience*

Amendments to the Constitution of the Republic of Belarus have been introduced, necessitated by the need to establish additional safeguards for the protection of historical memory and truth, thereby determining the trajectory of legislative development in this area [4]. In particular, the following instruments have been adopted: the National Security Concept of the Republic of Belarus (approved on April 25, 2024, by Resolution No. 5 of the All-Belarusian People's Assembly); the Directive of the President of the Republic of Belarus "On the Implementation of the Foundations of the Ideology of the Belarusian State" dated April 9, 2025, No. 12 (para. 2.3), which designates the promotion of active citizen participation in preserving historical memory and national values as one of the key objectives of ideological work; and the State Programme "Cultural Space" for 2026-2030 (approved by Resolution No. 800 of the Council of Ministers of the Republic of Belarus dated December 30, 2025). Furthermore, the laws "On Preventing the Rehabilitation of Nazism" (May 14, 2021, No. 103-Z) and "On the Genocide of the Belarusian People" (January 5, 2022, No. 146-Z) remain in force and continue to shape legal practice, containing provisions relevant to this sphere of social relations.

An important area of state policy is the prevention of the rehabilitation of Nazism (it should be recalled that the core doctrine of Nazi Germany was the criminal idea of the total destruction of the living environment in the occupied territories of the USSR, with the aim of systematically eliminating the very foundations of the existence of peoples -

their demographic potential, physical habitat, and cultural identity [7]). The legal framework for this policy is formed by the Constitution of the Republic of Belarus, which prohibits propaganda of war and incitement of social, national, religious, and racial hatred, as well as by laws and other legislative acts, including the laws "On Countering Extremism", "On Amendments to Laws on Countering Extremism", "On Preventing the Rehabilitation of Nazism" and "On the Genocide of the Belarusian People".

These regulatory legal acts prohibit in the Republic of Belarus: the rehabilitation of Nazism; the financing of the rehabilitation of Nazism; and the activities of organizations, representative offices of international or foreign organizations, or individual entrepreneurs aimed at the rehabilitation of Nazism. The Law "On the Genocide of the Belarusian People" establishes that atrocities committed by Nazi criminals and their accomplices, as well as by nationalist formations during the Great Patriotic War and the post-war period, aimed at the systematic physical extermination of the Belarusian people (i.e., Soviet citizens residing in the territory of the Byelorussian SSR during the war and/or post-war period), through killings and other acts recognized as genocide under legislative acts and norms of international law, constitute genocide of the Belarusian people.

Accordingly, the denial of the genocide of the Belarusian people - whether expressed in a public speech, a printed or publicly displayed work, mass media, or information disseminated via the global computer network (the Internet), other public telecommunication networks, or dedicated communication networks - entails criminal liability under Article 130-2 of the Criminal Code of the Republic of Belarus, introduced by this very law. This innovation has appeared for the first time in the legislation of the Commonwealth of Independent States. There is already initial practice of holding individuals criminally liable for denying genocide (of the Belarusian people, as defined by Article 130-2 of the Criminal Code of the Republic of Belarus). The facts of one such case are as follows: a 54-year-old resident of Minsk, S., an administrator of a group on a popular social network, published posts on historical topics within the community. He actively asserted to his followers that the atrocities committed on the territory of Belarus had been wrongly attributed to Nazi occupiers. He claimed that the world-famous "Khatyn" tragedy had been caused by partisans [11]. The suspect published allegedly collected "evidence" and sought like-minded individuals in order to rewrite the chronology of past events. Criminal proceedings were initiated against him for denial of the genocide of the Belarusian people (Part 1 of Article 130-2 of the Criminal Code of the Republic of Belarus). On October 30, 2024, the Minsk City Court found S. guilty of denying the genocide of the Belarusian people through information disseminated on the Internet and sentenced him to three years of imprisonment [14].

It is also noteworthy that, in the Russian Federation, as of January 1, 2026, Federal Law No. 74-F3 of April 21, 2025, "On Perpetuating the Memory of Victims of the Genocide of the Soviet People during the Great Patriotic War of 1941–1945", has entered into force, aimed at preserving the memory of the victims of genocide [13].

*III. Conclusion*

Turning to conclusions, the following proposals may be advanced:

1. Ensuring accountability for the crimes of genocide committed during the temporary occupation of the territory of the Soviet Union in the course of the Great Patriotic War of 1941–1945 should be regarded as one of the key legal measures for protecting historical truth about those events and the heroic past of our fraternal nations.

On this basis, we propose recognizing that the destruction and plundering by the armed forces and other formations of Nazi Germany in the occupied territories of the USSR of the cultural heritage of the Soviet people (including historical and cultural monuments, works of art, religious buildings and structures, museums, libraries, archives, etc.), acts of vandalism, and the imposition through such actions of an alien Nazi culture and ideology, as well as the Germanization of the population (including changes in toponyms), constitute part of the Nazi policy of genocide against the Soviet people, aimed at the destruction of national, ethnic, and religious groups. This conclusion makes it possible to formulate a new state legal position advocating for the supplementation of the United Nations Convention "On the Prevention and Punishment of the Crime of Genocide" with an additional manifestation of genocide not currently defined therein-namely, "cultural genocide", understood as the desecration and destruction of historical and cultural monuments with the aim of undermining national identity.

2. In order to strengthen the criminal law protection of historical truth, it appears advisable to introduce criminal liability for the dissemination of knowingly false information about the activities of the USSR during the Second World War, as well as for the denial of facts established by the judgment of the International Military Tribunal for the Trial and Punishment of the major war criminals of the European Axis, the approval of crimes established by that judgment, and the public dissemination of knowingly false information about the activities of the USSR during the Second World War. It is likewise proposed to establish liability for insulting or degrading the honor and dignity of veterans of the Great Patriotic War, which would require corresponding amendments to the Criminal Code.

3. An important direction of patriotic education is the dissemination of knowledge about cultural heritage sites and historical values associated with the perpetuation of the memory of victory in the Great Patriotic War of 1941-1945 and of the victims of genocide. Therefore, it is necessary to update educational programs to ensure that future specialists acquire skills in the legal protection of historical truth and memory. Certain experience in this regard already exists [9]; however, Belarus has gone further: within the framework of the academic discipline "Legal Protection of Historical and Cultural Heritage" (developed by the author of this article), issues of liability for genocide are examined, and the possibilities of legal protection of historical memory and truth are studied [8]. This experience may be of interest to the academic community and useful for fostering patriotism among future legal professionals.

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# SYSTEMATIZING THE SOURCES OF MEDICAL LAW: A COMPARATIVE LEGAL FRAMEWORK AND NORMATIVE MODEL FOR AZERBAIJAN

**Parvina Ismayilova***

**Abstract**

*The article examines the systematization of the sources of medical law as a necessary precondition for recognizing medical law as an independent complex branch of law. It proposes a functional-doctrinal taxonomy of medical law sources according to their legal force, origin and function: constitutional norms, ratified international treaties, national legislation, regulatory administrative acts, judicial interpretation, clinical guidelines, professional ethics and soft law instruments. On the basis of comparative examples from France, Germany, the Netherlands, Spain, Belgium, Hungary and the United Kingdom, the article argues that the existence of medical law does not depend solely on a single act entitled "Medical Code". Rather, it is determined by the existence of a specific regulatory subject matter, stable principles, legal institutions, sources, specialized practice and academic institutionalization. For Azerbaijan, the main conclusion is that medical law should be recognized not as a future possibility but as an already formed, though fragmented, independent complex branch. The author proposes the adoption of a separate Law on Patients' Rights (Patient Rights Act) and, subsequently, the systematic codification of legislation on healthcare and medical activity.*

***Keywords:*** *medical law, sources of medical law, health law, patients' rights, biolaw, soft law, systematization of medical legislation, Azerbaijani law.*

## *I. Introduction*

Medical law has become one of the most dynamic areas of contemporary legal development. Its expansion is driven by the transformation of clinical practice, the constitutionalization of patient rights, the globalization of public health risks, the rise of biomedicine, and the growing role of data, artificial intelligence and institutional quality control in healthcare. These processes make it insufficient to treat medical law merely as a set of scattered provisions belonging to civil, administrative, criminal or social security law. Modern medical relations require an integrated legal framework that can simultaneously protect individual autonomy, ensure the quality and safety of care, regulate professional responsibility, and secure public health interests [10].

The central hypothesis of this article is that medical law should be understood as an independent complex legal field and, in continental legal-doctrinal terminology, as an independent complex branch of law. This formula is not contradictory. The independence of medical law is functional and systemic: it is based on a specific subject matter, a stable group of principles, its own institutions and a distinctive system of sources. Its complexity means that it uses the instruments of constitutional, civil, administrative, criminal, social-security, data-protection and international law without being reduced to any one of them [12, p. 25-33].

The methodology of the article is doctrinal, systemic-structural, comparative and functional. The doctrinal method is used to determine the legal nature of medical law and its sources; the systemic-structural method is used to classify sources according to legal force, origin and function; the comparative method is used to examine European models

* PhD in Law, Lecturer, Baku State University, e-mail: parvina444@gmail.com

of codification and sectoral systematization; and the functional method is used to adapt these findings to Azerbaijani legislation and legal science.

For Azerbaijan, the scientific relevance of this approach is particularly significant. Azerbaijani legislation already contains a broad body of norms concerning health protection, psychiatric care, compulsory medical insurance, transplantation, reproductive health, sanitary and epidemiological safety, medicines, licensing, personal data and medical liability. However, these norms remain fragmented and are not yet fully connected by a patient-centred legal concept. The task is therefore not to create medical law from zero, but to doctrinally recognize and normatively systematize an already existing complex legal field [10].

*II. The Doctrinal Status, Sources, and Comparative Framework of Medical Law*

Medical law as an independent complex branch. The question whether medical law exists as an independent legal field cannot be answered by one formal criterion alone. In comparative legal systems, the degree of codification differs substantially. Some states collect a large part of health-care regulation in a public health code or a broad framework act; others distribute medical law rules across civil codes, patient-rights statutes, professional legislation, public-health statutes and case law. This variation does not disprove the existence of medical law. It shows that medical law may be systematized through different legislative techniques [12, p. 25-33].

The existence of medical law should therefore be assessed through a cumulative set of indicators. First, it has a specific subject matter: medical intervention, patient status, informed consent, confidentiality, professional standards, quality and safety of care, biomedical research, public health governance and medical liability. Secondly, it is based on a stable group of principles, including human dignity, autonomy, informed consent, non-maleficence, beneficence, justice, confidentiality, patient safety, scientific validity and protection of vulnerable persons. Thirdly, it contains relatively autonomous institutions, such as the medical treatment relationship, clinical documentation, patients' rights, medical secrecy, emergency care, biomedical research, reproductive medicine and transplantation [10].

Fourthly, medical law has a recognizable system of sources. These sources do not belong to a single classical branch and do not have identical legal force. They include constitutional norms, ratified treaties, national legislation, regulatory acts, court decisions, clinical protocols, ethical codes, technical standards, soft law instruments and doctrine. The multiplicity of sources is not a weakness of medical law, but a structural feature of its complex nature. It reflects the fact that medical activity is simultaneously a professional service, an exercise of public functions, a sphere of individual rights, and a field of scientific and technological risk [12, p. 25-33].

Fifthly, medical law is increasingly institutionalized as a field of education, scholarship and professional practice. European universities offer specialized programs in health law, medical law and Medizinrecht; research groups and professional associations study this field as a distinct legal discipline. This academic and professional institutionalization is a strong indicator that medical law is not merely a descriptive label for scattered norms, but a stable field of legal knowledge and legal application [5].

A functional-doctrinal taxonomy of medical law sources. A scientifically coherent theory of medical law requires a doctrinally structured taxonomy of its sources. The first source-group consists of constitutional and superior human rights norms. These norms form the axiological core of medical law: dignity, life, bodily integrity, privacy, equality, access to healthcare, protection of personal data and judicial protection. In Azerbaijani law, the Constitution, constitutional laws and the hierarchy of normative acts determine the formal framework within which health legislation and medical activity must operate [2].

The second source-group consists of ratified international treaties, regional legal instruments and international judicial decisions binding on the state under the relevant treaty regime. In this group, special attention should be given to the WHO Constitution, the International Health Regulations, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the Oviedo Convention for its States Parties, and binding judgments of competent international courts in cases concerning medical care, consent, privacy, detention, mental health, reproductive rights and vulnerable groups [22].

The third source-group comprises national codes, framework laws and special health-care statutes. This group gives medical law its formal domestic structure. It includes legislation on health protection, patient rights, psychiatric care, compulsory health insurance, reproductive health, organ and tissue transplantation, medicines, sanitary and epidemiological safety, licensing, medical education, public health institutions and professional liability. In Azerbaijan, the Law "On Protection of Public Health" is a central framework act, but it does not yet operate as a comprehensive patient-centred medical law code [2].

The fourth source-group consists of normative acts of the President, the Cabinet of Ministers and competent executive authorities. These acts specify licensing rules, health-care standards, financing mechanisms, public health measures, registries, clinical documentation, institutional accreditation and supervisory procedures. Their importance is high because many medical law obligations become practically applicable only after administrative concretization. However, such acts must remain within the limits of superior law and cannot independently restrict patient rights without a clear statutory basis [2].

The fifth source-group is formed by constitutional and supreme court interpretation, binding judgments delivered against the state, and authoritative international case law relevant to medical relationships. Judicial practice concretizes abstract norms in relation to medical negligence, informed consent, confidentiality, emergency care, reproductive decisions, mental health, end-of-life issues, detention, public-health restrictions and vulnerable groups [6].

The sixth source-group includes professional self-regulation recognized by law, clinical protocols and technical standards. These documents determine the scientific and professional quality of medical conduct. They are not always formal legal norms, but they perform evidentiary and standard-setting functions in the application of law. Their legal status should not be confused with that of statutes. A clinical guideline may help determine whether a physician acted according to the standard of care, but it cannot itself serve as an autonomous legal ground for restricting patient rights unless domestic law attaches such consequences to it [13].

The seventh source-group consists of soft law instruments adopted by the WHO, UNESCO, the World Medical Association and other professional or international bodies, as well as legal doctrine and bioethical principles. These instruments usually do not create direct treaty obligations, but they influence legislative policy, interpretation, professional conduct and the development of binding norms. In medical law, soft law is especially important because biomedical innovation often develops faster than formal legislation [23].

The proposed classification has a methodological function. It prevents three common errors: treating soft law recommendations as statutes; using clinical protocols as independent legal grounds for limiting rights; and ignoring the interpretative significance of judicial decisions, professional standards and international monitoring bodies. A doctoral-level analysis of medical law must identify not only the source itself, but also its legal force, addressees, mechanism of incorporation and function in legal application [12, p. 25-33].

Comparative models of systematization. Comparative law shows that the existence of medical law cannot be measured by the presence or absence of a single act entitled "Medical Code". At least three models can be distinguished in European legal systems: centralized codification, framework and sectoral codification, and a dispersed model based on several statutes, codes and judicial practice. Each model confirms that medical law can be institutionally mature while remaining complex in its sources and methods [1].

France represents one of the most developed examples of centralized public-health codification. The Code de la santé publique contains extensive regulation of patient rights, public health, health professions, biomedical research, medicines, health-care products, health institutions and governance. Yet even in France, the whole of medical law is not contained in one code. Medical contracts, civil liability, insurance and criminal responsibility remain partly regulated by other codes and statutes. Thus, advanced codification strengthens the visibility of medical law but does not eliminate its complex character [7].

Hungary provides another example of broad statutory systematization. Act CLIV of 1997 on Health regulates patient rights, health services, public health measures, emergency measures and health-care governance in a comprehensive framework act. This model demonstrates that a national legislator may organize medical law through a general health law without necessarily creating an autonomous "medical code" in the classical codification sense [11].

Germany and the Netherlands illustrate a different model. In Germany, the Patients' Rights Act integrated the medical treatment contract and several patient rights into §§ 630a-630h of the Civil Code, while the wider field of Medizinrecht remains distributed across drug law, medical device law, hospital law, social insurance law, professional regulation, transplantation law and criminal law. In the Netherlands, the medical treatment agreement is codified in Book 7 of the Civil Code under the WGBO framework, whereas quality of care, complaints and disputes are regulated by the Wkkgz and other special laws. These countries show that medical law can exist as a distinct doctrinal and professional field even without a single medical code [9].

Spain, Belgium and the United Kingdom demonstrate sectoral and dispersed approaches. Spain combines the General Health Law with the Law 41/2002 on patient autonomy, information and clinical documentation. Belgium regulates core patient rights through the Law of 22 August 2002, supported by complaint and ombuds mechanisms. The United Kingdom uses sectoral statutes such as the Human Tissue Act 2004 and the Mental Capacity Act 2005 together with common law principles. The comparative lesson is clear: codification is an important sign of systematic development, but it is neither the sole nor the decisive criterion of the existence of medical law [13].

The decisive criterion is the functional unity of the field. If a legal system has a stable group of medical law principles, institutions, sources, procedures, professional standards, adjudicative practice and academic specialization, medical law should be recognized as a distinct complex branch even when it is not codified in a single document. Conversely, the mere existence of a "health code" does not transform medical law into a classical primary branch if its regulation continues to depend on civil, administrative, criminal, social and international legal sources [16].

International human rights and biomedical sources. The international dimension of medical law begins with general human rights and public health cooperation. Article 55 of the UN Charter connects the solution of economic, social and health problems with international cooperation and respect for human rights. It does not create a subjective right called "medical law", but it establishes the constitutional basis of international cooperation in health-related matters [18].

The right to health received more specific legal content through the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Article 25 of the Universal Declaration refers to a standard of living adequate for health and well-being, including medical care, while Article 12 of the Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Covenant creates treaty obligations for States Parties, unlike the Universal Declaration, which functions as a foundational normative instrument rather than a treaty [15]. The Committee on Economic, Social and Cultural Rights has clarified that the right to health should not be understood as a right to be healthy. It includes timely and appropriate healthcare and the underlying determinants of health, such as safe water, sanitation, food, housing, healthy occupational and environmental conditions and access to health-related education and information. The AAAQ criteria - availability, accessibility, acceptability and quality - provide the main evaluative framework for state obligations [13].

The WHO Constitution is a central institutional source of global health law. It was adopted at the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 and entered into force on 7 April 1948. Its Articles 19-23 distinguish between conventions or agreements, regulations and recommendations. This distinction is crucial: not all WHO instruments have the same legal force [21].

The International Health Regulations are the clearest example of WHO regulatory authority. They operate through the mechanism established by Articles 21 and 22 of the WHO Constitution. The 2024 amendments to the IHR entered into force for most States Parties on 19 September 2025, while previous versions continue to apply to States that rejected those amendments. The amended IHR reinforce the need for national capacities, coordination and legal preparedness for public health emergencies [20]. The WHO Pandemic Agreement, adopted by the World Health Assembly on 20 May 2025, reflects the continuing evolution of international health law after COVID-19. Methodologically, however, it should not be described as an instrument already in force for States. According to WHO, after adoption the next step is completion of the Pathogen Access and Benefit-Sharing annex; only after that will the Agreement be opened for signature and ratification, and it will enter into force after the required number of ratifications. Therefore, in this article the Agreement is used as evidence of the direction of international health-law development, not as a currently binding treaty for Azerbaijan [25].

In biomedical law, the Oviedo Convention remains the most important regional treaty instrument. It protects human dignity and identity in the application of biology and medicine; establishes the priority of the interests and welfare of the human being over the sole interest of society or science; and regulates informed consent, privacy, equitable access, professional standards, genetics and research. The Council of Europe describes it as the only international legally binding instrument specifically protecting human rights in the biomedical field [4].

Azerbaijan is not listed as a Party to the Oviedo Convention in the Council of Europe Treaty Office status table as checked for this article in June 2026. Therefore, the Convention does not create direct treaty obligations for Azerbaijan. Nevertheless, it remains a highly authoritative comparative and regional standard for evaluating national medical legislation, especially in relation to consent, mental health, genetics, biomedical research, transplantation, legal remedies and institutional oversight [3]. Professional and soft law sources also shape medical law. The UNESCO Universal Declaration on Bioethics and Human Rights links biomedical progress to dignity, autonomy, consent, vulnerability, privacy, equality, social responsibility and benefit-sharing. The World Medical Association's Declaration of Lisbon formulates patient rights as professional-ethical standards, including quality care, choice, self-determination, information, confidentiality, dignity and spiritual assistance. These instruments do not have the same legal status as treaties, but they influence legislation, ethical codes, clinical practice and judicial interpretation [14].

*III. Medical law in adjacent legal regimes*

The complexity of medical law becomes especially visible in adjacent legal regimes. In penitentiary law, the Nelson Mandela Rules and United Nations Rules Concerning juveniles deprived of liberty contain standards on medical care, professional independence, confidentiality, sanitation and access to medicines. These norms belong formally to the law of detention, but functionally they also regulate patient rights and health-care quality [17].

International humanitarian law creates a special protective regime for the wounded and sick, medical personnel, medical units and medical transport in armed conflicts. The Geneva Conventions and the Additional Protocol I require impartial medical care based on medical need, protect medical ethics and prohibit coercive medical procedures and biological experiments. These norms demonstrate the intersection of medical law and humanitarian law without merging the two fields [8].

Environmental law is also relevant because health depends on ecological determinants. Rules on hazardous waste, air and water quality, environmental harm during armed conflict and transboundary pollution serve the protection of public health. Consequently, the right to health should not be reduced to the right to enter a hospital; it includes legal protection of the conditions necessary for physical and mental well-being [13].

The protection of vulnerable groups is another structural element of medical law. Contemporary terminology should avoid outdated and paternalistic expressions and should refer to persons with disabilities, persons with psychosocial or intellectual disabilities, children, older persons, migrants, pregnant women and socially isolated persons. Enhanced protection does not mean substituting the person's will; it requires accessible information, supported decision-making, non-discriminatory services and effective complaint mechanisms [19].

Judicial practice has a special role in transforming general human rights into concrete medical law duties. The European Court of Human Rights examines medical cases mainly under Articles 2, 3, 8 and 14 of the Convention, and sometimes under Article 6. Cases such as R.R. v. Poland, Konovalova v. Russia, Y.P. v. Russia and Pindo Mulla v. Spain demonstrate the Court's role in assessing access to genetic information, privacy in medical settings, consent to sterilization and refusal of medical treatment based on personal autonomy and religious conviction [6].

A normative model for Azerbaijan. The Azerbaijani legal system already contains the normative material necessary for recognizing medical law as a distinct complex legal field and, in national doctrinal terminology, as an independent complex branch. The Constitution, the Law on Normative Legal Acts, the Law on Protection of Public Health, special health statutes, regulations on medical activity, personal data rules, civil liability, administrative supervision and criminal-law provisions all regulate different parts of medical relationships. The problem is not the absence of medical law, but the absence of a coherent systematization of its sources, principles and institutions [2].

The first task is doctrinal recognition. Azerbaijani legal science should treat medical law not as an accidental combination of health-related provisions, but as an independent complex legal field with its own subject matter, sources, principles and institutions. In continental doctrinal terminology, this permits its characterization as a complex branch of law. Such recognition would improve legal education, judicial reasoning, legislative drafting and the professional training of lawyers working with health-care disputes [12, p. 25-33].

The second task is source systematization. Formal legal sources should be clearly distinguished from clinical protocols, ethical codes, WHO recommendations, professional standards and academic doctrine. This distinction is essential for legal certainty. A physician, patient, judge or administrative body must be able to identify which document creates a binding duty, which document guides clinical conduct, which document provides evidentiary support, and which document has interpretative or policy relevance [13].

The third task is the adoption of a separate Law on Patients' Rights. Such a law should define the legal status of the patient, informed consent, refusal of treatment, access to medical information, confidentiality, medical documentation, quality and safety of care, complaint procedures, compensation, protection of vulnerable persons and procedural guarantees in emergency situations. A patient-rights statute would create the normative core around which other medical law institutions could be systematized [13].

The fourth task is gradual codification. Azerbaijan does not necessarily need an immediate "Medical Code" in the formal sense. Comparative experience shows that a staged model is more realistic: first, recognition of the sources and principles of medical law; second, adoption of a patient-rights law; third, harmonization of special health statutes; and only after that, preparation of a coherent code or consolidated act on healthcare and medical activity. This approach would avoid mechanical codification and would preserve the necessary links with civil, administrative, criminal, social and international law [1].

The fifth task concerns new technologies. Genomics, reproductive technologies, transplantation, biomedical research, artificial intelligence, digital health and large health data require a legal framework based on human dignity, autonomy, safety, accountability and data protection. The use of artificial intelligence in healthcare, in particular, requires rules on explainability, clinical responsibility, bias prevention, data governance and human oversight [24].

*IV. Conclusion*

The systematization of the sources of medical law is not a purely technical exercise. It is a precondition for recognizing medical law as an independent complex branch and for ensuring legal certainty in healthcare. Medical law arises at the intersection of individual rights, professional standards, public health governance, biomedical innovation and international cooperation. Its sources are necessarily plural, heterogeneous and functionally interdependent, but they are united by a common normative purpose: the lawful, safe, ethical and rights-based organization of medical activity.

The comparative analysis confirms that medical law exists in different legal systems through different techniques. France and Hungary show strong codification and framework models; Germany and the Netherlands demonstrate civil-code and sectoral systematization; Spain, Belgium and the United Kingdom illustrate patient-rights and dispersed models. The absence of a single act entitled “Medical Code” does not negate the existence of medical law. Conversely, the presence of a health code does not eliminate the field’s complex character.

For Azerbaijan, the main scientific conclusion is that medical law should be recognized as an already formed, though fragmented, independent complex legal field and, in national legal-doctrinal terminology, an independent complex branch of law. Its development requires a clear theory of sources, a patient-centred legislative concept, the adoption of a Law on Patients’ Rights (Patient Rights Act), and the gradual systematization of health-care and medical activity legislation. Such a model would make Azerbaijani medical law more coherent, more compatible with international human rights standards, and more suitable for regulating contemporary medical practice and biomedical innovation.

This article develops the source-based dimension of a broader doctoral concept according to which medical law in Azerbaijan should be understood as an already existing but normatively fragmented complex legal field requiring doctrinal recognition and legislative systematization. Therefore, the proposed functional-doctrinal taxonomy of medical law sources should be regarded not as a technical classification of legal materials, but as a methodological basis for recognizing medical law in Azerbaijan as an independent complex legal field and for gradually transforming fragmented healthcare legislation into a coherent patient-centred system.

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# THE EVOLUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' APPROACHES TO THE ASSESSMENT OF EVIDENCE

**Firudin Movsumov**[*]

**Abstract**

*This article examines the evolution of the European Court of Human Rights' approaches to proof and the assessment of evidence through a systematic analysis of its jurisprudence and doctrinal development. Unlike domestic procedural systems governed by codified rules of evidence, the European Court of Human Rights has developed an autonomous evidentiary doctrine through judicial interpretation and application of the European Convention on Human Rights. The study explores the transformation of evidentiary principles from early case-law establishing the standard of proof "beyond reasonable doubt" toward a broader procedural model centered on fairness, effectiveness, and the protection of Convention rights. Particular attention is devoted to the emergence of the doctrine of holistic assessment of evidence, under which the Court evaluates evidentiary material in its entirety rather than relying on isolated items of proof. The article demonstrates how the Court increasingly incorporates direct evidence, circumstantial indications, factual presumptions, and procedural conduct of the parties into a unified evaluative framework. The research further analyses the Court's evolving understanding of admissibility, reliability, relevance, and sufficiency of evidence, including the distribution of the burden of proof and the procedural obligations imposed on respondent States. Special emphasis is placed on contemporary developments associated with digitalization, including the use of electronic records, digital communications, open-source intelligence, and surveillance-derived information. The article concludes that the European Court of Human Rights has developed a distinct and dynamic evidentiary doctrine which significantly influences domestic legal systems and contributes to the harmonization of procedural guarantees across Europe.*

***Keywords:*** *European Court of Human Rights, evidence, proof, fair trial, beyond reasonable doubt, procedural guarantees, burden of proof, digital evidence.*

*I. Introduction*

The European Court of Human Rights (ECHR) occupies a unique position within the European legal order as a supranational judicial institution entrusted with ensuring effective implementation of the rights and freedoms guaranteed under the European Convention on Human Rights [4]. Unlike many national legal systems, the Convention does not establish a comprehensive procedural code governing evidentiary matters before the Court. Consequently, the ECHR has developed its own autonomous evidentiary methodology through decades of judicial practice and interpretative activity [2, p. 612–669].

The absence of rigid evidentiary rules has not resulted in procedural unpredictability. On the contrary, the Court has gradually established a coherent body of principles regulating proof, admissibility, evidentiary assessment, and standards of judicial persuasion. These principles have become an essential component of the Convention system and now represent one of the most influential elements of European procedural human rights law [2, p. 612–669].

Questions relating to evidence occupy a particularly complex position within international adjudication. Unlike domestic courts, international tribunals frequently

[*] Lecturer, Baku State University, e-mail: F.movsumov@gmail.com

operate in circumstances where access to primary evidence is limited, where factual records are incomplete, and where one party - often the respondent State - possesses structural informational advantages. Under these conditions, evidentiary doctrine becomes inseparable from broader considerations of procedural justice and institutional legitimacy.

The ECHR has consistently maintained that it is not intended to function as a "fourth instance" reviewing national findings of fact. Instead, its role is to determine whether domestic proceedings, viewed as a whole, complied with Convention standards and whether factual determinations relied upon by national authorities were reached in a manner compatible with procedural fairness [3].

This distinction has significantly shaped the Court's evidentiary philosophy. Rather than imposing formal rules concerning categories of admissible evidence, the Court evaluates whether proceedings overall ensured equality of arms, adversarial participation, transparency of judicial reasoning, and sufficient procedural safeguards.

Over more than seven decades of jurisprudential development, the Court's evidentiary doctrine has evolved from relatively restrained approaches focused on factual sufficiency into a sophisticated and multidimensional framework incorporating standards of proof, procedural obligations of States, positive investigatory duties, evidentiary presumptions, and guarantees adapted to technological transformation.

The purpose of this article is therefore threefold. First, it seeks to identify the principal stages in the development of the ECHR's evidentiary doctrine. Second, it examines the gradual transformation of the "beyond reasonable doubt" standard and the emergence of holistic evidentiary assessment. Third, it evaluates the contemporary direction of the Court's jurisprudence in response to digitalization and the increasing complexity of evidentiary environments. The article argues that the Court's evolving approach reflects a broader movement in international adjudication from formal evidentiary structures toward substantive procedural justice.

## *II. Formation and Development of Fundamental Evidentiary Principles*

The formation of the European Court of Human Rights' evidentiary doctrine constitutes one of the most significant developments in contemporary international procedural law. Unlike domestic judicial systems, which generally rely upon codified rules regulating admissibility, probative value, and burden of proof, the ECHR developed its evidentiary framework incrementally through judicial interpretation and precedent [4, p. 87–92].

From its earliest jurisprudence, the Court recognised that effective protection of Convention rights required evidentiary standards capable of functioning within an international adjudicative environment characterized by asymmetry of information, varying domestic legal traditions, and limited direct access to factual material. The foundational point in this development was established in Ireland v. the United Kingdom, where the Court articulated for the first time the evidentiary standard of proof "beyond reasonable doubt" [7]. However, the Court simultaneously clarified that this standard should not be understood identically to its domestic criminal law counterpart.

According to the Court, proof "may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact" [5]. This formulation became a cornerstone of the ECHR's evidentiary doctrine and introduced a substantially more flexible understanding of judicial persuasion than traditional criminal evidentiary models.

Importantly, the Court rejected any requirement that Convention violations must always be demonstrated through direct evidence. Instead, it accepted that conclusions could emerge from the overall evidentiary picture, particularly where direct evidence remained inaccessible. This doctrinal position reflected the institutional realities of human rights litigation. Applicants frequently lack access to official records, investigative materials, detention facilities, surveillance data, or administrative documentation controlled by State authorities. Excessively formal evidentiary requirements would therefore undermine the practical and effective protection of Convention rights [2, p. 612–669].

Subsequent case-law strengthened this autonomous conception. In Klass and Others v. Germany, concerning secret surveillance measures, the Court acknowledged that procedural secrecy may prevent applicants from obtaining complete factual information regarding alleged interferences with rights protected under Article 8 of the Convention [8]. Consequently, evidentiary assessment could not depend exclusively on documentary confirmation supplied by applicants.

The Court accepted that the institutional imbalance between individuals and State authorities necessitated procedural flexibility. This logic became even more pronounced in Aksoy v. Turkey, a landmark case concerning allegations of torture under Article 3 of the Convention. The Court observed that where an individual enters State custody in good health and subsequently demonstrates injuries upon release, a strong factual presumption arises requiring explanation from the respondent State [1]. This development marked an important doctrinal transition. Rather than treating evidence as a static body of factual material, the Court began recognizing that evidentiary evaluation must account for institutional control over information and the practical ability of parties to discharge evidentiary burdens.

Scholars frequently describe this transition as the emergence of a contextual evidentiary model. Trechsel notes that ECHR evidentiary doctrine increasingly prioritizes substantive reliability over formal admissibility and procedural functionality over rigid evidentiary categories [14, p. 93–118]. Similarly, Harris, O'Boyle and Warbrick argue that the Court's jurisprudence demonstrates a deliberate movement away from strict evidentiary formalism in favor of preserving the effectiveness of Convention guarantees [6, p. 612–669].

*III. The Doctrine of Holistic Assessment of Evidence and the Evolution of the Burden of Proof*

One of the most influential developments in the evidentiary jurisprudence of the European Court of Human Rights has been the gradual emergence of the doctrine of holistic assessment of evidence. This doctrine transformed the Court's approach from isolated examination of individual items of proof toward an integrated assessment of all factual, procedural, and contextual circumstances of a case.

Unlike formal evidentiary systems that assign predetermined probative value to particular categories of evidence, the ECHR evaluates evidence as part of a broader factual matrix. This methodology reflects the Court's understanding that human rights violations frequently occur under conditions where complete evidentiary records are unavailable or where crucial information remains under the exclusive control of public authorities.

A decisive stage in this evolution occurred in Kurt v. Turkey. The case concerned the disappearance of the applicant's son after his detention by State security forces. Direct evidence establishing the subsequent fate of the detainee was unavailable. Nevertheless, the Court held that the absence of direct proof did not automatically preclude a finding of responsibility under the Convention [9]. The Court attached substantial importance to surrounding circumstances: the confirmed detention of the individual, the lack of official explanation, inconsistencies in governmental submissions, and deficiencies in the investigative process. The judgment illustrated that evidentiary conclusions may arise not only from what is affirmatively established but also from what authorities fail to explain. This reasoning significantly altered the traditional understanding of burden of proof. Rather than imposing a static obligation entirely upon the applicant, the Court recognised that evidentiary burdens may shift depending on access to information and institutional control over relevant facts.

As the Court later clarified, where events lie wholly or largely within the exclusive knowledge of State authorities, strong presumptions of fact may arise and require convincing explanations from the respondent Government [5]. This principle became especially influential in cases involving Articles 2 and 3 of the Convention.

The doctrinal expansion continued in Nachova and Others v. Bulgaria. That case concerned fatal use of force by military personnel and allegations of ineffective investigation. The Grand Chamber emphasized that Articles 2 and 3 impose not only substantive obligations to refrain from unlawful conduct but also procedural obligations requiring effective investigation capable of establishing relevant facts and identifying responsibility [11]. The Court's reasoning marked a substantial conceptual shift. Evidentiary assessment was no longer confined to evaluating historical facts. The adequacy of investigative measures undertaken by the State itself became part of the evidentiary inquiry.

Failures in evidence collection, delayed investigative actions, omissions in witness examination, or procedural passivity could themselves influence judicial conclusions regarding Convention violations. Academic commentary recognizes this shift as evidence of the Court's movement toward procedural equality. Trechsel observes that modern evidentiary doctrine before the ECHR increasingly relies upon concepts of informational asymmetry and institutional accountability rather than traditional allocation of evidentiary burdens [13, p. 87–92].

*IV. Digital Evidence, Procedural Fairness and Contemporary Standards of Admissibility*

The rapid development of digital technologies has fundamentally transformed evidentiary practices across both domestic and international adjudication. Electronic communications, metadata, digital recordings, surveillance technologies, cloud storage, and open-source information increasingly constitute essential components of factual determination. These developments have required the European Court of Human Rights to adapt classical evidentiary principles to technologically complex environments while preserving procedural fairness and effective protection of Convention rights.

The transition toward contemporary evidentiary standards became particularly visible in Al-Khawaja and Tahery v. the United Kingdom. The Grand Chamber examined the admissibility of witness statements provided by individuals who were unavailable for cross-examination during trial proceedings [2].

The Court rejected rigid exclusionary approaches and instead adopted a procedural balancing methodology. According to the Court, use of absent witness evidence does not automatically violate Article 6; however, adequate compensatory safeguards must exist to preserve the fairness of proceedings as a whole. This procedural orientation was reinforced in Perna v. Italy. The Court reiterated that its role is not to reassess evidentiary conclusions reached domestically but to determine whether proceedings, viewed in their entirety, satisfied the requirements of fairness under Article 6 [12]. Errors in evidentiary evaluation do not automatically amount to Convention violations. Only where procedural deficiencies undermine the overall fairness of proceedings does Convention responsibility arise. The emergence of digital evidence has intensified the relevance of these principles. Technological evidence frequently appears objective and reliable due to its automated or electronic character. However, the Court increasingly recognizes that digital information presents unique procedural risks.

Questions concerning authenticity, chain of custody, algorithmic processing, selective disclosure, metadata manipulation, and surveillance legality may directly affect evidentiary reliability. These concerns became particularly prominent in Big Brother Watch and Others v. the United Kingdom. The Grand Chamber examined the compatibility of large-scale interception regimes with Articles 8 and 10 of the Convention [3].

The Court accepted that States possess legitimate interests in national security and intelligence gathering. However, it emphasized that surveillance-derived information must operate within a legal framework containing adequate and effective safeguards against abuse. This decision represents a broader doctrinal shift. Digital evidence is no longer treated merely as a modern evidentiary category. Instead, it functions as a procedural environment requiring adaptation of established guarantees. Academic literature similarly recognizes that digitalization has transformed evidentiary theory. Greer notes that Convention jurisprudence increasingly integrates technological realities into broader concepts of democratic accountability and procedural legitimacy [5, p. 174–192].

*V. Contemporary Doctrinal Evolution: Positive Obligations, Evidentiary Equality and Future Directions*

The contemporary stage of development of the European Court of Human Rights' evidentiary doctrine demonstrates a gradual transition from classical evidentiary evaluation toward a broader procedural model centered on positive obligations, equality of evidentiary opportunities, and effective judicial protection. The procedural dimension of Convention rights has become particularly important in cases where the State possesses superior access to information.

In Nachova and Others v. Bulgaria, the Grand Chamber confirmed that effective investigation constitutes an autonomous Convention requirement independent from substantive findings regarding unlawful conduct [11]. An investigation must be capable of identifying relevant facts, collecting evidence promptly, ensuring institutional independence, and maintaining public confidence. This approach substantially affected evidentiary doctrine. The absence of evidence can no longer automatically favor respondent authorities where such absence results from deficiencies attributable to the State.

The Court's reasoning reflects a principle of evidentiary equality. Unlike formal equality, which merely grants identical procedural rights to parties, evidentiary equality requires that parties possess realistic opportunities to obtain, present, challenge, and contextualize relevant information. This issue received significant clarification in Murtazaliyeva v. Russia. The Grand Chamber examined whether refusal to summon defence witnesses violated Article 6 of the Convention [10]. The Court formulated a structured test requiring assessment of: whether the request to examine evidence was sufficiently reasoned; whether the evidence appeared capable of influencing the outcome; whether refusal undermined overall fairness of proceedings.

Modern doctrine therefore recognizes that evidentiary disadvantage may arise from structural conditions rather than explicit procedural exclusion. Future developments are likely to intensify these tendencies. Digitalization, artificial intelligence, automated decision-making, predictive analytics, biometric technologies, and algorithmic processing increasingly influence judicial and administrative procedures.

Although the Court has not yet established a comprehensive doctrinal framework governing these issues, existing jurisprudence suggests continuity of methodological principles based upon fairness, transparency, adversarial participation, and effective opportunities for contestation.

*VI. Critical Assessment of the Court's Contemporary Evidentiary Doctrine*

While the evolution of the European Court of Human Rights' evidentiary doctrine has significantly strengthened the practical effectiveness of Convention protection, several unresolved issues continue to generate academic and judicial debate [2, p. 612–669; 8, p. 93–118; 13, p. 174–192].

First, the Court's flexible approach to evidentiary assessment, although necessary in the context of international human rights litigation, may occasionally create concerns regarding legal certainty. The absence of formally codified evidentiary rules allows the Court to adapt its methodology to the specific circumstances of each case; however, such flexibility may also reduce predictability for applicants and respondent States [2, p. 612–669; 8, p. 93–118]. The determination of whether available evidence satisfies the standard of proof "beyond reasonable doubt" remains highly dependent upon judicial evaluation of the overall factual context.

Second, the increasing reliance upon factual presumptions and burden-shifting mechanisms raises important questions concerning procedural balance. The Court has rightly recognised that States frequently possess superior access to relevant information. Nevertheless, extensive reliance on presumptions may create difficulties in distinguishing between legitimate evidentiary inferences and indirect reversal of the burden of proof. Future jurisprudence may therefore require more precise criteria governing the circumstances under which evidentiary burdens should shift to respondent authorities [5; 7; 10].

Third, technological developments present challenges that existing evidentiary doctrine has not yet fully addressed. Artificial intelligence systems, automated decision-making processes, biometric identification technologies, and algorithmic profiling increasingly affect the exercise of Convention rights. The evidentiary implications of these technologies extend beyond traditional questions of admissibility and reliability. They also concern transparency, explainability, accountability, and effective judicial scrutiny of technologically generated evidence [12; 13, p. 174–192].

In this regard, the Court may gradually develop a more detailed framework governing the assessment of algorithmic evidence and digital decision-making processes. Such development would be consistent with the broader objectives of the Convention system and the Court's established emphasis on procedural fairness, equality of arms, and effective protection of fundamental rights [2, p. 612–669; 12].

The future evolution of the Court's evidentiary doctrine is therefore likely to involve a careful balance between flexibility and legal certainty, between technological innovation and procedural safeguards, and between effective human rights protection and the requirements of judicial legitimacy.

*VII. Conclusion*

The evolution of the European Court of Human Rights' approaches to the assessment of evidence demonstrates one of the most significant doctrinal developments within contemporary international procedural law.

Through several decades of jurisprudential development, the Court has constructed an autonomous evidentiary framework that differs substantially from traditional domestic approaches and reflects the specific institutional conditions of Convention adjudication.

The analysis undertaken in this study demonstrates that the Court's evidentiary doctrine evolved through several interconnected stages.

The initial phase was characterized by the emergence of the autonomous standard of proof "beyond reasonable doubt", articulated in Ireland v. the United Kingdom [7]. However, unlike domestic criminal law systems, the Court did not interpret this standard as requiring exhaustive formal certainty.

The second stage involved the development of holistic assessment of evidence. Through judgments such as Kurt v. Turkey and Aksoy v. Turkey, the Court recognised that human rights litigation frequently occurs under conditions of informational inequality and limited access to direct proof [1; 9].

A further stage of doctrinal development emerged through the strengthening of procedural obligations imposed upon respondent States. Contemporary jurisprudence reflects an additional shift associated with technological transformation. Digital evidence, surveillance-derived information, electronic communications, and open-source materials increasingly shape Convention litigation. The study therefore concludes that the ECHR's evidentiary doctrine should be understood not merely as a set of technical rules governing proof but as an independent procedural system directed toward ensuring the practical and effective enjoyment of Convention rights.

Its continuing evolution demonstrates a broader transformation in international adjudication - from formal evidentiary structures toward models of procedural fairness, institutional accountability, and human rights-oriented judicial reasoning.

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# THE UNITED NATIONS' DIFFERENT APPROACHES TO COMPENSATION FOR WAR CRIMES: THE IRAQ–KUWAIT AND ARMENIA–AZERBAIJAN CONFLICTS

**Mahammad Guluzade***

**Abstract**

*This article draws a parallel between the Armenia-Azerbaijan and Iraq-Kuwait conflicts and analyzes the differences between the resolutions adopted by the United Nations and the measures taken in these conflicts. The adoption of more resolutions by the United Nations on the Iraq-Kuwait conflict, which began at about the same time and was marked by the crime of aggression, the assessment of this conflict as a "violation of international peace and security", the recognition of Iraq as an aggressor, the imposition of sanctions against it, the appointment of a special rapporteur on human rights violations in the Iraq-Kuwait conflict, and the authorization of the deployment of troops by a coalition of 26 United Nations member states led by the United States, and the absence of these measures in the Armenia-Azerbaijan conflict, are considered indicators of the United Nations' different approach to similar conflicts. The article focuses on the activities of the United Nations Compensation Commission established by the United Nations on the Iraq-Kuwait conflict. This Commission, which operates as a subsidiary body of the United Nations Security Council, has identified 30% of Iraq's oil and oil product exports as the source of the compensation fund. In total, the Commission has paid compensation of US $52.4 billion to more than 1.5 million claimants. The Commission's experience in determining compensation for individuals and legal entities affected by this conflict is being closely studied.*

***Keywords:*** *Armenia-Azerbaijan conflict, Iraq-Kuwait, compensation, United Nations, Karabakh, human rights.*

*I. Introduction*

The United Nations and its Security Council have not always adopted the same approach in the activities they have carried out and the decisions they have taken in accordance with their mandates. The adoption of documents that differ substantially in content with respect to war crimes and gross and systematic violations of human rights committed during various conflicts - due either to the positions of Security Council members or to certain "invisible" reasons - has itself cast doubt on the effectiveness of the United Nations as a guarantor of peace and security. The application of double standards by the United Nations and its Security Council to conflicts of a similar nature between different states and the need for reform have been repeatedly emphasized [1].

This article comparatively analyzes the resolutions adopted by the United Nations during the Armenia–Azerbaijan and Iraq–Kuwait conflicts, as well as the measures implemented for the assessment and payment of compensation for damages.

It is an undeniable fact that the Armenia–Azerbaijan conflict was brought to an end only through the strength and determination of the Azerbaijani army. However, the international legal basis of those actions was equally important. The confirmation in international documents that the occupied territories belonged to Azerbaijan, and the international recognition that Armenia and its supporters had unlawfully entered Azerbaijani territory by the use of force and exercised effective control over it for a prolonged period, significantly strengthened Azerbaijan's position in the conflict.

* PhD in Law, e-mail: mguluzade@gmail.com

Although the four resolutions adopted by the United Nations Security Council regarding the Armenia–Azerbaijan conflict are typical documents issued by the body in similar situations, their content, terminology, and the actions taken by the United Nations on their basis differ considerably. Although the Iraq–Kuwait conflict occurred at approximately the same time as the Armenia – Azerbaijan conflict and both involved acts of aggression, the United Nations' response to the Iraq–Kuwait conflict differed fundamentally from its response to the Armenia – Azerbaijan conflict.

*II. Number and Legal Content of the Resolutions*

The UN Security Council adopted four resolutions concerning the Armenia–Azerbaijan conflict and fourteen resolutions concerning the Iraq–Kuwait conflict [7]. Resolution 661 determined that there had been an "occupation of Kuwait by Iraqi military forces" and assessed it as a breach of international peace and security [5]. Consequently, Iraq was recognized by the Security Council as an aggressor state, whereas Armenia was not identified as an aggressor state or even as a party to the conflict; instead, expressions such as "local Armenian forces" and "the parties" were used.

*III. Appointment of a Special Rapporteur by the UN*

In Resolution 1991/67, the Commission on Human Rights requested its Chairperson to appoint a Special Rapporteur "with a mandate to investigate human rights violations committed in Kuwait by the Iraqi occupying forces". On 31 May, the Economic and Social Council adopted Resolution 1991/251 approving the Commission's resolution. As a result, within less than four months the Special Rapporteur prepared and submitted a report to the United Nations. The Rapporteur was authorized to obtain relevant information from "the Government of Kuwait, specialized agencies, and intergovernmental and non-governmental organizations".

The Special Rapporteur characterized arbitrary executions, widespread and systematic torture, the deportation of large numbers of civilians to Iraq, the use of third-country nationals as "human shields" and the large-scale destruction of significant parts of Kuwait's infrastructure, including health and educational institutions, as grave breaches of the Geneva Conventions [11].

During two visits to Kuwait, the Special Rapporteur interviewed more than eighty victims and witnesses of alleged human rights violations committed by the Iraqi occupying forces. He visited former detention sites, looted and destroyed buildings, cemeteries, the camp for displaced persons in Abdali, and burned oil fields.

The report presented facts, statistics, and analyses regarding the treatment of prisoners of war, torture, detention, deportations, and other human rights issues. It reported the detention of 4,129 prisoners of war and 935 civilians, and approximately 2,000 persons were recorded as missing.

By confirming gross and systematic violations of human rights and the fact of aggression, the report provided a serious basis for United Nations military intervention. No comparable development occurred in the Armenia–Azerbaijan conflict.

*IV. Sanctions*

The United Nations imposed no sanctions on Armenia, whereas a range of sanctions was imposed on Iraq. Resolutions 661 and 670 introduced sanctions in the areas of trade, financial transfers, and transportation, particularly air transport. Resolution 661 prohibited the import of products originating in Iraq or Kuwait, commercial financial transfers to Iraq and Kuwait, the sale of goods - including arms and military equipment- except for medical and humanitarian purposes, and investment activities. Some researchers described these sanctions as "unprecedented" in scale [6]. According to general estimates, Iraq's imports declined from USD 10.3 billion in 1988 to USD 0.4 billion by 1991 [6, p. 14], inflation reached extremely high levels, and whereas one U.S. dollar had been equivalent to approximately four Iraqi dinars before Iraq's attack on Kuwait, by December 1995 one U.S. dollar was equal to 3,000 Iraqi dinars [6, p. 15].

Resolution 678 imposed additional obligations on Iraq, including the conclusion of a disarmament agreement, the destruction of all chemical and biological weapons and certain ballistic missiles, and the establishment of a Compensation Commission.

*V. UN Armed Intervention*

While the Armenia–Azerbaijan conflict was addressed mainly through diplomatic negotiations, Security Council Resolution 678 with respect to Kuwait authorized the use of "all necessary means" [8]. Azerbaijan itself implemented the Security Council resolutions concerning the Armenia–Azerbaijan conflict twenty-seven years later, whereas the United Nations ensured the implementation of the resolutions concerning Iraq within a few months. This approach was based on the principle of "collective security enforcement". With the support of a coalition of twenty-six UN member states led by the United States [11, p. 30], Iraqi forces were expelled from Kuwait. The legal basis was Chapter VII of the United Nations Charter. According to Fassbender, the Kuwait issue provided the Security Council with an opportunity to prove wrong those who had called it "dead", since after Korea (1950) the United Nations had not authorized member states to wage war under its banner [2]. Although many states opposed the occupation of Kuwait, the resolution was proposed and adopted at the initiative of the United States, which undoubtedly pursued its own interests. One explanation for the absence of a similar initiative in the Armenia–Azerbaijan conflict may be the reluctance of the United States to deploy troops near Russia's southern borders so as not to increase regional tensions.

Consequently, coalition forces led by the United States carried out air operations for several weeks and subsequently liberated Kuwait through a ground intervention. This outcome was viewed not only as the outcome of U.S.-led military action but also as the implementation of Security Council resolutions.

*VI. Establishment of a Special United Nations Compensation Commission and Enforcement of Compensation Payments*

The establishment by the United Nations of a Compensation Commission in relation to the Iraq–Kuwait conflict has been described as creating "new law and procedures for reparations relating to mass violations during armed conflict" [3].

Resolution 674 stated that Iraq bore responsibility for the damage resulting from the occupation of Kuwait and emphasized that this responsibility covered "all losses, damages, or injuries suffered by Kuwait and third states"[3]. Resolution 687 further clarified the scope of such damage, including "any direct loss, damage, including environmental damage and depletion of natural resources, and damage to foreign governments, nationals, and corporations" [9].

The Commission functioned as a subsidiary organ of the Security Council. The source of the compensation fund consisted of 30 percent of Iraq's exports of oil and petroleum products. Although the conflict occurred in 1991, the Commission set 1 January 1995 as the deadline for individual compensation claims and 1 January 1996 for claims by companies, states, and international organizations.

Compensation of USD 2,500 per displaced person and USD 5,000 per family was established. In cases of injury or death, compensation ranged from USD 2,500 to USD 10,000 per family. Compensation for property damage and moral injury was set at up to USD 100,000. In total, the Commission paid USD 52.4 billion in compensation to more than 1.5 million successful claimants [10].

*VII. Conclusion*

Twenty-seven years later, Azerbaijan itself implemented the United Nations resolutions concerning the Armenia–Azerbaijan conflict [4]. By contrast, in relation to Iraq the United Nations took more determined and consistent steps and resolved the conflict within a few months through the principle of collective security enforcement. The identification of Iraq as an aggressor state, the characterization of its actions as a threat to international peace, the imposition of sanctions, the appointment of a Special Rapporteur, the investigation of damages, the establishment of a special commission for compensation, and the authorization granted to United Nations member states to use "all necessary means", including armed force, may all be regarded as rare response measures in United Nations practice.

Apart from adopting four resolutions, the United Nations in practice provided Azerbaijan with little additional assistance in the Armenia–Azerbaijan conflict. Nevertheless, Azerbaijan's continued respect for the United Nations is reflected in the Shusha Declaration of 15 June 2021, signed by President Ilham Aliyev of the Republic of Azerbaijan and President Recep Tayyip Erdoğan of the Republic of Türkiye. Under the Declaration, if either party considers that its independence, sovereignty, territorial integrity, inviolability of internationally recognized borders, or security is threatened or subjected to aggression by a third state or states, the parties shall hold joint consultations and undertake initiatives consistent with the purposes and principles of the United Nations Charter and provide one another with the necessary assistance in accordance with the Charter.

The United Nations' different approaches to the two conflicts once again demonstrate the decisive role of geopolitical factors in its decision-making. The positions of the permanent members of the Security Council, the prevailing regional and international situation, and the specific interests of major powers appear to be more decisive factors than human rights considerations or even violations of the fundamental principles of the United Nations.

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# VICTORY IN KARABAKH AND THE RESTORATION OF FULL SOVEREIGNTY CONSTITUTIONAL ASPECTS

**Gulgun Guliyeva***

**Abstract**

*The military victory of Azerbaijan in the 2020 Patriotic War and the anti-terrorism operations in September 2023 led to the full restoration of state sovereignty over the Karabakh region. These events ensured the real guarantee of the country's territorial integrity within the framework of international law and the Constitution of Azerbaijan. Article 11 of the Constitution of the Republic of Azerbaijan enshrines the inviolability of the state territory, while Article 12 defines the protection of sovereignty and the guarantee of citizens' rights as the state's highest goal. The powers of the President outlined in Article 109 are aimed at ensuring national security and preserving territorial integrity. The liberation of Karabakh is assessed as a triumph of legal, political, and historical sovereignty. It has strengthened Azerbaijani statehood, increased its international prestige, and contributed to lasting peace and security in the region. Overall, the complete liberation of Karabakh is regarded as a successful implementation of constitutional provisions and a fundamental legal basis for the country's future development.*

***Keywords:*** *Karabakh conflict, Patriotic War, full sovereignty, territorial integrity, national security, legal foundations, international law, anti-terrorism operations, socio-economic reintegration, statehood, regional geopolitics.*

*I. Introduction*

Purpose of the article. The main purpose of this article is to explain the victory of Azerbaijan in the 2020 Patriotic War in the legal framework, especially in terms of the country's Constitution. The article examines how the restoration of Azerbaijan's territorial integrity is justified on the basis of international law principles, the concept of national sovereignty and constitutional norms. It also analyzes the relationship between the provisions reflected in the Constitution regarding the protection and preservation of the territorial integrity of the state and the requirements of international law. The article also emphasizes the importance of the anti-terrorist measures implemented in 2023 in terms of strengthening the sovereignty of the state and strengthening the legislative framework. The goal is to present the legal foundations that lead to a complete resolution of the Karabakh issue within the framework of the Constitution of the Republic of Azerbaijan and international law.

Historical context of the Karabakh issue. The Karabakh problem is one of the most complex and long-term conflicts in the South Caucasus region. Historically, the Karabakh territory has been part of various states and empires for centuries. In the Middle Ages, Karabakh was formed as part of the historical and cultural space of Azerbaijan. In the 18th–19th centuries, the Karabakh Khanate existed, and then it was incorporated into the Russian Empire.

During the Soviet era, the Karabakh Autonomous Region was established as part of the Azerbaijan SSR. However, in the late 1980s, against the backdrop of the weakening of the Soviet Union, national and cultural contradictions between Armenians and Azerbaijani

* Phd in Law, Baku State University, e-mail: gulgun2004@mail.ru

Turks intensified, and a conflict broke out in Nagorno-Karabakh with the demand for the Armenian population to secede from the Azerbaijani SSR and join Armenia.

After the collapse of the Soviet Union in 1991, this conflict turned into an armed conflict. In the early 1990s, separatist forces, with the support of Armenia, occupied Nagorno-Karabakh and surrounding regions. As a result, hundreds of thousands of Azerbaijani Turks were forced to leave their homelands. In the fall of 2020, the Azerbaijani Armed Forces launched "Combat Operations" to liberate their lands in accordance with international law, and as a result of a 44-day war, significant territories were liberated from occupation. The trilateral statement of November 10, 2020, ended the war and created new geopolitical realities in the region. The Karabakh issue is a topic that requires in-depth study in both historical and contemporary international law and geopolitical contexts. The resolution of the problem is one of the main conditions for regional peace, stability and cooperation.

*II. The roots of the power struggle in the historical context*

The roots of the power struggle in the South Caucasus go back to ancient times to the era of empires. Throughout history, this region has fallen under the influence of great powers such as the Sasanians, Byzantium, the Arab Caliphate, the Seljuks, the Mongols, the Ottoman Empire and the Russian Empire and has been at the center of geopolitical competition. With the treaties of Gulustan (1813) and Turkmenchay (1828), signed as a result of the Russo-Iranian and Russo-Ottoman wars in the early 19th century, a large part of the South Caucasus came under the control of the Russian Empire. This history is considered to be a period when the dynamics of independent development of the region weakened and Russian hegemony was established [32, p. 250]. The First World War and the subsequent Bolshevik Revolution in the early 20th century led to the establishment of independent republics in the South Caucasus: the Azerbaijan Democratic Republic (1918–1920), Georgia and Armenia. However, these republics collapsed shortly after the military intervention of Soviet Russia and the region came back under the control of Moscow.

Although the Soviet period (1920–1991) was presented as a period in which geopolitical stability was maintained in the South Caucasus through the drawing of artificial borders, the division of ethnic territories, and ideological control, in reality the seeds of latent conflicts and ethnic tensions were sown during this period [8, p. 45]. With the collapse of the Soviet Union in 1991, the region regained its independence. However, this time, the region also became a scene of conflicting interests between various powers in the post-Soviet space: Russia, Turkey, Iran, and the West. In particular, Karabakh, Abkhazia, South Ossetia, and other conflict zones became instruments of this power struggle [19, p. 149]. This historical context provides a fundamental basis for a better understanding of the geopolitical struggle that continues in the South Caucasus today. The struggle for power is not only a struggle for political and economic influence, but also for historical hegemony and ideological influence.

Azerbaijan's unique position and strategic resources. Azerbaijan is one of the most important actors in the South Caucasus region, distinguished by its geographical location, rich energy resources, and geopolitical initiatives. The country is located between the Black Sea basin and the Caspian Sea, at the intersection of East-West and North-South transport and energy corridors. This position gives it strategic importance on a regional and global scale [17, p. 79]. Azerbaijan's energy resources are one of the main tools that strengthen its position, especially in international relations. As one of the countries with the richest oil and gas reserves in the Caspian basin, Azerbaijan has played an important role in shaping international energy security through the "Contract of the Century" (1994) and the projects it has implemented in subsequent periods. Projects such as the Baku-Tbilisi-Ceyhan (BTC), Baku-Tbilisi-Erzurum (BTE), and the Trans-Anatolian Gas Pipeline (TANAP) create alternative routes to supply European markets with energy resources. In addition, Azerbaijan has strategic advantages in terms of logistics and transport infrastructure. Located at the intersection of the "East-West" (China-Europe) and "North-South" (Russia-India) corridors, Azerbaijan plays an important role in the global freight network through the Baku International Sea Trade Port and the Baku-Tbilisi-Kars railway. Azerbaijan's diplomatic position also increases its regional influence. Through fraternal relations with Turkey, cautious cooperation with Russia, a balanced policy with Iran, and an energy-oriented partnership with the West, the country pursues a multi-vector foreign policy. This approach allows Azerbaijan to both maintain regional balance and act as a stabilizing force rather than an active participant in conflicts and competitions [12, p. 48]. Finally, Azerbaijan's political stability, economic growth, and military modernization, especially its victory in the Second Karabakh War in 2020, have further strengthened its status as a regional power. Thus, the country's strategic resources and unique position allow it to act not only as a participant, but also as an initiator and shaper in the Caucasus. Russia: Caucasus policy and instruments of influence. Russia's policy in the South Caucasus is implemented within the framework of the "near abroad" concept it has developed in the post-Soviet space. This strategy is aimed at preserving Moscow's influence over the former Soviet republics, preventing their integration with the West, and preventing the geopolitical vacuum from being filled by other powers [33]. For Russia, the Caucasus is both a frontline in terms of security and an integral part of its regional hegemonic strategy.

"Near abroad" policy and protection of its sphere of influence. Since the 1990s, Russia has used political, military, and economic means to maintain its position in the South Caucasus. Ethnic conflicts in the region, especially in Abkhazia, South Ossetia, and Nagorno-Karabakh, have played an important role in increasing Moscow's influence. Russia has either directly intervened militarily in these conflicts (the 2008 Georgian events) or influenced the processes by acting as a mediator or "stabilizing force" [9, p. 256].

CSTO, CIS, and the "3+3" format. Russia is trying to establish multifaceted platforms of influence in the South Caucasus through the Collective Security Treaty Organization (CSTO), the Commonwealth of Independent States (CIS), and the recently promoted "3+3" format (Azerbaijan, Armenia, Georgia + Russia, Turkey, Iran). In addition to being an instrument of military influence for Russia, the CSTO acts as a mechanism for guaranteeing security over Armenia. The CIS, on the other hand, serves to ensure the sustainability of loyal alliances for Moscow in terms of economic and political coordination [4, p. 470]. The "3+3" platform is based on the idea of "local" solutions to regional problems without the participation of the West in the region. This initiative serves the purpose of Russia to balance the diplomatic activity of the West in the region and is used to keep the South Caucasus in its geopolitical orbit [16]. Restoration of full sovereignty as a result of the 2020 Patriotic War and anti-terrorist measures in 2023.

In the fall of 2020, the Azerbaijani Armed Forces launched large-scale military operations to liberate the territories occupied by Armenia. During the 44-day Patriotic War, the Azerbaijani army liberated strategically important cities, villages and districts, including settlements such as Shusha, Fuzuli, Jabrayil, Zangilan and Agdam, from occupation. These military successes resulted in the signing of a trilateral statement between Azerbaijan, Armenia and Russia on November 10, 2020. The statement confirmed the establishment of a ceasefire in the region and the recognition of the territorial integrity of Azerbaijan within the framework of international law.

In 2023, the Azerbaijani government intensified anti-terrorist measures to fully restore territorial integrity and sovereignty. These measures were carried out in the direction of strengthening security within the country, eliminating illegal military formations and ensuring peace. As a result, Azerbaijan restored its full sovereignty and launched socio-economic development and reconstruction in the liberated regions.

These processes were made possible thanks to Azerbaijan's national unity, adherence to international law and resolute state policy. The restoration of full sovereignty strengthened the country's position in regional security and laid the foundation for the formation of a new environment of peace and cooperation in the South Caucasus. Main part.

The South Caucasus region has faced serious geopolitical upheavals in recent decades, and these processes, especially for Azerbaijan, were accompanied by both threats and opportunities. The Second Karabakh War of 2020 once again exposed the cracks in the existing security architecture in the region. In the post-war period, Azerbaijan began to act as one of the initiators of regional stability and took conceptual and institutional steps towards peace.

The issue of security for the South Caucasus region, especially for Azerbaijan, is a complex concept that includes not only military and border security, but also geopolitical, economic and humanitarian aspects. The strategic location of the region as a transit space connecting Europe and Asia, an access point to energy resources, and at the same time the location of regional powers in the sphere of influence of Russia, Iran and Turkey makes Azerbaijan a decisive actor in the regional security architecture.

The 44-day Second Karabakh War that took place in 2020 not only resulted in the restoration of Azerbaijan's territorial integrity, but also created serious changes in the regional balance of power. The conflict situation, frozen for many years, has now entered a new phase, and this new reality has necessitated a rethinking of the region's security system. The war has also clearly revealed the role of international law, the positions of regional and global actors, and how peace and conflict dynamics can change.

Currently, Azerbaijan is not satisfied with military victory alone in the post-war period, but is pursuing a multi-pronged policy aimed at building a peace architecture based on more stable and mutual security mechanisms. This policy aims not only at normalizing relations with Armenia, but also at creating a new security platform based on peace and cooperation in the region. The activation of Azerbaijani diplomacy, transport corridor projects, initiatives in the field of energy security, and calls for peace based on international law constitute the main components of this strategy.

The article will analyze the main directions of the peace and security policy that Azerbaijan is trying to formulate in the post-war period, examine the interrelations of this process with regional geopolitical dynamics, and put forward theoretical and practical conclusions regarding future prospects. Main directions of Azerbaijan's security policy. After the 44-day war, Azerbaijan began to pursue a policy in a number of strategic directions to change the regional security agenda and form the foundations of lasting peace. This policy is being implemented in parallel both at the state level and at the regional and international levels.

Peace treaty initiative and normalization of relations with Armenia the signing of a long-term peace treaty with Armenia is at the forefront of Azerbaijan's peace agenda. Official Baku has proposed five basic principles based on the recognition of mutual territorial integrity and sovereignty with Armenia [8, p. 42]. These principles are an approach based on international law and aimed at minimizing the risks of future conflict. However, political instability within Armenia, pressure from revanchist forces, and security dependence on Russia complicate the progress of this process [5, p. 45].

Promotion of regional cooperation formats (3+3 platform). Azerbaijan wants to expand dialogue with the main powers in the region within the framework of the "3+3" cooperation format. In addition to Azerbaijan, Armenia and Georgia, Russia, Iran and Turkey are also represented in this format. The goal is to resolve regional problems within the region and minimize external interference. This platform is seen as an important step in terms of increasing regional ownership in the security of the South Caucasus.

*III. Military-strategic alliance with Turkey: Shusha Declaration*

The Shusha Declaration, signed in 2021, elevated Azerbaijan-Turkey relations to the level of a strategic alliance. The declaration established the principles of mutual military assistance, defense industry cooperation, and joint activities in the region between the two countries [8, p. 52]. This document, in addition to increasing Azerbaijan's security guarantees, played an important role in the formation of a balanced power model in the region. The security component of transport and energy corridors. The Zangezur corridor, initiated by Azerbaijan, is not only an economic project, but also an important element in geopolitical and security terms. This corridor, in addition to connecting the countries of the region, reduces logistical dependencies and strengthens the model of interdependence. At the same time, energy security cooperation with Europe within the framework of the Southern Gas Corridor has increased Azerbaijan's geopolitical importance.

Outlines of the Regional Security Architecture: New Opportunities and Risks. The new geopolitical environment that emerged in the South Caucasus after the 44-day war has changed not only the balance of power, but also the basis of security and cooperation formats. Azerbaijan acts as both an initiator and a coordinating actor in this new configuration. However, this process is not one-sided - the interests of various power centers in the region conflict with each other, creating both opportunities and risks. The Second Karabakh War that broke out in the South Caucasus in the fall of 2020 has created serious changes in the dynamics of regional security. New political and military realities have emerged between Azerbaijan, Armenia, and other regional actors, and the security architecture needs to be updated accordingly.

New opportunities. Expanding regional integration and cooperation formats: Structures such as the "3+3" cooperation platform initiated by Azerbaijan and the Organization of Turkic States have the potential to strengthen dialogue in the region and reduce conflict risks. Opening transport and energy corridors: Projects such as the Zangezur corridor and the Southern Gas Corridor increase economic interdependence between the countries of the region, which in turn contributes to long-term stability (EPRS, 2022). Strategic partnerships: The military-strategic cooperation signed with Turkey under the Shusha Declaration has strengthened Azerbaijan's security guarantees [8, p. 55]. New risks. Regional power struggles: The confrontation between Russia and the West, especially in the context of the Ukrainian war, is also having repercussions in the South Caucasus and poses a risk of regional instability [20, p. 42]. Iranian concerns: The Zangezur corridor and

Azerbaijan's rapprochement with Turkey are considered strategic threats to Tehran, which is causing tensions in Iranian-Azerbaijani relations. Armenia's internal political instability: The activities of revanchist forces and political crises could be effective in slowing down the peace process and increasing border tensions. Status of peacekeeping forces: The future of Russian peacekeepers and their role in the region remains uncertain, which calls into question the sustainability of security guarantees. The successful development of Azerbaijan's regional security architecture is possible on the basis of a multi-vector policy, diplomatic initiatives and strategic cooperation. Careful risk management and continued regional dialogue are essential for the realization of new opportunities.

Regional integration and interdependence. The following opportunities stand out in the post-war period: Restoration of transport arteries (Zangezur corridor, integration of East-West and North-South corridors): these projects can strengthen security by increasing economic interdependence in the region. Deepening strategic cooperation with Turkey: this partnership strengthens Azerbaijan's hand in terms of regional balance and deterrence. Energy and diplomatic cooperation with the European Union: The Southern Gas Corridor and partnership with Europe increase Azerbaijan's international legitimacy [11]. Azerbaijan has the potential to use these opportunities to become a locomotive of economic and political integration in the region.

Risks: geopolitical clashes and potential for instability. Major geopolitical changes in the South Caucasus region in recent years have led to the emergence of new risks. In addition to the interests of Azerbaijan, Armenia and other regional actors, the interaction of great powers complicates the security environment and increases the likelihood of instability.

The confrontation between Russia and the West. The growing tension between Russia and the West against the backdrop of the Ukrainian war is also reflected in the South Caucasus. The West's rapprochement with Armenia, while Russia's efforts to maintain its position in the region, disrupts the security balance and creates new hotbeds of conflict [20]. This situation slows down the regional peace process and increases the risk of military conflict.

Iran's concerns and regional policy. Iran, Azerbaijan's Zangezur. Iran's concerns and regional policy. Iran is concerned about Azerbaijan's Zangezur corridor and cooperation with Turkey. Tehran, viewing these processes as a threat to its national security, is conducting military exercises on the borders and strengthening its geopolitical position [32, p. 53]. This is leading to increased tensions in Iranian-Azerbaijani relations and the emergence of new risks in the region.

Legal Framework of the Karabakh Conflict. Consolidation of the Liberation of Karabakh into the National Legal System. As a result of the 44-day Patriotic War of 2020, the occupied Nagorno-Karabakh and surrounding regions of Azerbaijan were liberated. Strengthening the legal foundations of this historic victory in the national legal system is of great importance in terms of protecting the sovereignty and territorial integrity of the Azerbaijani state. The status and management regime of the liberated territories are regulated by the legislation of the Republic of Azerbaijan. The Constitution of the Republic of Azerbaijan (1995) guarantees the inviolability of territorial integrity and the sovereignty of the state [7, p. 45]. In addition, the Law "On Ensuring the Territorial Integrity of the Republic of Azerbaijan" (2021) regulates the restoration of state power in the territories liberated from occupation and the application of laws there [22]. Within the framework of the national legal framework, the "State Program on the Socio-Economic Development of the Liberated Territories" (2021–2025) creates a legal and financial basis for the restoration and reintegration of these regions. This program covers social, infrastructure and cultural projects. In addition, the Law "On Combating Terrorism" (2015) and its subsequent amendments have strengthened legal mechanisms for ensuring security in the region and preventing separatist activities. Within the framework of international law, the sovereignty and territorial integrity of the Republic of Azerbaijan have been confirmed by UN Security Council Resolutions Nos. 822, 853, 874 and 884 [34]. These resolutions require the immediate evacuation of the occupied territories and supports the sovereignty of Azerbaijan. As a result, the liberation of Karabakh was consolidated in the national legal system both at the Constitutional level and by legislative acts and was harmonized with international legal norms.

Events of 1988-1994 and Armenia's occupation policy. In 1988, against the backdrop of the weakening of the Soviet Union, the Armenian population living in the Nagorno-Karabakh Autonomous Oblast began protest actions demanding secession from the Azerbaijani SSR and unification with Armenia. These demands intensified nationalist conflicts and became the beginning of the conflict. In 1988–1991, the situation became increasingly tense, with armed clashes on both sides. After the collapse of the Soviet Union in 1991, Azerbaijan and Armenia, as independent states, came into direct conflict over the Karabakh issue. During the military operations that took place between 1992–1994, Nagorno-Karabakh and seven surrounding regions were occupied by Armenia. As a result of this occupation, hundreds of thousands of Azerbaijanis were forced to leave their homes. Armenia's occupation policy contradicts international law, including resolutions adopted by the UN Security Council. The UN Security Council adopted a series of resolutions in 1993, demanding the immediate withdrawal of the occupied territories and recognition of the territorial integrity of Azerbaijan. This period also marked a fundamental turning point in the international recognition of the legal basis of the conflict and the protection of Azerbaijan's sovereignty.

4 UN Security Council Resolutions (822, 853, 874, 884). In 1993, the UN Security Council adopted four major resolutions on the Karabakh conflict. These resolutions affirm the territorial integrity of Azerbaijan within the framework of international law and demand measures against the occupying forces: Resolution 822 (April 30, 1993). Demands the immediate withdrawal of Armenian armed forces from the occupied Azerbaijani territories, in particular the Agdam region. The parties are also called upon to resolve the conflict peacefully. Resolution 853 (July 29, 1993) Demands the evacuation of the wider territories occupied by Armenia, including the Kalbajar region. The call for a peaceful resolution of the conflict is reiterated. Resolution 874 (October 14, 1993). The parties to the conflict are advised to continue negotiations through the OSCE Minsk Group and to support the peace process. Emphasizes the evacuation of occupied territories and the protection of human rights. Resolution No. 884 (November 12, 1993). Demands the immediate withdrawal of Armenia from the occupied Jabrayil region. This resolution reaffirms the need to implement previous UN resolutions.

The Inconclusiveness of the OSCE Minsk Group Process. The OSCE Minsk Group, established in 1992, aimed to ensure a peaceful resolution of the Karabakh conflict. The Minsk Group mediated between Azerbaijan and Armenia, conducted negotiations and sought ways to compromise. The main members of the group, including Russia, the United States and France, received broad international support. However, negotiations conducted for more than 30 years have failed to resolve the main issues of the conflict, including the restoration of territorial integrity, the return of refugees, security and status. The main reasons for the inconclusiveness of the Minsk Group process are as follows:

The refusal of the parties to compromise: Both sides found it difficult to compromise their basic positions. Armenia's continued occupation policy: The failure to vacate the occupied territories complicated the negotiations. Limited powers and influence of international mediators: Although the Minsk Group played an active role in the peace process, its ability to force the parties to agree was limited. Conflicting geopolitical interests in the region: The different positions and interests of the major powers in the region hindered the progress of the process.

As a result, the Minsk Group failed to resolve the conflict for many years, which ended with the military liberation of Azerbaijan's territories during the 2020 Patriotic War. The Place of the Principle of Territorial Integrity of the Republic of Azerbaijan in International Law.

The principle of territorial integrity of the Republic of Azerbaijan is recognized as a fundamental legal category in both national constitutional law and international law. This principle protects the inviolability and sovereignty of the state's borders. In international law, the principle of territorial integrity is reflected in the Statute of the Rule of Law of States, the UN Charter, and other fundamental documents of international law. In particular, Article 2, paragraph 4 of the UN Charter requires respect for the territorial integrity of all member states and refrains from the use of force. The internationally recognized borders and territorial integrity of Azerbaijan have been confirmed by the UN, including in relevant resolutions of the Security Council. These resolutions require the immediate evacuation of the occupied territories of Azerbaijan and emphasize full respect for the principle of territorial integrity of the country.

In the national legal system, the Constitution of Azerbaijan is the main document protecting the territorial integrity of the state. Article 14 of the Constitution declares the territorial integrity of the country to be inviolable and inviolable. Thus, the principle of territorial integrity of the Republic of Azerbaijan has a position as the cornerstone of the country's sovereignty and independence in both domestic law and international law. Respect for this principle is necessary to ensure peace and security in the region.

*IV. Victory and Restoration of Full Sovereignty*

Results of the 44-Day Patriotic War of 2020. The 44-day Patriotic War, which lasted from September to early November 2020, resulted in the liberation of the territories of Azerbaijan occupied by Armenia. This war created significant changes in both the political, military, and humanitarian spheres. The 44-day Patriotic War, which lasted from September to early November 2020, resulted in the liberation of the territories of Azerbaijan occupied by Armenia. This war created significant changes in both the political, military, and humanitarian spheres. Restoration of Territorial Integrity: The Azerbaijani army liberated strategic cities and villages, including Shusha, Hadrut, Fuzuli, Jabrayil, Zangilan, and Aghdam, from occupation. This allowed Azerbaijan to restore full sovereignty within its borders recognized under international law.

New Geopolitical Realities: As a result of the war, the balance of power in the South Caucasus changed, creating new opportunities for peace and security in the region. The trilateral statement of November 10, 2020, signed with Russian mediation, became the basis for stopping the war and ensuring peace in the region. With this statement, Russian peacekeeping forces were deployed in the region, and new control mechanisms were established to ensure Azerbaijan's sovereignty.

Impact on International Relations: Azerbaijan's victory changed the regional balance of power and reshaped the political influence of countries such as Turkey, Russia, and Iran in the region. Western states, however, patiently approached the conflict and supported the peace process. Azerbaijan's victory also emphasized the primacy of international law and the principle of respect for the territorial integrity of states.

Future Peace Processes: A new phase of negotiations has begun to consolidate peace in the region after the war. Rehabilitation and reintegration programs are being implemented in the territories liberated from occupation by Azerbaijan, and conditions are being created for the return of refugees and internally displaced persons to their homelands. At the same time, diplomatic efforts are increasing to normalize relations with Armenia and ensure lasting peace.

Humanitarian and Social Impacts: The war created conditions for the return of hundreds of thousands of refugees and internally displaced persons to their homelands. Extensive restoration and reconstruction work began in the liberated territories. These processes have a positive impact on the country's economic and social development.

Internal Political and Legal Strengthening: The victory strengthened Azerbaijan's national unity and provided an impetus for strengthening the legislative framework to protect the state's sovereignty. State institutions began work on managing the regions liberated from occupation and ensuring security.

*V. New regional realities after the victory*

Azerbaijan's strengthening position after the Karabakh war. The Second Karabakh war, which took place in the fall of 2020, was a strategic turning point for Azerbaijan. With the victory in this war, Baku significantly strengthened its position in the region and brought new political and security realities to the long-standing conflict zone [9, p. 256]. New regional realities create both opportunities and challenges for Azerbaijan. As a result of the victory, the expansion of the territories controlled by Azerbaijan, the development of transport and energy corridors, as well as the prospects for regional cooperation and integration became more accessible. At the same time, Azerbaijan's strategic relations with its fraternal Turkey were further strengthened, and Russia's role in the region changed to some extent [17, p. 52]. At the same time, the establishment of new security mechanisms in the region and the formation of a balance of power are at the heart of Azerbaijan's future policy. In this new environment, Baku is trying to implement its multi-vector foreign policy more flexibly and effectively.

New power parities in the Caucasus and Azerbaijan: the rise of a multipolar approach rather than a unipolar one. The power dynamics that emerged in the South Caucasus after the collapse of the Soviet Union were mainly based on Russian hegemony in a unipolar system. However, in the last two decades, with the increasing interests of numerous actors of global and regional powers in the region, the rise of a multipolar geopolitical model has been observed [33]. This new parity is characterized by the active participation of various actors in the South Caucasus, such as Turkey, Iran, the European Union, and the United States, in addition to Russia. Each power center applies different strategies to defend its interests, thereby forming a complex balance of power in the region [8, p. 54]. Azerbaijan, on the other hand, pursues a flexible and balanced policy in this multipolar environment, both cooperating with power centers and strengthening its role as regional leader and initiator. The country's unique strategic position and energy resources increase its importance in this multipolar system and make Azerbaijan one of the regulators of the balance of power [18, p. 80]. This approach also ensures Azerbaijan's active participation in regional cooperation formats, such as the Organization of Turkic-

Speaking States, GUAM and other platforms, and contributes to the transformation of the Caucasus into a more inclusive, balanced and stability-oriented geography. September 2023 Anti-Terrorist Measures and Elimination of Separatism.

In September 2023, the Azerbaijani state expanded anti-terrorist measures in order to strengthen its territorial integrity and sovereignty. These measures were characterized by taking serious steps regarding the activities of illegal military formations and separatist groups in the territories liberated from occupation. As a result of anti-terrorist operations, groups that hindered the country's security, public order, and the restoration of state power were neutralized and their activities were terminated. This process was assessed as an important step to fully ensure the territorial integrity of Azerbaijan. The elimination of separatist attempts was carried out on the basis of the laws of the Republic of Azerbaijan and the principles of international law. With these measures, the state ensured national unity, state sovereignty, and legality, and created a solid foundation for peace and stability in the region. These measures are also consistent with the international support of the principles of protecting the territorial integrity of the state enshrined in the Constitution of the Republic of Azerbaijan, and serve to protect the legal and political independence of the country. In September 2023, the Azerbaijani state carried out large-scale anti-terrorist operations to ensure security and strengthen sovereignty in the liberated territories. These measures were assessed as serious steps taken towards the elimination of illegal armed groups and separatist movements.

Legal Basis: The Constitution of the Republic of Azerbaijan, especially Article 14, defines the inviolability and protection of territorial integrity as a fundamental principle. Also, the principles of international law related to the protection of the sovereignty and territorial integrity of states are enshrined in the UN Charter and other international documents. Anti-terrorist measures carried out within the framework of this legal framework serve to protect the legitimate interests of the state.

International Reaction: Azerbaijan's anti-terrorist operations have been assessed by the international community as the right of a legal state to protect its sovereignty and territorial integrity. A number of international organizations and neighboring states have supported the measures taken by the Azerbaijani government to ensure legality and stability. At the same time, calls have been made for a peaceful resolution of the conflict and ensuring stability in the region.

Social and Economic Results: As a result of anti-terrorist measures, public order and security have been restored in the region. This is one of the important conditions for the continuation of restoration and reconstruction work in the liberated territories and the safe return of refugees and internally displaced persons to their homelands. The policy pursued by the state in this area strengthens national solidarity and creates conditions for ensuring lasting peace in the region.

Elimination of Separatism: Elimination of illegal separatist activities is a manifestation of the state's sovereign right enshrined in the domestic legal system of Azerbaijan and international law. These steps are of strategic importance in terms of ensuring the territorial integrity of the country and protecting national security.

*VI. Full Restoration of the State's De facto Sovereignty*

The state's de facto sovereignty means that it has the right to full governance and control over its territory within the framework of international law and domestic legislation. As a result of the Patriotic War of the Republic of Azerbaijan in 2020 and the anti-terrorist measures carried out in subsequent years, state power has been de facto restored in the occupied territories of the country. This restoration process includes, in addition to the legal confirmation of territorial integrity, the application of laws in those lands, the deployment of security forces, the organization of administrative management, and the reconstruction of socio-economic infrastructure. The full restoration of de facto sovereignty is a basic condition for ensuring the rights and freedoms of the state's citizens, protecting the rule of law, and ensuring national security. At the same time, the restoration of the state's de facto sovereignty must also be recognized and supported by the international community so that regional stability and peace are long-lasting. Azerbaijan has fully restored and strengthened its sovereignty in this direction, based on the norms of international law. The de facto sovereignty of the state is its right to full governance and control over its territory, which is one of the basic principles of international law and national legislation. As a result of the 44-day Patriotic War carried out by the Republic of Azerbaijan in 2020 and the anti-terrorist measures in September 2023, state power was de facto restored in the occupied territories.

Legal basis: Article 14 of the Constitution of the Republic of Azerbaijan guarantees the inviolability of the territorial integrity of the state, which constitutes the basis of the state's sovereignty. International law, in particular Article 2 of the UN Charter and Security Council resolutions 822, 853, 874 and 884, confirm the protection of the territorial integrity and sovereignty of Azerbaijan. These documents recognize the principle of respect for the sovereignty and territorial integrity of states as a fundamental principle of international law.

Practical examples: The restoration of de facto sovereignty in Azerbaijan is accompanied by the establishment of state administration in the territories liberated from occupation, the application of laws, the deployment of security agencies and the provision of citizens' rights and freedoms. For example, the raising of the Azerbaijani flag in the city of Shusha after 2020, the start of local administration and the reconstruction of social infrastructure are important indicators of the restoration of de facto sovereignty. The anti-terrorist operations carried out in September 2023 created conditions for the full implementation of the state's security and law enforcement functions in the region. These measures were an important step in terms of eliminating separatist groups and stopping illegal activities.

International recognition and stability: Strengthening de facto sovereignty is supported by the international community and Azerbaijan's efforts to ensure peace and stability within its territorial integrity are strengthened. This also creates the necessary conditions for long-term peace and cooperation in the region. Thus, the full restoration of the de facto sovereignty of the state is possible through the comprehensive implementation of legal, administrative and security measures, and Azerbaijan has achieved great success in this direction.

Karabakh in the Constitutional Context. Territorial Integrity Articles in the Constitution of the Republic of Azerbaijan. The Constitution of the Republic of Azerbaijan is the main legal guarantee of the sovereignty and territorial integrity of the state. Article 14 of the Constitution defines territorial integrity as an inviolable and immutable principle. According to this article, the territorial integrity and borders of the Republic of Azerbaijan are determined by law, and any changes can be made only through a referendum. At the same time, Article 3 of the Constitution establishes that the Republic of Azerbaijan is a sovereign, democratic, legal and secular state, which indicates the protection of territorial integrity as the main priority in the country's domestic and foreign policy. The Karabakh issue is recognized within the framework of these constitutional provisions as an integral part of the territorial integrity and sovereignty of the Republic of Azerbaijan. The Constitution of the state provides strong legal protection against the illegal occupation of any territory and separatist activities. Thus, the fact that the Karabakh region is an integral part of Azerbaijan and its sovereignty is legally confirmed by the immutable articles of the Constitution. This forms the basis of Azerbaijan's position both in domestic legislation and in international law.

Article 3. State sovereignty. "The Republic of Azerbaijan is a sovereign, democratic, legal and secular state". This article defines the principle of statehood of Azerbaijan and establishes that the state is sovereign in all areas, including in terms of territorial integrity.

Article 14. Territorial integrity of the Republic of Azerbaijan. "The territorial integrity and borders of the Republic of Azerbaijan are inviolable and unchangeable. The territorial integrity and borders of the Republic of Azerbaijan can be changed only by referendum".

This article indicates that the territorial integrity of the country is protected at the Constitutional level and that any territorial change is impossible only by the direct will of the people. These articles constitute the legal foundations of the statehood position of the Republic of Azerbaijan. The Karabakh issue is also protected as an integral part of the territorial integrity and sovereignty of Azerbaijan within this framework. The Constitution provides legal protection against any violation of the territorial integrity of the state and states that only the people have the authority to change the international borders of the country. These provisions play the role of the main legal basis for the protection of territorial integrity in the domestic legislation of Azerbaijan and in international law.

Article 11 of the Constitution Inviolability of the Territory of the State. "The territory of the Republic of Azerbaijan is integral and inviolable. The inviolability of the territorial integrity of the state is ensured". This article establishes that the territorial integrity and inviolability of the Azerbaijani state are guaranteed at the Constitutional level. According to the principle of territorial integrity, the borders of the state cannot be changed and no foreign or internal force can illegally interfere in its territory. The integrity and inviolability of the territory of the Republic of Azerbaijan is one of the main conditions for the sovereignty of the country. This article provides legal protection against the illegal occupation or division of any territory of the state and defines the protection of the territorial sovereignty of the state as a priority. This provision also acts as a legal basis against the violation of the territorial integrity of the state in the context of the Karabakh issue and supports the full sovereignty of Azerbaijan within its internationally recognized borders.

Article 12 of the Constitution yhe Supreme Goal of the State and the Guarantee of Citizens' Rights. "The supreme goal of the Republic of Azerbaijan is to ensure human rights and freedoms on its territory". This article establishes that the highest priority in the activities of the state is to ensure the protection of human rights and freedoms. The sovereignty and territorial integrity of the state are closely related to the protection of human rights; because for citizens to live in safe and peaceful conditions, it is important for the state to have full power in its territory. The article also shows that the main task of the state is to protect the rights of citizens and ensure their free lifestyle. This principle plays an important role in resolving human rights problems, especially those arising from conflict zones such as Karabakh. This article emphasizes the social and legal direction of the Constitution aimed at human rights and shows that the Azerbaijani state, while protecting its sovereignty and territorial integrity, bases its efforts on ensuring the rights and freedoms of citizens.

Article 109 of the Constitution Powers of the President and Security Policy. “The President of the Republic of Azerbaijan is the head of state, the supreme representative of state power and the supreme leader of the Republic of Azerbaijan”.

Among the powers of the President, the determination and implementation of the country's security policy occupies an important place. The President is the Supreme Commander-in-Chief of the Azerbaijani Armed Forces and is the person responsible for ensuring the national security of the state. This article confirms that the President has the highest executive authority in the Azerbaijani state. One of the main duties of the President is to manage the country's defense and security policy. These powers include ensuring national security, leading the army, as well as protecting the country's sovereignty and territorial integrity in foreign policy. These powers of the President, especially in the context of the Karabakh conflict, play a key role in restoring and protecting the territorial integrity of the Republic of Azerbaijan. The President's leadership of the national defense policy during the 2020 Patriotic War and the implementation of anti-terrorist measures in 2023 are practical expressions of these powers. This article legally substantiates the functions of the state leadership in the field of security and defense and emphasizes the central role of the President in protecting the sovereignty and national security of Azerbaijan.

*VII. Consolidation of the Liberation of Karabakh into the National Legal System*

As a result of the 44-day Patriotic War of 2020, the occupied Nagorno-Karabakh and surrounding regions of Azerbaijan were liberated. Strengthening the legal foundations of this historic victory in the national legal system is of great importance in terms of protecting the sovereignty and territorial integrity of the Azerbaijani state. The status and management regime of the liberated territories are regulated by the legislation of the Republic of Azerbaijan. The Constitution of the Republic of Azerbaijan (1995) ensures the inviolability of territorial integrity and the sovereignty of the state [7, p. 42]. In addition, the Law “On Ensuring the Territorial Integrity of the Republic of Azerbaijan” (2021) regulates the restoration of state power in the territories liberated from occupation and the application of laws there [22]. Within the framework of the national legal framework, the “State Program for the Socio-Economic Development of the Liberated Territories” (2021–2025) creates a legal and financial basis for the restoration and reintegration of these regions. This program covers social, infrastructure and cultural projects. In addition, the Law on Combating Terrorism (2015) and its subsequent amendments [24] have strengthened the legal mechanisms for ensuring security in the region and preventing separatist activities. Within the framework of international law, the sovereignty and territorial integrity of the Republic of Azerbaijan have been confirmed by UN Security Council Resolutions 822, 853, 874 and 884 [35]. These resolutions demand the immediate evacuation of the occupied territories and support Azerbaijan’s sovereignty. As a result, the liberation of Karabakh has been consolidated in the national legal system, both at the Constitutional level and through legislative acts, and has been harmonized with international legal norms.

Strengthening the State's Sovereignty and Security Assurance. As a result of the 44-day Patriotic War of 2020 and the September 2023 anti-terrorist measures, state power was fully restored within the internationally recognized borders of Azerbaijan. These events led to the full provision of the state's de facto sovereignty.

From a legal perspective, this victory ensured the practical implementation of the principle of territorial integrity (Article 11) enshrined in the Constitution of the Republic of Azerbaijan. The laws of the state began to be implemented in all territories liberated from occupation, and legal governance was fully restored. This also means the realization of the principle of sovereign equality of states, stipulated in Article 2 of the UN Charter.

From a geopolitical perspective, Azerbaijan's position in the region has been significantly strengthened. The country has become a strategic center both economically and in terms of energy and transport routes. A new balance of power has been formed in the South Caucasus, and Azerbaijan has consolidated its status as one of the main political players in the region. The military victory also increased Azerbaijan's role in the regional security architecture, deepening its alliance with Turkey. At the same time, this victory laid the foundation for redefining priorities in the country's national security concept and strengthening its defense capabilities in the long term.

As a result of the 44-day Patriotic War of 2020 and the September 2023 anti-terrorist measures, state power was fully restored within Azerbaijan's internationally recognized borders. These events significantly strengthened the country's position in international relations.

Strengthening Azerbaijan’s position in the international arena. From a legal perspective, Azerbaijan’s achievements were fully consistent with the fundamental principles of international law, in particular the principles of sovereign equality and territorial integrity of states enshrined in Article 2 of the UN Charter [32, p. 213]. UN Security Council Resolutions 822, 853, 874 and 884 also confirmed the need to evacuate the occupied territories and recognize the territorial integrity of Azerbaijan. The resolution of the conflict based on the norms of international law for Azerbaijan strengthened the country’s diplomatic legitimacy.

From a geopolitical perspective, Azerbaijan has strengthened its status as a major political, economic and military actor in the South Caucasus. Energy projects such as the Southern Gas Corridor, the Baku–Tbilisi–Ceyhan oil pipeline and the Baku–Tbilisi–Kars railway have transformed the country into a regional energy and transport hub [34]. At the same time, the strategic alliance with Turkey was elevated to the highest level with the Shusha Declaration, which strengthened coordination in the field of security and defense. In the international community, Azerbaijan is no longer perceived solely as an exporter of energy resources, but also as a regional security provider and one of the main pillars of stability in the South Caucasus. This status gives the country additional leverage in both diplomatic and economic spheres.

Azerbaijan’s mediation and initiative mission and participation in regional security initiatives. Against the backdrop of complex power dynamics and ethnic-national contradictions in the South Caucasus, Azerbaijan is actively implementing a mediation and initiative mission to ensure regional peace and stability. Baku plays an important role both in coordinating post-conflict recovery processes and in developing regional cooperation formats [18, p. 68]. In particular, after the 2020 war, Azerbaijan has been supporting the creation of new security mechanisms and improving existing ones on its own initiatives. In this context, Baku is actively participating in the establishment of joint control mechanisms with Russia, deepening military-strategic cooperation with Turkey, and expanding dialogue with international organizations [12, p. 48]. Azerbaijan’s mediation mission is manifested not only in conflict zones, but also in opening regional communication and transport corridors, ensuring the security of energy projects, and promoting dialogue between ethnic groups. This both strengthens the country’s position as a regional power and creates broad opportunities for cooperation with global actors. At the same time, Azerbaijan's participation in regional security initiatives underscores its importance as a guarantor of its multi-vector policy and strategic independence. Baku seeks to create important platforms for stability and development both in the Caucasus and in the wider Eastern Europe and Central Asia region [8, p. 53].

Strengthening the State's Sovereignty and Security Provision. As a result of the 44-day Patriotic War of 2020 and the September 2023 anti-terrorist measures, state power was fully restored within the internationally recognized borders of Azerbaijan. These events led to the provision of de facto sovereignty and the strengthening of the national security architecture. From a legal perspective, this victory ensured the real implementation of the principle of territorial integrity enshrined in Article 11 of the Constitution of the Republic of Azerbaijan (Constitution of the Republic of Azerbaijan, 1995). In addition, the results were based on the principle of sovereign equality and territorial integrity of states in accordance with Article 2 of the UN Charter [34].

From a security perspective, the state's national defense capability was increased, border control was fully restored, and separatist armed structures were liquidated. During the 2023 anti-terrorist measures, the Law of Azerbaijan "On Combating Terrorism" provided the legal basis for security measures in the liberated territories.

From a geopolitical perspective, Azerbaijan has become a leading security provider in the region. Military-strategic cooperation with Turkey was raised to a legal level through the Shusha Declaration, and mutual defense obligations were strengthened.

Socio-Economic Reintegration of Karabakh and a New Legal Governance Model After the 2020 Patriotic War and the 2023 anti-terrorist measures, the process of socio-economic reintegration in the Karabakh region has become one of the priority directions of Azerbaijani state policy. This process is being implemented in two main directions: Physical restoration and socio-economic development with the establishment of a new legal governance system. Socio-economic reintegration. Within the framework of the "Great Return" program, infrastructure (roads, railways, power lines, water supply) and the construction of new settlements are being carried out in the liberated territories [2]. These steps are aimed at ensuring the gradual return of former internally displaced persons to their homelands. At the same time, revitalizing the agricultural sector, developing tourism potential, and creating special economic zones increase economic activity.

New legal governance model. State governance in the region is organized entirely in accordance with the legislation of the Republic of Azerbaijan. New administrative structures Karabakh and East Zangezur economic regions were established by Presidential Decree dated July 7, 2021 [10]. Law enforcement agencies, the judiciary, local executive authorities and municipalities operate in accordance with the national legal framework. In addition, security measures have been strengthened and mine clearance operations have been intensively carried out during the reintegration phase to protect territorial integrity and sovereignty [1].

Legal and political implications. The implementation of the new governance model realizes both the principle of territorial integrity in Article 11 of the Constitution and the supreme goal of the state in Article 12. At the same time, the reintegration of the region is integrated into the national economic strategy of Azerbaijan and results in the restoration of a single legal space.

*VIII. Conclusion*

Legal, Political and Historical Significance of the Victory. The 44-day Patriotic War of 2020 and the September 2023 anti-terrorist measures were a turning point in the modern history of the Republic of Azerbaijan. The significance of this victory can be assessed in three main dimensions: Legal significance. The results achieved are fully consistent with the principles of territorial integrity of international law and have ensured the real implementation of the provisions of the Constitution of Azerbaijan, such as the inviolability of the state territory, sovereignty and national security. The restoration of de facto state control has eliminated legal gaps and created conditions for the full implementation of a single legal space.

Political significance. The victory has strengthened the positions of the Azerbaijani state in the international arena, raised regional cooperation and alliance relations (especially with Turkey) to a strategic level. This event has also been a factor in strengthening the country's internal political stability and civil solidarity.

Historical significance. The liberation of Karabakh has changed the geopolitical realities that have been formed in the region for centuries and has become a source of eternal pride in national memory. This event is considered one of the most important stages in the history of independence of the Azerbaijani people and will be an important part of the statehood heritage for future generations.

Thus, the complete liberation of Karabakh and the restoration of sovereignty are not only a military victory, but also a multidimensional event such as the restoration of legal legitimacy, political solidity and historical justice.

Impact of Full Sovereignty on Future Generations - the restoration of full sovereignty of Azerbaijan in Karabakh has profound and multifaceted implications not only for the present period, but also for future generations.

Firstly, this victory and the guarantee of sovereignty are invaluable in terms of preserving historical memory. Future generations will know and be proud of their belonging to their native lands, the inviolability of their national identity and culture.

Secondly, the strengthening of statehood traditions and the continuity of state-building are ensured. The restoration of sovereignty creates the basis for instilling in the younger generation a spirit of loyalty to the state, patriotism and national solidarity [21, p. 300].

Third, the formation of a stable political and economic environment ensures the attraction of investments for the future and the increase of social welfare. This also expands the opportunities for education, labor and development of young people [26, p. 145].

Finally, the existence of full sovereignty makes Azerbaijan an even stronger actor in the regional and international arena, ensures the security and development prospects of future generations [14, p. 313]. Thus, the full liberation of Karabakh creates an important guarantee for the safe and prosperous life not only of today, but also of future generations.

Assessment of the Liberation of Karabakh as a Triumph of Constitutional Law. The liberation of Karabakh is assessed as both a moral and legal triumph of the Constitutional law of the Republic of Azerbaijan. This event is a triumphant confirmation of the principles of sovereignty and territorial integrity of the state in real life, a magnificent indicator of the practical implementation of the provisions of the Constitution.

First of all, Article 11 of the Constitution of Azerbaijan clearly states the inviolability of the state territory, and Article 12 clearly states that the supreme goal of the state is the guarantee of national sovereignty and civil rights. The liberation of Karabakh acts as the implementation of these provisions in the military, political and legal spheres.

Secondly, constitutional law forms the basis of the state's domestic and foreign policy. The return of Karabakh is not only a triumph of this law, but also demonstrates the strength of Azerbaijan's state institutions and the rule of law [15, p. 192].

Finally, this victory is a key stage in ensuring the principles of the Azerbaijani Constitution of a civilized state of law, a democratic society and the guarantee of human rights. The liberation of Karabakh is a triumph of the unity and power of the national legal system.

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# FROM DEMOLISHED HOMES TO NEW LEGAL REALITIES

**Gumru Eyvazova**•

**Abstract**

*This article provides an in-depth examination of the legal framework surrounding the demolition of residential buildings within the broader context of urban development and renewal projects in Azerbaijan. As the country undergoes rapid modernization and large-scale infrastructural transformation, particularly in major urban centers such as Baku, the demolition of existing housing stock has raised numerous legal and human rights concerns. The article investigates these issues through a comprehensive analysis grounded in the Constitution of the Republic of Azerbaijan, decisions of the Constitutional Court, and relevant domestic legislation, supplemented by comparative insights from international legal standards and best practices. A central focus of the study is the principle of adequate compensation for displaced residents, which remains a contentious issue in many cases. The article critically evaluates whether current legal mechanisms and administrative practices align with constitutional guarantees and the evolving doctrine of property rights. The legality of executive demolition orders-often issued without full judicial oversight or sufficient procedural safeguards - is also examined, raising questions about administrative discretion, transparency, and the rule of law. Furthermore, the paper addresses the interpretive challenges associated with the term "public interest", which is frequently invoked to justify redevelopment efforts, yet lacks a consistent legal definition. In addition, the article highlights key judicial trends emerging from national court decisions, including the approach of the Supreme Court and the Constitutional Court in balancing state development goals with the rights of individual property owners. It also explores the growing role of alternative dispute resolution mechanisms, particularly mediation, as a means of achieving more equitable and consensual outcomes in redevelopment-related conflicts. The paper concludes by emphasizing the need to strengthen legal awareness among citizens and to adopt a rights-based approach to urban planning. It advocates for a more coherent and transparent legal framework that upholds constitutional principles, ensures fair compensation, and protects the dignity and rights of individuals affected by demolition and resettlement. Ultimately, the article calls for a legal model that harmonizes the imperatives of urban development with the foundational values of justice, legality, and human rights.*

***Keywords:*** *demolition, property rights, adequate compensation, public interest, judicial practice, mediation, legal awareness.*

*I. Introduction*

Over the past decade, Azerbaijan has undertaken ambitious programs of urban redevelopment and infrastructure modernization, particularly in Baku and other major cities. These initiatives are aimed at revitalizing urban landscapes, replacing deteriorating residential buildings, and creating more modern and efficient housing environments in line with contemporary urban planning standards. The legal foundation for these efforts is rooted in the Constitution of the Republic of Azerbaijan, which guarantees the right to property while simultaneously allowing for its restriction in cases of public necessity, provided that fair and adequate compensation is offered. Additionally, various laws and presidential decrees regulate the procedural aspects of urban development and construction activity.

Despite this seemingly solid normative framework, the actual implementation of demolition and redevelopment projects has raised a wide range of complex legal and social issues. While the state and private developers justify these projects on the grounds of public

• Member of the Bar Association of the Republic of Azerbaijan, e-mail: gumru.e@gmail.com

benefit, many affected residents have experienced the process as disruptive, opaque, and inequitable. In numerous cases, demolition has proceeded without the genuine and informed consent of property owners, and consent procedures have been reduced to formalities rather than meaningful negotiations. Moreover, demolition orders have sometimes been issued in the absence of clear legal justification, raising concerns about abuse of administrative discretion and violations of the principles of legality and due process.

One of the most pressing concerns relates to the inadequacy of compensation mechanisms. Although the law mandates fair compensation, in practice, residents are often offered replacement housing or monetary payments that do not reflect the actual market value of their property or the loss of their social and environmental living conditions. This has led to a growing number of legal disputes, where citizens challenge the legality of demolition decisions and the sufficiency of compensation before national courts.

In light of these developments, this article undertakes a detailed examination of the legal challenges associated with the demolition of residential buildings in Azerbaijan, with particular emphasis on judicial interpretations, constitutional guarantees, and the evolving standards of adequate compensation. Drawing on key decisions of the Supreme Court and the Constitutional Court, the article analyzes the criteria used to evaluate legality and fairness in such cases and assesses how these principles are applied in practice. The discussion also explores the interplay between domestic legal norms and international human rights standards, such as those embodied in the European Convention on Human Rights, to which Azerbaijan is a party.

Ultimately, this article aims to contribute to the growing academic and professional discourse on the need for legally robust, transparent, and socially responsible urban redevelopment mechanisms that respect the fundamental rights of citizens while enabling necessary modernization. By identifying gaps and inconsistencies in current practice, and offering comparative perspectives, the article seeks to inform both policymakers and legal practitioners in their efforts to reconcile public development goals with constitutional justice.

In recent years, large-scale urban redevelopment and modernization projects in Baku and other major cities of Azerbaijan have led to the demolition of many outdated residential areas. Although this process is grounded in the Constitution and other legal acts, its practical implementation often gives rise to serious legal challenges. These include the disregard for residents' consent, demolition orders issued without legal basis, superficial consent procedures, and inadequate compensation mechanisms. This article analyzes specific court decisions and their legal implications, contextualizing them within constitutional norms and the positions of the Supreme Court and Constitutional Court.

*II. Protection of Property Rights in the Constitution and Normative Legal Acts*

Article 29 of the Constitution of the Republic of Azerbaijan guarantees the right to property. This right may only be restricted for state or public needs and only upon the payment of fair compensation in advance [9].

In the Decision of the Plenum of the Constitutional Court dated 16 December 2011 "On the Interpretation of Articles 107-2.1 and 107-5.1 of the Civil Code of the Republic of Azerbaijan" clarified that public need must be based on legal grounds and justified by legality rather than expediency [1]. State intervention must be necessary and proportionate in accordance with the principle of inviolability of property rights.

Additionally, the Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated March 4, 2015, on the verification of the compliance of the decision of the Civil Chamber of the Supreme Court of the Republic of Azerbaijan dated

July 16, 2014, with the Constitution and laws of the Republic of Azerbaijan stated that compensation mechanisms must not only reimburse actual losses but also provide for equivalent living conditions [5].

*III. Compensation Practices in Judicial Cases/ Legal Basis of Executive Orders and Administrative Oversight*

In recent judicial practice, disputes between residents and construction companies have emerged in various districts of Baku. In cases where residents refused to give consent, courts issued decisions to terminate their property rights and offer alternative housing. Typically, the proposed apartments exceeded the original floor area by 20%, and companies committed to covering temporary rental costs. In most cases, courts upheld that the construction companies had complied with all legal procedures and had provided lawful compensation. Notably, the courts increasingly interpret "fair compensation" not only as market value but also in terms of improved living conditions.

Executive orders issued by the Baku City Executive Authority granted construction companies permission to demolish hazardous buildings and build new residential complexes. However, some residents challenged these orders in administrative court, arguing they were illegal. The court found that residents must be informed about such decisions, their written consent obtained, and such documents must carry legal validity. Actions taken without consent and the deliberate deterioration of living conditions were deemed rights violations. These rulings underscore the need for administrative decisions to be legally grounded and for individual rights to be respected.

*IV. International Law and the Principle of Adequate Compensation/ Alternative Dispute Resolution and Mediation*

The European Court of Human Rights has consistently emphasized that compensation for interference with property rights must strike a fair balance between the demands of the general interest and the protection of individual rights. In Sporrong and Lönnroth v. Sweden (1982), the Court held that prolonged restrictions on the owners' ability to use and dispose of their property, without adequate compensation or effective remedies, imposed an excessive burden on the applicants and violated Article 1 of Protocol No. 1 to the European Convention on Human Rights. The judgment established that state measures affecting property must maintain a reasonable proportionality between the public interest pursued and the impact on the individual [2].

Similarly, in James and Others v. the United Kingdom (1986), the Court recognized that states enjoy a wide margin of appreciation in implementing social and economic policies, including property reforms. However, it stressed that compensation is a material factor in determining whether a fair balance has been achieved. Although full market-value compensation is not required in every circumstance, the amount of compensation must be reasonably related to the value of the property and must not impose a disproportionate and excessive burden on the affected owners. These judgments have become leading authorities in establishing that lawful deprivation or restriction of property rights requires not only a legitimate public purpose but also adequate and proportionate compensation [3].

It was stated in the decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated 31 May 2020 on the verification of the compliance of the decision of the Civil Chamber of the Supreme Court of the Republic of Azerbaijan dated 11 October 2019, issued in connection with the complaint of the "Fortis-Bayıl" Housing Construction

Cooperative, with the Constitution and laws of the Republic of Azerbaijan that demolition without agreement is permissible only in exceptional public danger situations [4].

Compensation must be equal or superior not only in square footage but also in terms of living conditions. This reflects a socially-oriented interpretation of property law, which Azerbaijani courts increasingly adopt.

*V. Alternative Dispute Resolution and Mediation/Legal Awareness and Preventing Social Discontent*

Disputes between residents and construction companies can often be resolved without litigation. In this context, mediation is an efficient and mutually agreeable mechanism. According to the Law on Mediation of the Republic of Azerbaijan, parties may voluntarily enter into the process and resolve disputes more quickly and at lower cost. In property disputes, mediation is crucial to avoiding social tensions. Agreements on alternative housing or compensation that are notarized and confirmed through mediation acquire legal force [6]. This practice is successfully implemented in several European countries and helps reduce court caseloads.

One of the main reasons for disputes over demolition projects is the lack of legal awareness among the population. Citizens often sign formal agreements and consent letters without understanding the legal consequences. Therefore, prior to initiating demolition projects, public awareness campaigns, legal consultation services, and public hearings must be organized. Executive authorities must conduct public surveys and address concerns in advance. Otherwise, forced execution and legal disputes will increase social dissatisfaction, eroding trust in government and weakening the rule of law.

*VI. Protection of Vulnerable Social Groups*

Demolition processes have more severe consequences for vulnerable groups such as people with disabilities, pensioners, single mothers, and low-income families. For these groups, differentiated legal mechanisms should be applied, including:

- Additional compensation packages,
- Priority access to alternative housing,
- Extended rental assistance periods,
- Legal and psychological support.

This approach aligns with the principle of social justice, which demands equitable-not merely equal-treatment.

*VII. Role of Local Self-Government and Public Consensus*

Demolition decisions are often made solely by executive authorities and construction companies. However, according to Article 3 of the Law on the Status of Municipalities, municipalities must participate in decisions affecting local living conditions [8]. This would help reduce conflicts and foster community initiative and accountability. Additionally, the European Charter of Local Self-Government emphasizes the principle of public participation in territorial governance. To implement this in Azerbaijan, legislation must require municipal opinions, public hearings, and community surveys.

*VIII. Differentiating State Need from Private Agreements.*

Demolition is often justified by reference to “state need” or “public interest”, but in many cases, projects are driven by private commercial aims. In such instances, it is critical to examine the legality and legitimacy of executive orders. There should be clear legal distinctions between:

- Projects undertaken in the name of state/public interest,
- Projects driven by private agreements.

Each must follow different compensation, consent, and dispute resolution procedures, which must be clearly defined in law.

*IX. Role of Expert Opinions in Courts*

In disputes concerning the demolition of residential property and the adequacy of compensation offered to affected residents, one of the most crucial issues is the valuation of property and the determination of whether the replacement housing or monetary compensation provided is truly equivalent. In judicial practice in Azerbaijan, expert opinions serve as a central evidentiary element, particularly in civil and administrative cases where courts often rely heavily on the findings and conclusions of appointed experts to assess the value of real estate assets, construction quality, and comparable living conditions.

However, concerns persist regarding the objectivity, impartiality, and methodological soundness of some expert evaluations. There have been cases where expert conclusions either failed to consider essential socioeconomic factors or lacked justification based on current market data and legal standards. In some instances, courts have accepted such opinions without sufficient scrutiny, leading to outcomes that may undermine the principle of fair and adequate compensation enshrined in Article 29 of the Constitution of the Republic of Azerbaijan and affirmed in numerous rulings of the Constitutional Court [9].

To ensure that expert assessments genuinely reflect the realities of property values and residents' living conditions, the following institutional and procedural improvements are necessary: experts must be selected from a certified national registry recognized by the relevant governmental authority, such as the Ministry of Justice or the State Committee on Property Issues. This registry should include only individuals who have met defined educational, professional, and ethical standards, and whose activities are subject to ongoing quality monitoring and disciplinary oversight.

Parties to the dispute should be granted the right to challenge an expert opinion and request a second, independent evaluation, especially where credible evidence suggests bias, error, or incompleteness. This is in line with the principles of adversarial proceedings and procedural equality under the Civil Procedure Code of the Republic of Azerbaijan.

The methodology of valuation must extend beyond mere technical and architectural indicators, such as square footage, floor level, and construction materials. It should also consider social and environmental factors, including access to infrastructure, proximity to public services (schools, hospitals, transportation), safety conditions, and the continuity of community ties. These factors are essential in maintaining residents' standard of living and should be reflected in compensation.

Courts should be encouraged to subject expert opinions to critical legal and factual assessment, rather than treating them as conclusive. Judges must have the competence and discretion to reject poorly substantiated opinions and, where necessary, appoint new experts or seek clarification.

In especially sensitive or large-scale demolition cases, a panel of multidisciplinary experts (e.g., real estate appraisers, economists, sociologists, and urban planners) could be engaged to ensure a more comprehensive and balanced evaluation.

Ultimately, the effective use of expert opinions in the Azerbaijani legal system must align with the principle of justice and legal certainty, as well as the right to property and effective remedy, as guaranteed by both national law and international human rights obligations to which Azerbaijan is a party. By improving the standards, transparency, and accountability of expert testimony, courts can better protect the rights of citizens affected by demolition and ensure that compensation awards reflect both legal fairness and social reality.

*X. Role of Media and Public Opinion, Role of Civil Society*

Beyond legal aspects, public opinion and media influence are significant in shaping the narrative around demolition. Information disseminated through TV, social media, and news portals often distorts legal realities and misleads citizens. Media coverage must adhere to legal accuracy, balanced reporting, and citation of independent sources. Government institutions and the Bar Association should collaborate with media outlets to organize legal awareness campaigns for the public.

Public oversight is a critical component of the rule of law during demolition and redevelopment. Oversight can be exercised by: human rights organizations; civil society coalitions; independent journalists and lawyers.

Monitoring efforts, documentation of rights violations, and preparation of reports and surveys are essential to ensuring transparency. Mechanisms under the Law on Public Participation should be improved to institutionalize this oversight [7].

*XI. Conclusion and Recommendations*

An analysis of existing legislation and judicial practice reveals that, although the demolition of residential properties in Azerbaijan is subject to legal regulation, significant practical gaps, ambiguities, and risks persist. These shortcomings are particularly evident in areas such as the definition of public interest, the determination and provision of adequate compensation, the transparency of decision-making processes, and the protection of vulnerable populations affected by redevelopment initiatives. The lack of uniform standards and enforcement mechanisms leads to inconsistencies in judicial outcomes and undermines public trust in legal and administrative institutions.

In order to address these challenges and enhance the legal framework governing demolition and urban renewal processes, the following recommendations are proposed: adoption of a dedicated Law on Demolition and Compensation, which would clearly define procedures, standards, and rights related to the forced eviction of residents and redevelopment of property; establishment of mandatory financial guarantees and liability insurance for developers to ensure the fulfillment of obligations toward affected residents and the mitigation of potential social harms; requirement for formal written agreements with residents, to be executed and certified by a notary, thereby ensuring informed consent and legal protection; mandatory economic and social expert evaluations in court proceedings to assess the adequacy of proposed compensation, taking into account not only market value but also social, psychological, and environmental factors; institutionalization of public hearings and legal awareness campaigns as a prerequisite for each demolition project, to ensure transparency, community participation, and alignment with principles of democratic governance.

Furthermore, it is essential to strengthen the capacity of the judiciary to apply constitutional and human rights norms in property-related disputes. Courts must play an active role in balancing the legitimate interests of the state with the individual rights of citizens, particularly the right to private property, the right to housing, and the right to a fair hearing.

*XII. Conclusion*

In conclusion, while the Constitution of the Republic of Azerbaijan and the Supreme and Constitutional Courts have consistently reaffirmed the principles of property inviolability and the right to adequate compensation, these guarantees must be translated into real and enforceable protections. Achieving this objective requires not only legislative reform, but also the development of robust implementation mechanisms, increased transparency in administrative procedures, and the active involvement of civil society institutions. Only through a comprehensive and inclusive approach can Azerbaijan ensure that its urban development policies respect fundamental human rights, foster social justice, and promote sustainable and equitable urban transformation.

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# EXISTENTIAL CRISIS AND ITS IMPACT ON LEGAL CONSCIOUSNESS AMONG UNIVERSITY STUDENTS: A CASE STUDY AT YERSIN UNIVERSITY OF DA LAT

**Son Chau*, Tam Tran**, Tam Le***, Khoa Pham****, Quy Tran*******

**Abstract**

*Existential crisis is a psychological state characterized by feelings of disorientation, self-doubt, and confusion regarding the meaning of life. This study investigates the prevalence of existential crisis among university students and examines associated factors, including anxiety, depression, self-awareness, living conditions, and psychosocial determinants. Data were collected from 321 students aged 18-22 at Yersin University of Da Lat using standardized questionnaires and analyzed through descriptive statistics, Pearson correlations, multiple linear regression, ANOVA, and Chi-Square tests. Findings revealed a high level of existential crisis among students, accompanied by active efforts to search for meaning in life. Anxiety and depression were significantly correlated with existential crisis, with depression emerging as a strong predictor. Physical and mental health conditions also demonstrated notable influence, highlighting the interplay between psychological vulnerability and protective factors such as self-awareness and meaning-making. This study contributes to a deeper understanding of existential crisis in the Vietnamese higher education context and provides practical implications for school-based psychological support programs and policy development aimed at promoting mental health and resilience among students.*

***Keywords:*** *Existential crisis, university students, meaning in life, academic stress, and social support.*

## *I. Introduction*

The university period is a complex stage of transition into adulthood, during which young people face academic pressures, social expectations, and existential questions about their identity and future. In many cases, this leads to a state of disorientation, doubt, and inner emptiness-commonly referred to as an existential crisis. This phenomenon is not only a widespread psychological experience but also a mental health issue that requires appropriate attention in higher education settings.

According to Viktor [1], the human drive to find meaning is the primary motivating force of existence. When meaning is not found, existential emptiness arises, manifested through anxiety, reduced motivation, and social maladjustment [1]. Yalom (1980) identifies four unavoidable realities at the core of the existential crisis: death, isolation, freedom, and meaninglessness. These theories laid the groundwork for modern research in existential psychology [9].

In recent years, international studies have significantly expanded the understanding of existential crises among students. Tomaszek and Muchacka-Cymerman (2022) noted that existential anxiety serves as a mediating factor between academic burnout and symptoms of post-traumatic stress disorder among students [8]. Lopez-Tiu (2025) conducted a qualitative

* Yersin University, Da Lat

** Vietnam Women's Academy, Ho Chi Minh City Branch

*** Vietnam Women's Academy, Ho Chi Minh City Branch

**** Yersin University, Da Lat

***** Yersin University, Da Lat

study on students' existential experiences, demonstrating that a lack of life meaning can lead to feelings of isolation and the loss of social connections [3]. In Asia, Roy and colleagues (2025) found that students with low academic performance often experience existential crises in the form of anxiety related to death, career, and personal destiny [5].

In Vietnam, research by Do Hoang Phúc (2024) was the first to clarify the characteristics of existential crises among students, particularly during transitional periods - such as the first year of university or just before graduation [4]. However, most domestic studies remain descriptive and have not yet deeply analyzed the relationship between existential crisis and protective factors, such as meaning in life and social support, or risk factors like academic stress. Furthermore, to date, no studies have focused specifically on students at regional universities, such as Yersin University in Dalat, which possess unique cultural, social, and academic characteristics.

Based on these theoretical and empirical gaps, the present study aims to address the following research question: "How is the level of existential crisis among students at Yersin University in Dalat associated with their perception of life meaning, levels of academic stress, and social support?"

*II. Methodology*

This study employed a quantitative descriptive-correlational design. The purpose of this approach was both to examine the level and characteristics of existential crisis in the selected group of students and to analyze and test the hypothesized relationships between existential crisis and subjective factors (e.g., meaning in life) as well as objective factors (such as academic stress and social support). The use of a quantitative method ensured objectivity, allowed for the generalization of findings, and enabled a systematic test of the research hypotheses.

*2.1. Sample and Selection Procedure*

• Study sample: The initial sample consisted of 350 students randomly selected from various faculties at Yersin University in Dalat, to ensure representativeness in terms of gender, field of study, and year of enrollment.

• Data collection: The survey was conducted from August to October 2025. After reviewing the questionnaires for completeness and accuracy, 321 valid responses were included in the final dataset for analysis.

*2.2. Measurement Instruments*

The study employed standardized scales that have been validated and tested for reliability in previous research:

1. Meaning in Life Questionnaire (MLQ): Developed by Steger, this scale measures two dimensions of life meaning: presence (the perceived significance of one's life) and search (the effort to find meaning) [7].

2. Patient Health Questionnaire-9 (PHQ-9): A 9-item instrument designed to screen and assess the level of depressive symptoms experienced by participants over the past two weeks [2].

3. Generalized Anxiety Disorder-7 (GAD-7): A 7-item scale for assessing the severity of generalized anxiety based on DSM-IV diagnostic criteria [6].

*2.3. Data Analysis Methods*

All data were processed using SPSS version 26.0. The data processing procedure included data cleaning, reliability testing of the scales (using Cronbach's alpha), and verification of necessary statistical assumptions. The main statistical methods included:

• Descriptive statistics (frequencies, mean, SD): To describe the demographic characteristics of the sample (Table 1) and to assess the level of existential crisis (Table 2).

• Pearson correlation analysis (r): To examine positive/negative relationships between existential crisis and subjective factors (Table 3), as well as anxiety and depression (Table 6).

• Multiple linear regression (Beta, p-value): To determine the predictive power of independent variables (self-awareness, depression, anxiety) in relation to the dependent variable-existential crisis (Tables 4 and 7).

• ANOVA and chi-square tests (F, p-value): To compare differences in the level of existential crisis across different groups (e.g., by year of study, expenditure level, physical health) and to identify psychosocial factors (Tables 5 and 8).

*2.4. Ethical Considerations*

The study strictly adhered to ethical principles of social research. All students participated voluntarily, and the confidentiality of personal information was fully ensured.

*III. Research results*

A total of 321 students from Yersin University participated in the properly conducted survey for this study.

Table 1. Characteristics of the Survey Sample

| Variable | Category | Frequency (N) | Percentage (%) |
|---|---|---|---|
| Gender | Male | 116 | 36,1 |
| | Female | 205 | 63,9 |
| Year of Study | 1st year | 76 | 23,7 |
| | 2nd year | 128 | 39,9 |
| | 3rd year | 97 | 30,2 |
| | 4th year and above | 20 | 6,2 |
| Age (Year of Birth) | 2007 | 112 | 34,9 |
| | 2006 | 68 | 21,2 |
| | 2005 | 62 | 19,3 |
| | 2004 and earlier | 79 | 24,6 |
| Living Arrangement | Lives alone | 113 | 35,2 |
| | Lives with friends | 108 | 33,6 |
| | Lives with family | 100 | 31,2 |
| Income | Less than 3 million | 96 | 29,9 |
| | 3–5 million | 101 | 31,5 |
| | 5–10 million | 80 | 24,9 |
| | More than 10 million | 44 | 13,7 |
| Birth order in Family | Eldest child | 101 | 31,5 |
| | Only child | 97 | 30,2 |
| | Youngest child | 66 | 20,6 |
| | Middle child | 57 | 17,7 |

The survey sample showed that women comprised the majority (63.9%), reflecting a gender imbalance that needs to be considered during analysis. First- and second-year students accounted for nearly 64% of the sample, primarily aged 18-20, corresponding to the “emerging adulthood” phase - a period associated with the highest risk of experiencing an existential crisis.

The most common living arrangements were living alone (35.2%) or with friends (33.6%), reflecting a tendency toward independence. The majority of students reported monthly expenses below 5 million VND (61.4%), indicating economic differences that could influence psychological well-being. High proportions of older siblings (31.5%) and only children (30.2%) suggest a possible relationship between family position, expectations, and perceived responsibilities.

Overall, the research sample is focused on a group of young students in the process of forming personal identity and life orientations. Factors such as gender, year of study, living arrangements, level of expenditures, and birth order may impact existential crisis and require deeper analysis to ensure reliability and the generalizability of findings.

*3.1. High level of existential crisis among students*

The hypothesis proposed is that students at Yersin University in Dalat exhibit a high level of existential crisis experience.

Table 2. Students' Experience of Existential Crisis

| Measured Variable | N | Mean | Std. Deviation | T-Test | P-value | Cohen's d |
|---|---|---|---|---|---|---|
| Experience of crisis | 321 | 4,51 | 1,13 | 8,12 | < 0.001 | 0,45 |
| Search for meaning in life | 321 | 4,83 | 1,13 | 13,23 | < 0.001 | 0,74 |

The results indicated that students experience a high level of existential crisis while simultaneously actively seeking meaning in life as a coping mechanism.

This finding aligns with the theories of Yalom (1980) and [1], which emphasize that existential crisis arises as a response to life's realities, such as death, isolation, and meaninglessness, with the search for life meaning serving as a motivating factor to overcome the crisis. The results also support Arnett's (2000) concept of "emerging adulthood", showing that students aged 18-25 are susceptible to instability regarding life values and future orientation.

The hypothesis is therefore accepted. These findings provide an important basis for developing psychological support programs in educational institutions, tailored to the developmental characteristics of students.

*3.2. Subjective factors associated with existential crisis*

The hypothesis is that subjective factors, such as self-awareness, adaptability, and the level of search for meaning in life are closely associated with the level of existential crisis among students.

Table 3. Pearson correlation between subjective factors and existential crisis

| Variable | r | p-value |
|---|---|---|
| Self-awareness ⇔ Existential crisis | -0,39 | < 0.001 |
| Search for meaning in life ⇔ Existential crisis | -0,19 | < 0.001 |

Both subjective factors - self-awareness and the search for meaning in life show a negative correlation with existential crisis, with the influence of self-awareness being stronger than that of the search for meaning. This suggests that enhancing self-awareness may be a key factor in reducing the level of existential crisis among the studied student group.

Table 4. Multiple linear regression of subjective factors related to existential crisis

| Independent variables | β(Beta) | p-value | Ý nghĩa |
|---|---|---|---|
| Self-awareness | -0,12 | <0,001 | Có |

| | | | |
|---|---|---|---|
| Search for meaning in life | 0,001 | <0,001 | Không |

Self-awareness clearly plays a protective role against existential crisis, whereas the search for meaning in life does not show a direct effect in the linear regression model.

This finding aligns with the existential theories of Yalom (1980) and [1], which posit that a crisis arises when an individual has not defined life values and personal identity. Self-awareness helps individuals better understand themselves, thereby reducing existential anxiety. Although a negative correlation exists, the search for meaning in life does not exert a direct effect, suggesting a potential mediating or indirect role. Further investigation using more advanced analytical models, such as Structural Equation Modeling (SEM), is warranted.

The hypothesis is therefore supported: self-awareness is closely related to existential crisis, whereas the role of the search for meaning in life requires further exploration to determine its regulatory or mediating function.

*3.3. Objective factors influencing existential crisis*

It is hypothesized that objective factors - such as academic pressure, value conflicts, personal life events, living environment, and support from educational institutions and society - have a significant impact on the development and maintenance of existential crisis.

Table 5. Objective factors affecting existential crisis

| Factor | F | P-value | Conclusion |
|---|---|---|---|
| Living environment | 2,09 | 0,125 | No Effect |
| Part-time job | 0,40 | 0,525 | No Effect |
| Daily expenses | 3,30 | 0,021 | Has an Effect |
| Physical health | 7,66 | <0,001 | Has an Effect |
| Year of study | 7,80 | <0,001 | Has an Effect |

The results reveal statistically significant differences between groups, reflecting the practical influence of living conditions, physical health, and year of study on existential crisis.

This finding is consistent with previous research on the impact of academic environment and living conditions on mental health. The initial stage of university education represents a period of heightened risk for crisis due to instability in environment, finances, and personal identity.

Physical health serves as a fundamental factor in coping with stress. High levels of expenditures may reflect financial pressure or social expectations, contributing to anxiety and depression. First-year students often have not yet adapted and are more susceptible to crisis. The hypothesis is partially supported: physical health, expenditure level, and year of study have a significant impact, whereas living arrangements and part-time work show no clear effect. These results underscore the need to focus on personal development factors and living conditions in student psychological support programs.

*3.4. Relationship between existential crisis, anxiety, and depression*

The hypothesis is that there is a direct positive relationship between the degree of existential crisis and the levels of anxiety and depression among students.

Table 6. Pearson correlation between existential crisis, anxiety, and depression

| Variable | r | P-value |
|---|---|---|
| Existential crisis ⇔ Existential crisis | 0,193 | <0,001 |
| Depression ⇔ Existential crisis | 0,252 | < 0,001 |

Both variables show a statistically significant positive correlation, indicating that as levels of anxiety or depression increase, the level of existential crisis also rises.

Table 7. Linear regression of the relationship between existential crisis, anxiety, and depression

| Independent variables | β(Beta) | p-value | Ý nghĩa |
|---|---|---|---|
| Anxiety | 0,049 | 0,494 | Không |
| Depression | 0,220 | 0,002 | Có |

Although both anxiety and depression are correlated with existential crisis, only depression emerges as a statistically significant predictor in the regression model. This indicates that depression has a deeper connection with existential crisis, consistent with existential theory regarding the loss of life meaning and prolonged feelings of emptiness. Anxiety, on the other hand, may be a temporary or adaptive response, insufficiently strong to predict crisis at a deeper level. Consequently, depression should be a priority target for intervention in student support programs. The hypothesis is partially supported: while both anxiety and depression are associated with existential crisis, only depression plays a clear predictive role, confirming its key significance in students' experience of crisis at the university.

*3.5. Other factors influencing existential crisis*

The hypothesis is that various factors, such as academic pressure, loss of loved ones, conflicts between personal and social values, lack of psychological support in the environment, and others have differing impacts on the level of existential crisis among students.

Table 8. Factors contributing to existential crisis

| Causes | Percentage (%) | Chi-square | p-value |
|---|---|---|---|
| Loss of loved ones / personal life events | 71,3 | 30,53 | <0,001 |
| Conflicts between personal and social values | 70,1 | 58,47 | <0,001 |
| Environment with insufficient psychological support | 69,8 | 50,25 | <0,001 |
| Periods of significant transitions | 65,7 | 31,77 | <0,001 |
| Prolonged academic / work-related pressure | 65,4 | 51,84 | <0,001 |
| Material factors (economic, etc.) | 4,7 | 263,80 | <0,001 |

Chi-Square analysis revealed that all groups of factors were highly statistically significant ($p < 0.001$), indicating a genuine trend rather than random variation.

The most common causes are psychosocial in nature, such as loss, value conflicts, and lack of social connections, which aligns with Yalom's (1980) existential theory regarding realities such as death, isolation, and meaninglessness.

Particular attention is drawn to conflicts between personal and social values, highlighting students' internal contradictions - a characteristic phenomenon of the "emerging adulthood" phase. In contrast, material factors, such as economic considerations, were less frequently selected, indicating that existential crisis is primarily associated with life values and social relationships.

The hypothesis is therefore supported. Psychosocial causes have a significant impact on existential crisis, underscoring the need for interventions focused on psychological support strategies, counseling regarding life values, and the creation of a supportive educational environment.

*IV. Discussion*

The results of the study indicate that existential crisis among students is closely associated with anxiety, depression, and physical health - factors that influence self-awareness and the capacity to search for meaning in life.

Anxiety shows a positive correlation with existential crisis ($r = 0.193$), whereas self-awareness and the search for meaning in life exhibit negative correlations ($r = -0.39$ and $-0.19$, respectively). Anxiety reduces the capacity for self-awareness, hindering emotional regulation and the maintenance of life orientation. Reducing anxiety through stress management and cognitive-behavioral therapy may indirectly enhance these two protective factors.

Depression demonstrates a stronger association ($r = 0.252$) and emerges as a significant predictor ($\beta = 0.220$). When depression arises, both self-awareness and the search for meaning in life are substantially diminished. This supports Frankl's theory (1963), which posits that the absence of life meaning is a primary cause of depression. Consequently, depression requires prioritized intervention through therapy and the strengthening of social connections.

Physical health serves as a fundamental factor ($F = 7.66$), supporting energy, emotional stability, and coping capacity. Poor health increases stress and weakens the two protective factors. Therefore, student psychological support programs should incorporate attention to physical health, including nutrition, physical activity, and sleep.

In summary, depression functions as a central risk factor and requires priority intervention. Anxiety can be addressed through coping skills, while physical health plays a strong protective role. Counseling programs should integrate: (1) cognitive-behavioral therapy; (2) enhancement of self-awareness and the search for meaning in life; and (3) improvement of physical health to stabilize mental state and enhance quality of life.

*V. Conclusion*

The study conducted among 321 students at Yersin University in Da Lat revealed a high level of existential crisis, with students actively engaging in the search for meaning in life.Associated factors: Subjective factors, such as anxiety, depression, and self-awareness, are closely linked to existential crisis, with depression emerging as the most significant predictor. Objective factors, including physical health, monthly expenses, and year of study, also exert a notable influence.

Primary causes: The main causes are psychosocial in nature, such as loss, value conflicts, and lack of psychological support rather than material circumstances. Significance and application: The findings provide a practical basis for developing psychological counseling programs in universities, particularly targeting first-year students and high-risk groups. These programs should focus on enhancing self-awareness, managing anxiety, and fostering the search for meaning in life. The study also offers data to educational administrators for creating supportive learning environments and effective psychological support policies. Limitations and Future Directions: The study acknowledges limitations related to sampling methodology and suggests that future research expand coverage, employ more advanced analytical models (e.g., SEM), and incorporate additional factors related to culture and personal values.

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# TEMPORAL JURISDICTION (RATIONE TEMPORIS) OF THE SPECIAL TRIBUNAL FOR THE CRIME OF AGGRESSION AGAINST UKRAINE

**Dere Yasin***

**Abstract**

*In this article, a study is conducted and own proposals are put forward regarding one of the most relevant topics of modern international criminal law - the ratione temporis of the Special Tribunal for the crime of aggression against Ukraine. The main difficulty lies in the fact that the Statute of the Tribunal does not contain a direct mention of temporal jurisdiction, in connection with which a legal conflict arises between the Resolutions of the United Nations General Assembly since 2022, where it was recognized that the Russian Federation committed aggression against Ukraine, and a more cautious political step without establishing the fact of aggression back in 2014. In the study, an analysis is conducted of the "crime of aggression" as a "leadership" and "continuing" crime, the interaction of national jurisdiction and the hierarchy of applicable law (in accordance with Article 3 of the Statute), as well as the application of the principle of "Kompetenz-Kompetenz" in an international judicial tribunal. The author proves that the temporal jurisdiction of the Tribunal should cover events starting from February 2014. A decisive role in establishing this precedent will be played by judicial discretion, which will ensure comprehensive and proper administration of justice, overcoming the challenges of the nullum crimen sine lege principle and preventing the impunity of the top political and military leadership of the Russian Federation.*

**Keywords:** *Special Tribunal for the crime of aggression against Ukraine, temporal jurisdiction, crime of aggression, Judicial Chambers, applicable law, United Nations General Assembly, Council of Europe, Ukraine.*

## *I. Introduction*

The creation of the Special Tribunal for the crime of aggression against Ukraine (hereinafter - the Special Tribunal) on June 25, 2025, was met by the inability of the International Criminal Court (hereinafter - the ICC) to exercise its jurisdiction under Article 8bis "the crime of aggression". This is caused by the Kampala Amendments to the Rome Statute (see Articles 15 bis and 15 ter) [3]. According to Article 15 bis (5) "In respect of a State that is not a party to the Rome Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory" [3]. It is known that the RF is not a party to the Rome Statute, and for Ukraine it entered into force only on January 1, 2025. Speaking about the mechanism of Article 15 ter (exercise of jurisdiction over the crime of aggression through the referral of a situation by the UN Security Council), the veto power of the RF as a permanent member of the UN Security Council does not allow the activation of the Court's jurisdiction. The aforementioned problem of bringing to justice for the "crime of aggression" led to the need to create an appropriate ad hoc court, capable of bringing to justice for the most serious crime, which the Judgment of the Nuremberg Tribunal characterized as "the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole" [16, p. 186].

* PhD Student, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, e-mail: dere.yasin06@gmail.com

On the basis of a bilateral Agreement between Ukraine and the Council of Europe, the Special Tribunal was created, which has the powers of investigation, criminal prosecution, and judicial consideration of cases regarding persons who bear the greatest responsibility for the crime of aggression against Ukraine (Art. 1) [2], with the Statute attached to the Agreement. Unlike the Rome Statute of the International Criminal Court (Article 11 of which clearly regulates jurisdiction in respect of time), the Statute of the Special Tribunal does not contain a separate direct norm that would fix the exact date of the beginning of its temporal jurisdiction. This legal deficiency gives rise to an overly controversial topic - whether the jurisdiction of the Tribunal should be limited to the period of the full-scale invasion, starting from February 24, 2022 (on which attention is often focused in political declarations), or whether it should cover the entire period of the armed aggression of the Russian Federation, including the occupation and annexation of the Autonomous Republic of Crimea and the city of Sevastopol in February 2014. The absence of a clear date creates challenges related to the observance of the fundamental principle of nullum crimen sine lege ("no crime without law") and the risk of fragmentation of responsibility.

*II. Discussion*

Features of the crime of aggression as a "continuing crime". For the further study of the ratione temporis of the Special Tribunal, it is worth analyzing the features of "aggression" as an international crime. According to paragraph 1 of Article 2 of the Statute of the Tribunal, the crime of aggression "means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations" [2]. This definition fully corresponds to customary international law, in particular to Article 8bis of the Rome Statute. Kai Ambos notes that "... Article 8bis ... confirms the idea that certain qualified violations of the prohibition of the use of force and, therefore, jus ad bellum (law on war), just as serious violations of jus in bello (law of war), as well as acts of genocide and crimes against humanity, entail not only the responsibility of the state, but also carry with them individual criminal sanctions under international law" [17, p. 587]. At the same time, let us note that the crime of aggression can be committed only by the leaders of the state to which the corresponding act of aggression is attributed. Thus, we fully agree with the established approach of scholars in the literature who emphasize the "leadership" character of the "crime of aggression" [11, p. 298, 301-302, 578, 1266]. K. Ambos rightly emphasizes that "Without this restrictive criterion (leadership - author's note), every single soldier of the armed forces who has made his contribution to the hostilities, otherwise, as a principle, would have to stand trial. Thus, Article 8bis is the only one of the four crimes over which the Court has subject-matter jurisdiction under Article 5 of the Rome Statute that limits the circle of potential perpetrators of such a crime. This is a tribute to the special nature of the crime of aggression, which, unlike the other crimes listed in Article 5 of the Statute, is focused not on the protection of individuals or the protection of a certain protected group, but rather on the protection of the state from the use of armed force by another state and, thus, at the same time is aimed at the protection of the international legal system, at the core of which lies the prohibition of the use of force" [17, p. 590]. The Statute of the Special Tribunal also contains a definition of an "act of aggression" (Art. 2 para. 2), which is also effectively a copy from the Rome Statute. A feature of an "act of aggression" is that it is an unlawful aggressive act of a state, which is closely connected with the individual character of the "crime of aggression" (planning, preparation, and initiation). Astrid Reisinger Coracini, an Austrian lawyer, notes that "The structure of the crime of aggression in the Rome Statute assumes that an individual participates in a collective act - an act of aggression - which by definition must be an act of the state. In other words, the act of aggression must be attributed to the state" [11, p. 312]. Further, he notes that "... in the case of the crime of aggression, the Court will need to determine the commission of an act of aggression before determining individual criminal responsibility" [11, p. 316]. Thus, we can come to the following conclusion that before qualifying individual criminal responsibility for the "crime of aggression", there must necessarily be present the so-called "act of the state" in the context of an "act of aggression".

Moreover, paragraph 4 of Article 2 contains the following mention of the term "war of aggression" - "For the purposes of this Statute, in the context of the aggression against Ukraine, an act of aggression which is determined to be such by its character, gravity and scale as to constitute a manifest violation of the UN Charter, is also considered to constitute a war of aggression" [2]. The return to "Nuremberg terminology", in our view, is related to the specificities of the war in Ukraine, which has been ongoing from 2014 until today. The Rome Statute, unlike the Statute of the Tribunal, does not contain a definition of the concept "war of aggression". The study of "war of aggression", in our view, deserve separate thorough research; however, we will dwell on some aspects of this formulation of aggression in more detail. An analysis of the judgment of the Nuremberg Tribunal indicates that it differentiated an "act of aggression" (in particular regarding Austria and Czechoslovakia) from the "war of aggression" itself in Poland [16, p. 192, 194-195, 201-202]. Instead, subsequent trials in the allied states (Ministries trials) demonstrated a tendency toward identifying these categories within a single composition of crimes against peace [8, p. 197-213]. Thus, the Nuremberg process did not give us a clear definition of what a "war of aggression" is; however, the judgment clearly distinguishes a "war of aggression" precisely by scale and character (full-scale invasion of Poland and the USSR) and by the duration of this war, which stretched over years.

From the point of view of international criminal law, aggression is not a single-moment act. It belongs to the category of "continuing crimes" (delictum continuum). The concept of a continuing crime implies that the objective side of the act (actus reus) is not exhausted by the initial moment of commission but is stretched in time, being maintained by the continuous will of the subject to violate the law. As the UN International Law Commission notes in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (in particular in Article 14), the breach of an international legal obligation by an act having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation [14].

The definition of the "crime of aggression" in the Statute of the Tribunal covers "planning" and "preparation". These stages by their nature precede the "initiation" or "execution" itself. Thus, the crime of aggression begins to be committed even before the first shot is fired. This view is shared by C. Kreß, who notes: "The requirement of the use of force does not imply the necessity of shots being fired and people being killed or wounded or property being physically damaged. On the contrary, the internationally wrongful presence of a state's armed forces with hostile intent can also amount to a use of force" [11, p. 424]. At the same time, the term "war of aggression", enshrined in the Statute, in our view, emphasizes precisely the "continuing" character of the crime of aggression, which began as early as 2014. This is confirmed by paragraph 4 of Article 2, where the Statute notes that the concept of "war of aggression" is considered "in the context of the aggression against Ukraine", which constitutes a "manifest violation of the UN Charter". Furthermore, the protracted war of aggression became the root cause and predetermined the commission of other serious international crimes - in particular, war crimes and crimes against humanity, which once again emphasizes the special gravity and systemic nature of this act. Therefore, a "war of aggression" is the most dangerous form (or the highest threshold) of an act of aggression as an act of the state, which also entails its international legal responsibility, in particular in the context of the payment of reparations, compensations, and other forms of reparation for damage.

Discrepancies in the legal qualification of "aggression" in Ukraine in the context of UN GA Resolutions. One of the difficulties in defining the ratione temporis of the Special Tribunal from 2014 is the discrepancy in the resolutions of the UN General Assembly. Reacting to the conduct by the RF of an illegal referendum and the occupation of the Autonomous Republic of Crimea in 2014, the UN GA adopted Resolution 68/262 "Territorial Integrity of Ukraine". Despite the condemnation of the illegal referendum and the call to refrain from the use of force, the text of the document, given the need to achieve a political compromise among member states, deliberately avoided a direct qualification of the actions of the Russian Federation as an "act of aggression" [15]. Only on March 2, 2022, after the beginning of the full-scale invasion of the territory of Ukraine, the UN GA adopted Resolution ES-11/1 "Aggression against Ukraine" directly and unequivocally condemned the actions of the RF as aggression that violates paragraph 4 of Article 2 of the UN Charter [1]. Such a temporal gap in terminology can be used by the defense to argue that the international community did not politically recognize the existence of an "act of aggression" in the period from 2014 to 2022. Consequently, the extension of the Tribunal's jurisdiction to the events of 2014 allegedly violates the principle of legal certainty. However, such an approach, in our view, is erroneous given the doctrine of international law, which clearly distinguishes between political declarations and objective legal reality. UN GA resolutions regarding the qualification of a situation are of an exclusively declaratory, rather than constitutive, nature. The existence of an "act of aggression" is an objective fact established on the basis of the norms of customary international law. Article 2 of the Statute of the Special Tribunal emphasizes that for the definition of an act of aggression, the Tribunal takes into account UN GA Resolution 3314 (XXIX) of December 14, 1974. The invasion by armed forces, military occupation (even temporary), and the annexation of the territory of a state with the use of force fall under the signs of an act of aggression enshrined in Article 3(a) of the mentioned 1974 Resolution [6]. Accordingly, an act of aggression objectively existed since the end of February 2014, regardless of the political caution of the UN GA at that specific moment in time. A crime arises at the moment of the commission of the act, and not at the moment of its political condemnation at the UN level. In fact, all UN member states recognized the sovereignty and territorial integrity of Ukraine within its recognized borders as of the dissolution of the Soviet Union in 1991. Moreover, the Special Tribunal is not an institution created by the UN Security Council under Chapter VII of the UN Charter, which would make it strictly dependent on the terminology of UN institutions. The Tribunal is created on the basis of a bilateral international Agreement between Ukraine and the Council of Europe. Therefore, the regional international legal consensus of the founding states is important for the interpretation of ratione temporis. As stated in the Preamble of the Agreement, the Parties take into account Opinion of the Parliamentary Assembly of the Council of Europe No. 300 (2022), which directly states that the escalation from February 24, 2022, is a continuation of the war of aggression of the Russian Federation, "started on February 20, 2014".

Thus, we believe that the discrepancies in the Resolutions of the UN General Assembly are leveled by customary international law (on the basis of Resolution 3314, the Rome Statute on the basis of 8bis, and other international acts) and the consensual will of the parties to the Agreement, which is the constituent document of the Tribunal.

Interaction of delegated jurisdiction (Art. 1) and applicable law (Art. 3) by the Special Tribunal. According to Article 1 of the Statute, the jurisdiction of the Tribunal is based on the territorial jurisdiction of Ukraine regarding the crime of aggression [2]. In accordance with the generally recognized principle of international law nemo plus iuris transferre potest quam ipse habet (no one can transfer more rights than he himself possesses), the state delegates to the international institution that volume of sovereign powers which it possesses at the moment of delegation. Since the national legislation of Ukraine (in particular, the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine") establishes the start date of the armed aggression of the Russian Federation - February 20, 2014, we believe that the temporal jurisdiction of the tribunal will also cover this time period. Essential for establishing the temporal jurisdiction is the applicable law of the Special Tribunal. Thus, Article 3 establishes a clear applicable hierarchy - 1) the Statute and the rules of procedure and evidence (which will be adopted later, probably by the judges themselves); 2) customary international law and general principles of law (Customary international law, codified in UN GA Resolution 3314, unambiguously recognizes military occupation and annexation of territories as acts of aggression. As we determined above, the priority application of the norms of international law already creates a sufficient and independent normative basis for covering the events of 2014 by the jurisdiction of the Tribunal); 3) In case of the impossibility of applying the aforementioned, the Tribunal applies the provisions of the substantive criminal law of Ukraine concerning the criminal prosecution and punishment for the crime of aggression [2].

We believe that the enshrinement of the substantive law of Ukraine in the Statute is an observance of an important principle of international law - nullum crimen sine lege. If the defense attempts to challenge the applicability of international criminal law norms regarding individual responsibility for aggression as of 2014 (arguing, for example, that the Kampala Amendments to the Rome Statute were activated only in 2018), the Tribunal will be able to rely on Ukrainian legislation. As of February 2014, Article 437 of the CC of Ukraine already provided for strict criminal responsibility for the planning, preparation, unleashing, and conducting of a war of aggression. Moreover, the unleashing of a war of aggression is prohibited by Russian criminal legislation, namely by Article 353, which is effectively analogous to the Ukrainian one. Consequently, the subjects of the crime were fully aware of the unlawfulness of their actions even at the stage of crossing the state border of Ukraine, which completely levels the arguments about the retroactive effect of the law in time. Article 31 of the Statute establishes the use of the evidentiary base collected by the competent authorities of Ukraine and other subjects even before the moment of the Tribunal's launch [3]. Since 2014, Ukraine has a fairly clear legal position defined by national courts, including the Supreme Court (see case No. 415/2182/20) [13], which concerns the crime of aggression. The General Prosecutor's Office of Ukraine actively collected evidence regarding the unleashing of the war and other related crimes, both for national judicial proceedings and for international judicial processes.

In 2023, the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) was created; it is established to support national investigations and ensure the inevitable responsibility of the top political and military leadership of the RF for the crime of aggression, its mandate covers events from 2014 [10]. On the basis of the stated facts, we believe that the Prosecutors of the tribunal will necessarily use the evidentiary base collected specifically from 2014, as for Ukraine, ignoring this time period is unacceptable.

Judicial discretion (la compétence de la compétence) in defining the ratione temporis of the Special Tribunal. As we noted above, the Statute of the Special Tribunal did not leave us a direct norm that would fix the start date of its jurisdiction ratione temporis. Therefore, we believe that the resolution of this issue will inevitably pass to the discretion of the judges. As is rightly emphasized in legal literature: "The first question that may arise before an international tribunal is whether it has jurisdiction (competence) to determine its own jurisdiction (competence) ... usually this question does not require resolution unless it has been raised ... however, in many cases, tribunals simply made decisions regarding their jurisdiction" [4, p. 121]. The International Tribunal for the former Yugoslavia (hereinafter - ICTY) in the Tadić case determined that the principle of la competence de la competence is a necessary component of the judicial function and does not require direct enshrinement in the constituent documents of these tribunals, although this is often done [12, p. 18].

The principle of la compétence de la compétence is implemented in paragraph 3 of Article 26 of the Statute of the Special Tribunal, which establishes that the Trial Chamber "is responsible for the resolution of any preliminary motions, including challenges to the indictment and jurisdiction" [2]. It is quite probable that during the very first judicial proceedings, the defense (representing the interests of the top leadership of the RF) will submit preliminary motions to exclude the events of 2014-2021 from the jurisdiction of the Tribunal. It is then that the judges of the Special Tribunal will be obliged to form a precedent, relying on the specificities of international criminal law. The historical and modern practice of ad hoc international tribunals demonstrates that judges tend to apply teleological (purposive) interpretation to cover all stages of continuing international crimes within the jurisdiction. As a classic example, it is worth citing the Nuremberg Tribunal, which did not contain a specific start date for the commission of "crimes against peace". However, although World War II officially began on September 1, 1939, the Judgment of the Nuremberg Tribunal provided a legal assessment of the events of planning and preparation of aggression that took place long before that date (in particular, Hitler's infamous 1937 meeting recorded in the Hossbach Memorandum, as well as the Anschluss of Austria in 1938) [16].

The ICTY in the Tadić case concluded that it must exercise its "competence de la competence" and consider the jurisdictional objection of the defense regarding the legality of the establishment of the tribunal in order to satisfy itself whether it has jurisdiction to consider the case on the merits. Moreover, the Tribunal noted that "since there is no such restrictive text in the Statute of the International Tribunal, the International Tribunal can and indeed is obliged to exercise its compétence de la compétence, and to consider the objection of the defense regarding jurisdiction in order to establish the existence of its jurisdiction to consider the case on the merits" [12, p. 19].

The International Court of Justice (hereinafter - ICJ) in the advisory opinion regarding "Effect of Awards" (Effect of Awards Opinion) noted that one of the essential attributes of a tribunal of a judicial character is the competence to determine its own jurisdiction; therefore, if the constituent document provides for such power, this is a strong indication that a judicial function was intended. However, the Court did not state that any body that has la competence de la competence is a judicial tribunal. For some bodies, such as conciliation commissions and commissions of inquiry (for example, on human rights), may have such power without being judicial. The International Court said only that the presence of such competence is an important sign of the judicial nature of the body [7, p. 51-53]. It is worth noting that even the Permanent Court of International Justice referred in its cases to the interpretation of the principle of la competence de la competence, for example, in the advisory opinion regarding "Interpretation of the Greco-Turkish Agreement" (1928) or in the judgment on "Rights of Minorities in Upper Silesia (Minority Schools)" (1928).

ICJ Judge Hersch Lauterpacht, one of the most famous international lawyers of the 20th century, in his separate opinion in the Interhandel case, determined that "... in the matter of its jurisdiction, it is the international tribunal, and not the interested party, that has the right to take a decision as to whether the dispute pending before it is covered by the instrument creating its jurisdiction" [9, p. 104-105].

The Pre-Trial Chamber of the International Criminal Court (hereinafter - ICC) in the case regarding the situation of the deportation of the Rohingya people from Myanmar to Bangladesh used the principle of la competence de la competence. Despite the fact that Myanmar is not a state party to the Rome Statute, the judges recognized the existence of jurisdiction because deportation has the character of a continuing crime, and part of this crime (or its consequences) was completed on the territory of a state party (Bangladesh) [5, p. 64-72]. The Court determined that "... it follows that in the circumstances identified in the Request, the Court has jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh, provided that such allegations are established to the required threshold. This conclusion does not preclude further findings on jurisdiction at a later stage of the proceedings" [5, p. 73]. Summarizing, this only proves our position that the Trial Chamber will have all the necessary legal grounds to dismiss the jurisdictional objections of the defense. Applying the principle of la competence de la competence and relying on the specificities of "war of aggression" as a continuing crime, the judges will be able to determine ratione temporis over the events from February 20, 2014, thereby ensuring the integrity of the judicial consideration.

Nullum crimen sine lege and ratione temporis of the Special Tribunal. The temporal jurisdiction of the Special Tribunal is closely interconnected with such fundamental principles of international criminal law as nullum crimen, nulla poena sine praevia lege poenali (no crime and no punishment without a prior law). As we noted above, potentially the defense may argue that the jurisdiction of the ICC regarding the crime of aggression was activated only in 2018 (after the ratification of the Kampala Amendments by the required number of states), individual criminal responsibility for this crime was allegedly not sufficiently defined in customary law as of February 2014. We believe that this argumentation does not withstand criticism from the positions of modern international criminal law. The principle of nullum crimen sine lege requires that the act be recognized as a crime under national or international law at the moment of its commission (which, in particular, is enshrined in para. 2 of Article 11 of the Universal Declaration of Human Rights and para. 1 of Article 15 of the International Covenant on Civil and Political Rights).

The crime of aggression is a crime that bears the character of customary law. R. Schöndorf and D. Geron note that during the adoption of the Kampala Amendments, delegations insisted on the observance of the principles nullum crimen, nulla poena sine lege, as it is on the observance of these principles that the credibility of the ICC depends [11, p. 1400]. In the view of lawyers, customary law (after Nuremberg) considers only full-scale war ("war of aggression") to be a crime, whereas Resolution 3314 is broader - it includes even individual acts (blockade of ports, shelling). Thus, it is Article 8-bis of the Rome Statute that effectively "combined" a war of aggression with an act of aggression under Resolution 3314. In turn, this should help the Court to focus on cases falling within the scope of the crime of aggression as it is recognized by customary law, thereby narrowing the space for challenging the Court's jurisdiction on the basis of considerations of legality, as well as the harmful politicization of the Court [11, p. 1201-1203].

Thus, the entry into force of the Kampala Amendments only from July 17, 2018, is not a legal obstacle to establishing the jurisdiction of the Special Tribunal over the events that began in 2014. Although the Statute of the Tribunal contains definitions of the "crime of aggression" (correlating with Article 8-bis of the Rome Statute) and "act of aggression" (according to UN GA Resolution 3314), the decisive factor is the enshrinement in it of responsibility for a "war of aggression" (Art. 2 para. 4). The latter, according to the judgment of the Nuremberg Tribunal, has the status of a norm of customary international law. Since the customary prohibition of a war of aggression existed long before 2014, the retrospective coverage of this period by the Special Tribunal will not violate the principle nullum crimen sine lege, but will only ensure the law enforcement of the criminal law norm already existing at that moment.

*III. Conclusion*

The conducted analysis allows for a well-founded conclusion that the absence in the Statute of the Special Tribunal of a separate norm with a specific start date of jurisdiction ratione temporis is not a legal gap that limits its competence to the period after February 24, 2022. On the contrary, a systematic and teleological interpretation of the constituent documents indicates the coverage by the Tribunal of the entire period of armed aggression, starting from February 20, 2014.

Firstly, modern international criminal law defines "aggression" as a continuing crime. This does not allow for it to be conventionally divided into different stages (the years 2014 and 2022), as they are united by a single criminal intent of the top leadership of the Russian Federation.

Secondly, the Statute of the Special Tribunal contains a clear hierarchy of applicable law (Article 3) and determines that jurisdiction is based on the territorial jurisdiction of Ukraine (Art. 1), which creates a reliable legal basis for the qualification of the events of 2014 as an act of aggression in accordance with customary international law, while relying on the national legislation of Ukraine as a guarantee of compliance with the principle nullum crimen sine lege. The enshrinement in the Statute of the term "war of aggression" allows for the justification of the Tribunal's jurisdiction over events preceding the entry into force of the Kampala Amendments, as this composition of the crime is based on customary international law. Such an approach serves as a guarantee of compliance with the principle of legality (nullum crimen sine lege), as criminal responsibility for conducting a war of aggression was clearly established in international law since the times of the Nuremberg process. This effectively levels the potential objections of the defense regarding retroactivity, since jurisdiction in this case is based on universal custom and not only on the treaty norms of the Rome Statute.

Thirdly, a decisive role in consolidating temporal jurisdiction will be played by the Trial Chamber of the Special Tribunal. Empowered to resolve jurisdictional disputes (Article 26 of the Statute) and guided by the principle of la competence de la competence, the judges will be able to rely on historical precedents of ad hoc international tribunals and the modern practice of the ICC and the ICJ regarding continuing crimes to dismiss the motions of the defense.

Only the extension of the ratione temporis of the Special Tribunal for the crime of aggression against Ukraine will allow for the achievement of the main goal of the tribunal's creation-the investigation, criminal prosecution, and judicial consideration of cases regarding persons who bear the greatest responsibility for the crime of aggression against Ukraine. Only such an approach will allow for the avoidance of fragmentation of responsibility, will guarantee comprehensive justice, and will eliminate the gap of impunity for the top political and military leadership of the Russian Federation for unleashing the largest war of aggression in Europe since the times of the Second World War.

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# PROTECTION OF VULNERABLE GROUPS AGAINST THE RISKS OF CONFLICT: WOMEN, CHILDREN, AND OTHERS

**Arzu Aghalarova***

**Abstract**

*One of the most important areas of the contemporary international relations system where human rights are seriously abused is armed conflicts. Vulnerable groups - particularly women, children, the elderly, and people with disabilities - face increased dangers during these processes. This essay examines the main dangers these groups face and assesses the international legal frameworks now in place to safeguard them. According to the research, there are still a lot of obstacles in the way of the current legal framework's practical implementation, despite its relative comprehensiveness. In the context of armed conflict, the essay also looks at the fundamental hazards that vulnerable groups - like women, kids, and senior citizens, people with disabilities, and internally displaced people (IDPs) - face. According to the study, these groups are disproportionately impacted by the effects of conflict, and their rights are frequently and severely infringed. The study finds loopholes and challenges in the application of international humanitarian law and human rights law by examining the protection mechanisms within both frameworks. As a result, the study highlights the need for institutional and legislative measures to be strengthened in order to guarantee more effective protection of vulnerable populations.*

**Keywords:** *armed conflict, vulnerable groups, human rights, women's rights, children's rights, international humanitarian law, refugees, protection mechanisms.*

## *I.Introduction*

The nature of modern armed conflicts has fundamentally changed, going beyond the conventional limits of inter-military conflicts and directly affecting civilian populations' day-to-day life. In contrast to other eras, modern fighting takes place in urban areas, including hospitals and schools, rather than on far-off frontlines. In this situation, the most severe effects of war fall on vulnerable groups, including women, children, the elderly, and people with disabilities who lack the social, legal, or physical capacity to defend themselves. For these people, war represents not just a physical danger but also the deterioration of human dignity, fundamental rights, and prospects for the future.

Although "de jure" legal frameworks and "de facto" battlefield realities continue to diverge in practice, the 1949 Geneva Conventions, which form the basis of International Humanitarian Law (IHL), declare civilians to be inviolable. Statistics reveal a shocking trend: the vast majority of casualties in modern conflicts are non-combatant civilians. These groups are classified as "vulnerable" not because they are weak by nature, but rather because the belligerents disregard international norms [8, p. 51-53].

It is crucial to remember that women and children are more susceptible to systemic risks during wars. Women are often the "invisible victims" of conflict due to gender-based abuse [11]. Children are at risk of becoming a "lost generation" because they experience physical deprivation in addition to developmental and scholastic disadvantage [12].

Even while UN Security Council Resolution 1325 establishes a legal framework to address these issues, actual implementation processes are still subpar. Furthermore, the

* Master's student, Faculty of Law, Baku State University, e-mail: agalarova.arzu21@gmail.com

elderly and those with disabilities-two of society's most disadvantaged groups-frequently become "forgotten groups" that are isolated in conflict zones.

Examining current international recommendations for protecting vulnerable people and identifying the primary barriers to their implementation are the primary objectives of this study. The key claim of this paper is that preserving underprivileged populations is not merely a humanitarian effort but also a legal necessity for upholding universal justice and global security.

*II. The Concept of Vulnerable Groups and Their Characteristics*

In International Humanitarian Law (IHL), "vulnerability" refers not just to physical weakness but also to a person's legal and social powerlessness against the perils of conflict. Unlike the broader civilian population, vulnerable groups require special assistance and a special legal position to meet their fundamental needs and stay safe. These groups can be divided into four primary categories:

A. Children: Psychological Fragility and Double Protection

The Russian Legal Encyclopedia defines a "child" as any person under the age of eighteen, while the Oxford English Dictionary defines a "child" as a young person who has not yet reached full physical development. From a psychological standpoint, childhood is separated into several developmental stages, ranging from infancy (0–1 year) to early youth (17–18 years) [1, p. 140-146].

Children are still the most exploited group in violent conflicts. Two characteristics that set them apart include biological reliance and a limited capacity for autonomous decision-making. Article 24 of the Fourth Geneva Convention of 1949 states that countries have an unshakeable obligation to protect children [3]. Being separated from their families and being used as "child soldiers" are the two main risks that children face in contemporary conflict. In addition to their physiological inviolability, children are safeguarded by their rights to education and psychosocial rehabilitation [10].

B. Women: Gender-Based Systemic Risks

Women need special legal protection because of their physiological traits as well as a historical tendency to be less protected than men. The development of international standards in this field, women's direct right to appeal to international tribunals, and the incorporation of these standards into domestic law continue to be central to international jurisprudence. These days, the foundation of the framework for protecting women's rights is equality and nondiscrimination [1, p. 136-140]. While vulnerability in international law used to be viewed in terms of "honor and dignity", gender-based violence is the main focus of current viewpoints. Women in conflict are distinct in that they incur the expense of displacement while simultaneously trying to preserve the family's social roots [11]. The concept of vulnerability has taken on a new meaning when women are seen as active players in peace processes rather than only "passive victims".

C. The Elderly and Persons with Disabilities: "The Invisible Victims"

Some medical requirements and limited mobility set this group apart. During humanitarian emergencies, states must take "all necessary measures" to protect those with disabilities. When hospitals and pharmacies are attacked during a conflict, their lives are directly at risk. They sometimes comprise a "forgotten" segment of the population - those who are either physically unable to reach shelters or may not hear evacuation orders [4].

Communities have historically expressed concern for individuals with mental or physical disabilities by referring to them as "handicapped" or "persons with limited health opportunities". The cultural, religious-philosophical, and economic developments of the era have a profound impact on how society perceives these individuals [1, p. 154-156].

D. Intersectional Vulnerability

In modern academic doctrine, vulnerability has various elements. A person may simultaneously be a woman, a refugee, and a disabled person. This intersectional vulnerability significantly increases an individual's risks. The International Committee of the Red Cross (ICRC) feels that rather than being unified, protection methods should be tailored to the particular requirements of each population.

*III. Risks Created by Armed Conflicts*

In addition to directly endangering civilians, especially vulnerable populations, armed conflicts can entail long-term systemic hazards. According to international assessments, the expansion of fighting into residential areas and the breach of the principle of difference are directly responsible for the rise in civilian casualties in contemporary warfare.

The primary dangers include armed assaults, explosive residues, and indiscriminate bombardment. Vulnerable populations are twice as at danger. Children's fascination with unexploded ordnance or their use as "human shields", in particular, and the fact that elderly and disabled people remain directly in the line of fire because they are unable to reach shelters in time ultimately lead to a greater threat to their rights to life and health, an increase in fatalities and serious injuries, and the emergence of long-term physical and psychological trauma. According to the International Criminal Court's guidelines, intentionally targeting civilians is considered a high war crime [6, p. 15-37].

Sexual and gender-based violence is one of the greatest hazards to women and girls during times of conflict. The use of sexual violence as a "method of warfare" or a "tool of ethnic cleansing" is widespread in practice despite being strictly prohibited by international law, and UN Security Council Resolution 1820 attests to the fact that it seriously and permanently damages victims' psychological states, social standing, and dignity in addition to their physical integrity. These acts include personal criminal culpability and can be categorized as war crimes and crimes against humanity [2, p. 656]. Sexual assault is not just a result of war; it is a direct threat to security.

Additionally, during times of conflict, vulnerable communities are at risk of "silent death" due to the failure of energy, water, and hospital services. Dialysis patients, elderly people with chronic illnesses, and pregnant women are examples of medically dependent people for whom discontinuing medical care can be fatal right away. However, famine is one of the main causes since starvation of civilians is specifically prohibited by international law as a strategy of war [7, p. 12-24]. The most dangerous and perilous aspect is the mass migration from war zones, which seriously compromises the legal protection of those who are most vulnerable. Children who are internally displaced or have refugee status are particularly susceptible to family separation, illegal adoption, and human trafficking in these circumstances. However, the loss of social support networks can cause severe depression and PTSD in young people and the elderly [12].

*IV. International and National Legal Protection Mechanisms*

In addition to being a moral requirement, the protection of vulnerable groups during armed conflicts is governed by the preemptive principles of international law. The two primary pillars of this protection system are national legislation and international universal standards. The "backbone" of international protection is the Geneva

Conventions of 1949. Since the Fourth Geneva Convention expressly covers the protection of civilians, it must be discussed first. Women's honor and dignity must be preserved, including from sexual abuse, according to Article 27 of the Convention. The 1977 Additional Protocols I and II, which uphold the "principle of distinction", are the first major international accords that prohibit the enlistment of minors as soldiers [3].

Because of this, a system of "special respect and protection" is designed for youngsters, pregnant women, and the elderly, laying the groundwork for any attack on them to be considered a war crime. The UN Security Council has developed political-legal instruments to protect the status of vulnerable individuals in conflict zones. Among these are UNSC Resolution 1325 (2000) and the Convention on the Rights of the Child (1989). Resolution 1325, which made women's safety a key priority for international security, established the "Women, Peace, and Security" agenda [11]. However, Article 38 of the CRC prohibits children from directly participating in armed hostilities and mandates that countries ensure that children get humanitarian aid. [10, p. 48].

One of the main instruments used to ensure that crimes against vulnerable groups are punished is the Rome Statute. The most important legal shift is that the Rome Statute now recognizes sexual violence as a systemic form of warfare rather than merely an individual crime. Therefore, under its paragraphs 7 and 8, sexual assault, child recruiting for military service, and starving of civilians are classified as "crimes against humanity" and "war crimes". The International Criminal Court (ICC) is the highest court that provides accountability in this field [9, p. 289-290].

It should be emphasized that the effectiveness of national protection measures depends on the integration (implementation) of international principles into national legislation. First and first, war crimes and violence against civilians must be classified as serious crimes by states' internal laws (criminal codes, etc.) and other normative legal acts. Ombudsman offices also play a crucial role in keeping an eye out for violations of human rights, gathering reports, and developing national action plans (such those for implementing Resolution 1325).

*V. Existing Problems and Gaps*

Despite the depth of international humanitarian law (IHL) and international human rights norms, there are significant "implementation gaps" in the protection of vulnerable people during armed conflicts. These issues stem from both the obsolescence of legal norms and the new, complex realities presented by modern military operations.

The worst flaw in international law is the inadequacy of the unavoidable and efficient penalty mechanisms for norm infractions. It is well known that conflict parties, particularly non-state armed groups, evade responsibility for crimes against civilians by arguing that international conventions do not apply to them. Systematic impunity for war crimes committed against vulnerable people is fostered by the International Criminal Court's (ICC) limited jurisdiction and the failure of some large governments to ratify the Rome Statute. This atmosphere of impunity acts as a "green light" for ongoing criminal behavior.

The 1949 Geneva Conventions were ratified without taking into account the state of technology at the time. Cyberattacks and autonomous armed systems (drones) that target civilian infrastructure have effectively rendered the "principle of distinction" ineffective. For example, a cyberattack on a country's electrical and water systems could not be considered a direct military offensive, but hospitalized infants, the elderly, and people with disabilities are at risk of mass mortality. "Virtual warfare" tactics have not only protected vulnerable individuals physically, but they have also introduced new concerns, like the blocking of personal information and access to humanitarian aid. [7, p. 48-58].

Humanitarian aid, which is essential for underprivileged communities, is often incorporated into military strategies or utilized as a political tactic. In violation of international law, belligerent parties utilize the starvation of civilians as a means of applying pressure. When assistance convoys are shelled or humanitarian routes are deliberately blocked, the elderly and children who are directly dependent on food and medicine suffer the most. Current legal procedures lack the capacity to aggressively engage against such blockades. [5, p. 15-17].

In conflict zones, it is extremely difficult to document incidents of violence against vulnerable populations, particularly gender-based crimes. Restricting the access of foreign observers prevents victims from receiving legal protection and leads to the concealment of facts. A large portion of sexual violence incidents during conflict are not documented in statistics due to social stigma and fear. Consequently, effective global response tactics to these crimes cannot be implemented.

*VI. Conclusions*

In conclusion, the research shows that the most urgent and important issue facing international humanitarian law is the protection of vulnerable groups during armed conflicts, particularly women, children, the elderly, and people with disabilities. The "urbanization" of contemporary combat and the use of new technology make it more difficult to enforce the 1949 Geneva Conventions and the 1977 Additional Protocols, which guarantee the inviolability of civilians. In addition to physical violence, the main risks to vulnerable groups include barriers to humanitarian help, the use of sexual violence as a weapon of war, and a climate of systematic impunity. The paper emphasizes that the absence of international responsibility and the inadequacy of execution procedures on the real battlefield are the main issues, not the simple existence of a legal framework.

In terms of suggestions and required actions, it is crucial to develop international accountability systems, improve cyber-law standards, and create safe, continuous humanitarian corridors in order to better safeguard vulnerable populations in war areas. Additionally, national laws should be aligned with international norms, and inclusive protection plans based on the concept of "multiple vulnerabilities" (such as a displaced woman with a disability) must be developed. For these actions to be carried out successfully, it is especially crucial to improve institutional coordination, put monitoring systems in place, and guarantee accountability.

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# GREEN ENERGY AT THE INTERSECTION OF INTERNATIONAL ENERGY AND ENVIRONMENTAL LAW: LEGAL CONFLICTS BETWEEN THE ENERGY CHARTER TREATY AND THE PARIS AGREEMENT

**Khanim Khudaverdiyeva***

**Abstract**

*The conceptualization of "green energy" at the confluence of international energy law and international environmental law constitutes one of the most volatile normative frictions within contemporary international jurisprudence. Through a systematic doctrinal analysis, this article examines the legal nature of renewable energy and its structural intersection with four key areas: investment protection, permanent sovereignty over natural resources, climate mitigation imperatives, and the overarching principles of sustainable development. Central to this inquiry is the acute normative conflict arising between the Energy Charter Treaty (1994) - a robust multilateral investment instrument-and the 2015 Paris Agreement, alongside an evaluation of viable pathways toward systemic harmonization.The investor-centric protective mechanisms embedded within the Energy Charter Treaty framework-most notably the Fair and Equitable Treatment standard, the doctrine of legitimate expectations, and investor-state dispute settlement pathways-impose formidable legal blockades against state-driven decarbonization initiatives, subsidy reallocations, and fossil fuel divestment strategies indispensable for the fulfillment of international climate pledges. This asymmetry engenders a profound "regulatory chill" macro-effect, wherein host states dilute or defer urgent climate actions under the threat of astronomical indemnification liabilities. This systemic friction is empirically scrutinized through international arbitral jurisprudence, focusing heavily on the dense cluster of intra-European renewable energy claims brought against the Kingdom of Spain. The Spanish arbitral saga serves as a primary locus for assessing the mutability of state subsidy regimes, the boundaries of investor reliance, and the fragmented interpretive methodologies deployed by arbitral tribunals regarding state liability. Beyond its theoretical contribution to the structural integration of energy and climate law, this study offers immediate pragmatic utility for emerging market economies - such as the Republic of Azerbaijan-by articulating strategic recommendations designed to fortify domestic legal frameworks for energy transition, insulate sovereign regulatory autonomy, and reconcile competing international obligations.*

***Keywords:*** *Green Energy, International Energy Law, Energy Charter Treaty, Paris Agreement, Norm Conflict, Systemic Integration, Regulatory Chill, Legitimate Expectations, Decarbonization, Spanish Renewable Arbitrations, Vienna Convention on the Law of Treaties.*

## *I. Introduction*

Anthropogenically induced global climate change and the geometric escalation of greenhouse gas emissions- carbon dioxide-have forced a fundamental paradigm shift in international law, destabilizing classical Westphalian conceptions of territorial sovereignty and unmitigated economic expansion. The systemic ecological degradation intrinsic to conventional hydrocarbon extraction and consumption has catalyzed an internal "greening" of international energy law, thrusting the concept of renewable energy into the epicenter of transnational regulatory regimes. Far from serving as a mere technical or economic taxonomy, green energy operates as a complex, multi-layered legal construct

* Master's student, Faculty of Law, Baku State University, e-mail: kkhanimkhudaverdiyeva@gmail.com

wherein the principles of foreign investment protection, sovereign regulatory autonomy, intergenerational equity, and climate change mitigation dynamically intersect.

However, this transition is structurally impeded by a severe fragmentation of international law, characterized by a stark normative antinomy between distinct legal regimes. On one side of the ledger, the 1994 Energy Charter Treaty anchors the stability and security of energy investments via rigorous, directly enforceable substantive guarantees, chief among which are the Fair and Equitable Treatment standard, the doctrine of legitimate expectations, and the potent Investor-State Dispute Settlement mechanism. On the opposing side, the 2015 Paris Agreement codifies radical decarbonization mandates, obligating contracting states to restrict the increase in the global average temperature to well below 2°C, and to pursue active measures to limit the temperature increase to 1.5°C above pre-industrial baselines. This architecture is operationalized through the cyclic submission of progressively ambitious Nationally Determined Contributions, demanding an aggressive phase-out of fossil fuel dependencies, the dismantling of carbon-intensive subsidy frameworks, and the rapid deployment of renewable infrastructure.

This systemic asymmetry generates a sharp collision when a state's execution of its international climate mandates (e.g., the mandatory closure of coal-fired thermal plants, the retroactive recalibration of feed-in tariffs, or the revocation of fossil fuel drilling permits) directly impairs the commercial value of foreign capital, triggering allegations of treaty infringement. The resultant multi-billion-dollar arbitral claims yield a pervasive "regulatory chill" effect: host states, immobilized by the prospect of crippling compensation awards, frequently dilute, delay, or entirely abandon imperative environmental regulations. This defensive state behavior is starkly illuminated by the operational realities of the Energy Charter Treaty, notably evidenced by the wave of more than fifty arbitral proceedings initiated against the Kingdom of Spain following the structural overhaul of its domestic renewable energy incentive schemes.

By dissecting the theoretical and empirical dimensions of these legal disputes, this article evaluates the prospects for aligning the Energy Charter Treaty with the Paris Agreement through the prism of the principle of systemic integration, as codified in Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties [17]. Furthermore, specific analytical attention is devoted to the modernized provisions of the Energy Charter Treaty adopted by the Energy Charter Conference in December 2024, critically assessing their capacity to neutralize the current regulatory gridlock and facilitate a legally coherent green energy transition [12].

### *II. The Position and Legal Nature of the "Green Energy" Concept in International Energy Law*

Historically, the corpus of international energy law crystallized around the core tenets of the classical international economic order: the permanent sovereignty of states over natural resources, the facilitation of secure and uninterrupted energy transit, and the market-driven liberalization of energy trade. However, the existential imperative of contemporary climate governance has forced an ontological transformation, engendering a specialized sub-regime focused on renewable energy under the umbrella of sustainable development law (jus ad sustinendum). This evolving conceptual framework aims to redefine the normative foundations of the energy matrix, shifting the legal focus from unhindered resource exploitation to environmental sustainability and intergenerational equity.

As Professor Philippe Sands underscores, the principle of sustainable development has transitioned from an aspirational political manifesto into a foundational, integrative legal principle: "The principle of sustainable development is not merely a political declaration from a legal perspective; it is an integrative normative tool that permeates all areas of international law and demands the reconciliation of economic activities, including energy production, with the regenerative capacity of the environment" [9, p. 391; 10, p. 217–219].

Within international legal doctrine, green energy transcends its technical definition as low-carbon or renewable inputs (such as solar, wind, geothermal, and biomass). It denotes a comprehensive, structurally distinct legal regime designed to codify and enforce a low-carbon international economic order.

To this end, Bradbrook and Wahab demonstrate that the concept of international energy security has undergone a qualitative mutation, evolving from its traditional focus on the physical security and continuity of supply to encompass the mandatory parameter of environmental sustainability [2, p. 118-122]. In contemporary legal scholarship, this paradigm is frequently categorized under the rubric of "transition law". As Tomain observes, transition law provides the indispensable legal architecture needed to govern the deep structural shifts between a state's internal market mechanics and the overarching requirements of the global climate regime [15, p. 45-48].

Nevertheless, this transition generates profound friction when juxtaposed against established doctrines of private property rights, investment security, and macroeconomic stabilization. Schill astutely notes that the collision between host-state regulatory measures aimed at climate mitigation and the strict strictures of international investment law constitutes one of the most acute systemic crises within the constitutionalization of international law [11, p. 12-15].

This systemic tension manifested empirically in the wake of the 2008 global financial crisis. Facing fiscal constraints, several European sovereigns (most notably Spain, Italy, and the Czech Republic) retroactively dismantled or compressed the highly lucrative feed-in tariff frameworks previously instituted to attract foreign capital into their renewable energy sectors. In the seminal dispute Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain, the arbitral tribunal concluded that Spain's radical and total alteration of the pre-existing regulatory ecosystem violated the standard of Fair and Equitable Treatment protected under Article 10(1) of the Energy Charter Treaty, specifically striking down the state's actions for frustrating the investor's core legitimate expectations [3, p. 362–365]. Consequently, the tribunal ordered the sovereign to pay an award of approximately 128 million euros [4, p. 482].

The systemic misalignment between twentieth-century investment protection frameworks and modern global climate governance is prominently demonstrated by the structural operation of the Energy Charter Treaty. As Tienhaara and Cotula emphasize, the Energy Charter Treaty was originally designed to safeguard foreign capital in a market dominated by fossil fuels, meaning its expansive provisions extend identical, unmitigated protection to carbon-intensive infrastructure. Consequently, when contracting states enact legitimate public interest regulations to reduce greenhouse gas emissions or phase out coal and gas operations, they face severe exposure to Investor-State Dispute Settlement claims [14]. This dynamic effectively penalizes sovereign climate action by shifting the economic burden of stranded fossil fuel assets from multinational corporations onto public budgets.

Furthermore, the threat of multi-billion-dollar arbitration claims under the Energy Charter Treaty creates what is widely identified as a pervasive regulatory chill across signatory jurisdictions [13]. Fearing prolonged and costly litigation before international tribunals, governments are frequently disincentivized from adopting bolder environmental mandates or accelerating their green energy transitions. By locking in historical protections for fossil fuel investments and isolating them from the evolving commitments of the Paris Agreement, the unamended text of the Energy Charter Treaty operates as a rigid legal barrier that directly undermines the global capacity to implement timely and effective climate change mitigation policies [12; 13].

The intersection of international energy law and environmental law is starkly illuminated by the landmark dispute RWE Aktiengesellschaft and RWE Eemshaven Holding II Besloten Vennootschap v. Kingdom of the Netherlands [7], which perfectly captures the acute legal conflicts between the Energy Charter Treaty and the Paris Agreement. In this case, the German energy giant leveraged the investor-state dispute settlement mechanisms of the Energy Charter Treaty to demand approximately 1.4 billion euros in compensation after the Netherlands enacted legislation to completely phase out coal-fired power generation by 2030 in compliance with its international climate targets. This dispute serves as a primary empirical paradigm of how rigid investment protection instruments within the Energy Charter Treaty framework directly clash with the proactive, state-driven decarbonization mandates of the Paris Agreement. Ultimately, the RWE case demonstrates how legacy treaty provisions can impede green energy transition initiatives by creating a profound regulatory chill effect, forcing sovereign states to choose between fulfilling their binding environmental imperatives or facing astronomical financial penalties.

*III. Climate Obligations of States under the Paris Agreement and Legal Mechanisms of the Green Energy Transition*

The adoption of the 2015 Paris Agreement under the auspices of the United Nations Framework Convention on Climate Change marked a fundamental structural break from prior global climate frameworks [16]. Diverging from the rigid, top-down mandatory emission targets that characterized the legally constrained but politically unviable Kyoto Protocol architecture, the Paris Agreement introduces a decentralized, "bottom-up" governance model. This hibrid framework blends binding international procedural obligations with sovereign substantive flexibility, conditioning state action through the mechanism of Nationally Determined Contributions pursuant to Article 4 [16].

Professor Daniel Bodansky clarifies the specific legal anatomy of this hybrid architecture: "The Paris Agreement balances the procedural character of international legal obligations (accountability, transparency, and global stocktake) with substantive flexibility in domestic policy. States are legally responsible not for failing to achieve their targets, but for failing to establish targets and report on them [1, p. 291] ".

Conseqently, while the achievement of specific domestic emission reductions remains legally non-binding at the international level, the procedural duties to formulate, submit, and maintain successive Nationally Determined Contributions-and to pursue domestic mitigation measures with the objective of achieving them-constitute hard, mandatory international legal obligations.

Furthermore, as Zaman analyzes, while the primary objective of the Paris Agreement is to limit global temperature rises, the treaty itself lacks direct, mandatory substantive rules regulating the specific pace of the renewable energy transition. Instead, it operates by stimulating national regulatory pathways and institutional frameworks through the Nationally Determined Contributions, granting states the legal legitimacy to construct their own domestic green energy sub-regimes rather than dictating uniform investment commands [12, p. 165-168].

Consequently, while the achievement of specific domestic emission reductions remains legally non-binding at the international level, the procedural duties to formulate, submit, and maintain successive Nationally Determined Contributions-and to pursue domestic mitigation measures with the objective of achieving them-constitute hard, mandatory international legal obligations.

The overarching substantive target of this regime is codified in Article 2(1)(a): limiting the global average temperature increase to well below 2°C above pre-industrial levels, while actively pursuing efforts to restrict the increase to 1.5°C (Paris Agreement, 2015, Art. 2(1)(a)). Realizing these temperature thresholds requires an unprecedented, comprehensive decarbonization of the global economy, with the energy sector serving as the primary arena for structural transformation. States are structurally compelled to enact far-reaching legal reforms, including the rapid phase-out of fossil fuel subsidies, the imposition of carbon-pricing mechanisms, and the state-directed prioritization of renewable energy infrastructure.

As Zillman and Redgwell observe, the rapid pace of decarbonization mandated by the Paris Agreement systematically embeds a "renewable energy priority principle" within the domestic public law sub-regimes of contracting states [19, p. 33-37]. This domestic execution is further conditioned by the foundational principle of "Common but Differentiated Responsibilities and Respective Capabilities" (CBDR-RC) reaffirmed in Articles 2(2) and 3 [16]. This principle dictates that while developed nations must lead with absolute, economy-wide emission reduction targets, developing states are granted longer timeframes and supported via institutionalized channels of technology transfer under Article 10, climate finance mechanisms under Article 9, and capacity-building assistance under Article 11 [16].

However, the primary structural vulnerability of the Paris Agreement resides in its complete lack of coercive enforcement or punitive sanction mechanisms. The compliance apparatus established under Article 15 is explicitly designed to be facilitative, non-adversarial, and non-punitive [16, Art. 15(2)]. This reliance on soft law enforcement mechanisms places the Paris Agreement at a severe disadvantage when positioned against the highly Energy Charter Treaty, hard-law enforcement architecture of international investment agreements like the Energy Charter Treaty, which grant private actors direct access to binding, supranational monetary enforcement against sovereign states. This norm-enforcement asymmetry underpins the profound legal conflicts that arise within the energy transition process.

*IV. Legal Conflicts and Harmonization Prospects Between the Energy Charter Treaty and the Paris Agreement*

The operational intersection of the Energy Charter Treaty and the Paris Agreement presents a classic textbook example of a norm conflict within the international legal order. The two instruments diverge on a fundamental systemic level: while the Paris Agreement mandates the rapid dismantling of "carbon lock-in" dynamics and the swift de-escalation of fossil fuel assets, the Energy Charter Treaty isolates and immunizes the economic value of those identical assets through expansive investment stabilization and protection guarantees [5]. When arbitral tribunals interpret the Fair and Equitable Treatment standard and the doctrine of legitimate expectations as absolute insurance policies against regulatory change, they severely impair a state's legislative capacity to alter its energy matrix. This normative friction accentuates the fragmentation of international law, pitting distinct specialized sub-regimes against one another.

Within contemporary legal scholarship, this phenomenon is widely analyzed under the framework of Regulatory Chill, a concept articulated by Kyla Tienhaara to describe the systemic suppression of public-interest regulation: “States, fearing that they will be forced to pay exorbitant arbitral compensation, refrain from implementing their obligations under the Paris Agreement-such as tightening environmental regulations, closing fossil fuel plants prematurely, or altering subsidy schemes” [13, p. 233].

This defensive state posturing is particularly acute within developing economies and emerging markets, where the threat of multi-million-dollar ISDS awards can place significant stress on national fiscal reserves, forcing an artificial choice between economic stability and climate compliance.

| The Regulatory Chill Cycle | |
|---|---|
| 1. Paris agreement obligation | State adopts climate measures (e.g., carbon tax, subsidy phase-out) |
| 2. Energy Charter Treaty investor reaction | Foreign fossil fuel/renewable investor triggers Investor-State Dispute Settlement claim via Energy Charter Treaty |
| 3. Litigation risk / Indemnity | Host state faces multi-million/billion dollar liability potential |
| 4. Regulatory chill effect | State dilutes, delays, or rolls back urgent decarbonization laws |

*4.1. Resolution Scenarios from a Treaty Law Perspective*

The secondary rules of treaty interpretation and conflict resolution codified in the 1969 Vienna Convention on the Law of Treaties offer the primary doctrinal framework for addressing this normative overlap [17]. Specifically, Article 30 of the Vienna Convention on the Law of Treaties governs the application of successive treaties relating to the same subject matter, offering two classic interpretive maxims:

- Lex posterior derogat legi priori (The subsequent law supersedes the prior law): Under a strict chronological reading, the 2015 Paris Agreement, as the later instrument, should override conflicting provisions of the 1994 Energy Charter Treaty to the extent of their incompatibility [17, Art. 30(3)]. However, the practical invocation of this rule is routinely rejected by arbitral tribunals. Tribunals consistently rule that the two treaties do not relate to the same subject matter-the Energy Charter Treaty being a specialized instrument regulating investment protection, while the Paris Agreement is a general framework governing global climate architecture.
- Lex specialis derogat legi generali (The specific law supersedes the general law): Because the Energy Charter Treaty isolates and specifically regulates the precise rights of energy investors within a demarcated economic sector, arbitral tribunals almost universally categorize the Energy Charter Treaty as the lex specialis. Consequently, they prioritize its explicit protective mandates over the generalized, structurally flexible environmental objectives of the Paris Agreement.

Faced with this gridlock, Professor Jorge E. Vinuales posits that the only doctrinally sound path toward systemic coherence lies in the robust application of the “Principle of

Systemic Integration" under Article 31(3)(c) of the Vienna Convention on the Law of Treaties [18, p. 244-247]. This canon of interpretation mandates that when construing the terms of a treaty (such as the scope of fair and equitable treatment or "expropriation"), there shall be taken into account "any relevant rules of international law applicable in the relations between the parties" [17, Art. 31(3)(c)]. By compelling arbitral tribunals to interpret investment protections in alignment with the parties' co-existing international climate commitments under the Paris Agreement and the United Nations Framework Convention on Climate Change, this principle allows for a more balanced approach that protects sovereign regulatory space.

This systemic asymmetry stems from a fundamental incompatibility: the Energy Charter Treaty was designed during an era dominated by fossil fuels to protect capital from political risks, whereas the Paris Agreement demands proactive, state-driven market interventions to achieve deep decarbonization. As global temperatures approach critical thresholds, treating the protection of foreign investors as absolute through rigid interpretations of the Fair and Equitable Treatment standard directly undermines anthropogenic environmental imperatives. The empirical reality of investor-state dispute settlement claims regarding the restructuring of renewable energy subsidies and the phase-out of fossil fuels proves that the threat of astronomical compensation creates a serious regulatory chill effect. This effect hinders states from updating their Nationally Determined Contributions and turns legacy investment instruments into legal shields for carbon-intensive assets. Consequently, maintaining the status quo under the current Energy Charter Treaty framework creates an unsustainable paradox where states face financial penalties for fulfilling their binding climate obligations [6, p. 532].

*4.2. Harmonization Models and Modern Trends*

Faced with growing friction between investment law and climate governance, state practice has split into two primary operational pathways designed to align the Energy Charter Treaty with the modern climate regime:

Model 1: Institutional Treaty Modernization - This model attempts to reform the Energy Charter Treaty from within by amending its text to strip fossil fuel investments of their protected status, explicitly insulating the state's right to regulate, and directly integrating climate metrics into the treaty text. Following years of negotiations, the Energy Charter Conference adopted a package of modernization amendments on December 3, 2024, which entered into provisional application on September 3, 2025 [5].

A core feature of this modernized framework is a flexible carve-out mechanism: contracting parties like the European Union, the United Kingdom, and Switzerland are permitted to phase out investment protection for existing fossil fuel assets by 2040 at the latest, while completely stripping protection from new fossil fuel investments implemented after the entry into force of the amendments. However, a wide swath of legal scholars and climate economists criticize these modifications as a compromised, path-dependent reform. They argue that the extended 2040 sunset timelines remain fundamentally incompatible with the immediate greenhouse gas reductions required to preserve the 1.5°C threshold.

Model 2: Inter Se Agreements and Coordinated Secession - Driven by the perceived insufficiency of the modernization process, an influential coalition of sovereigns has pursued a strategy of coordinated exit, utilizing the mechanisms provided in Article 41 of the Vienna Convention on the Law of Treaties [17, Art. 41]. This pathway allows a subset of contracting parties to conclude inter se agreements to modify or suspend the operation of treaty provisions exclusively among themselves.

This model has been vigorously executed within the European Union. Recognizing that the unamended Energy Charter Treaty systematically undermined its internal European Green Deal mandates, a succession of European Union member states (including France, Germany, Spain, Italy, and the Netherlands)-sculminating in the European Union as a collective entity-formalized their denunciation of and withdrawal from the Energy Charter Treaty. This political secession was reinforced by the Court of Justice of the European Union in its landmark preliminary ruling in Republic of Moldova v. Komstroy, which held that the Investor-State Dispute Settlement clauses contained in Article 26 of the Energy Charter Treaty are structurally incompatible with EU law when applied to intra-European Union disputes [7, p. 42–47].

| Harmonization Dimension | Model 1: Treaty Modernization | Model 2: Coordinated Secession |
|---|---|---|
| Primary Legal Mechanism | Formal text amendment via Article 36 Energy Charter Treaty. | Withdrawal via Article 47 Energy Charter Treaty paired with Article 41 Vienna Convention on the Law of Treaties agreements. |
| Fossil Fuel Protection | Phased out by 2040 for existing capital; immediate exclusion for new assets. | Extinguished immediately between the withdrawing contracting states. |
| Sovereign Right to Regulate | Explicitly codified via new interpretive articles. | Re-asserted by shifting disputes back to domestic judiciaries. |
| Survival Clause Mitigation | Vulnerable to the 20-year sunset provision for non-consenting states. | Neutralized internally among seceding states via a non-applicability agreement. |

While neither pathway offers a total remedy for the global fragmentation of investment law, their operational overlap is actively rewriting the rules of international energy governance. For states remaining within the Energy Charter Treaty framework, the explicit codification of the “right to regulate” represents a valuable step forward. Conversely, for states exiting the treaty, the focus shifts toward ensuring that the Energy Charter Treaty 's 20-year “survival clause” (Article 47(3)) cannot be retroactively weaponized by fossil fuel investors.

Resolving this crisis requires a fundamental paradigm shift in the codification and interpretation of international energy law. The energy law of the future must transcend its classical focus on security of supply and resource sovereignty to embed the principles of decarbonization, intergenerational equity, and climate justice into its normative foundation. To bridge the gap between investment protection and environmental conservation, several steps are essential: a more rigorous application of the principle of systemic integration [17, Art. 31(3)(c)], a doctrinal recalibration by arbitral tribunals, structural modernization of the Energy Charter Treaty or organized exit mechanisms [17, Art. 41], and elevating the state’s right to regulate in the sphere of climate policies to an inviolable, non-compensable framework.

*V.Conclusion*

The intersection of international investment arbitration and global climate governance constitutes a crucial stage in the evolution of modern international law. This study shows that the normative conflict between the Energy Charter Treaty and the Paris Agreement is not simply a technical incompatibility between the two instruments. Rather, it reflects a structural crisis stemming from the historical fragmentation of international law and reveals a profound clash between a highly commercialized, investor-oriented economic sub-regime and a new ecological-social legal order based on public interests and environmental sustainability.

This systemic disproportionality stems from a fundamental incompatibility: the Energy Charter Treaty was designed to protect capital from political risks in an era dominated by fossil fuels, while the Paris Agreement calls for active market interventions led by the state to achieve deep decarbonization. As global temperatures approach critical thresholds, the protection of foreign investors through strict interpretations of the Fair and Equitable Treatment standard directly undermines environmental imperatives. The empirical reality of investor-state dispute settlement claims regarding the restructuring of renewable energy subsidies and the phasing out of fossil fuels demonstrates that the threat of astronomical compensation creates a serious "regulatory chill" effect. This effect discourages states from renewing their Nationally Determined Contributions and turns old investment instruments into legal shields for high-carbon assets. As a result, maintaining the status quo under the current Energy Charter Treaty creates an unsustainable paradox in which states face financial sanctions for not meeting their binding climate commitments.

Resolving this crisis requires a fundamental paradigm shift in the codification and interpretation of international energy law. Future energy law must move beyond its traditional focus on security of supply and resource sovereignty to incorporate the principles of decarbonization, intergenerational equity, and climate justice into its normative foundation. Several important steps are needed to bridge the gap between investment protection and environmental protection: a more rigorous application of the principle of systemic integration, a doctrinal reassessment by arbitral tribunals, a structural modernization of the Energy Charter Treaty or organized exit mechanisms, as well as the elevation of the state's right to regulate in the field of climate policy to an inviolable and non-compensatory framework.

Consequently, the alignment of international energy law with the global climate regime is a necessary condition for the systemic integrity and legitimacy of international law. Only by striking a balance between private commercial expectations and the principles of collective environmental security and a just transition can the international legal order form a stable, fair and sustainable framework for a global green transition.

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# ILLICIT ENRICHMENT: THE ISSUE OF CRIMINALIZATION

**Alam Nabizade***

**Abstract**

*The article provides a comprehensive analysis of the institution of illicit enrichment as an object of criminalization, both in the domestic criminal laws of several states and in transnational criminal law. Particular attention is paid to the international legal grounds for criminalizing illicit enrichment, primarily Article 20 of the 2003 United Nations Convention against Corruption, as well as the provisions of other universal and regional international instruments. The paper conducts a comparative legal analysis of approaches to criminal liability for illicit enrichment in the Russian Federation, Ukraine, and the Kyrgyz Republic, including the practice of constitutional review concerning the relationship between this corpus delicti and constitutional legal principles. Based on the identified models and law enforcement problems, the prospects for criminalizing illicit enrichment in the Republic of Azerbaijan are examined and assessed for compliance with constitutional principles. In conclusion, proposals are formulated to improve the legislation of the Republic of Azerbaijan, aimed at increasing the effectiveness of anti-corruption efforts while simultaneously ensuring the guarantees of individual rights and freedoms.*

***Keywords:*** *illicit enrichment, unjust enrichment, criminal law, transnational criminal law, corruption offenses, United Nations Convention against Corruption, presumption of innocence, privilege against self-incrimination.*

*I. Introduction*

Illicit enrichment should not be confused with unjust enrichment, as these are entirely different concepts belonging to completely different branches of law.

Thus, unjust enrichment is a concept inherent in civil law. Roman law already recognized the institution of condiction obligations, i.e., obligations arising from unjust enrichment. Pursuant to Article 14.2.7 of the Civil Code of the Republic of Azerbaijan, unjust enrichment constitutes a ground for the emergence of civil rights and obligations [24].

In addition to contract and tort, unjust enrichment is another source of obligations. The enrichment of one person at the expense of another, without sufficient legal grounds, gives rise to an obligation to restore the value acquired. In other words, this principle may be expressed as follows: no one should be enriched at the expense of another [23, p. 588].

The concept of illicit enrichment is defined in Article 20 of the 2003 United Nations Convention against Corruption as a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

The key distinction between these concepts lies in the respective legal relationships. In condiction obligations, as in all obligation-based legal relations, there are generally two parties: the person who has been unjustly enriched and the injured party. Since criminal prosecution for corruption offenses is generally conducted by public prosecution, there is no injured party in the criminal procedural relations for the adjudication of such offenses. The same applies to illicit enrichment. The disposition of illicit enrichment excludes the existence of an injured party in these criminal procedural relations. This is because the importance of criminalizing illicit enrichment lies precisely in the unknown origin of the assets. Identifying the person at whose expense the public official was illicitly enriched leads to the reclassification of the act.

* Bachelor's student, Baku State University, Faculty of Law, e-mail: alam.nabizade@gmail.com

*II. Illicit Enrichment in Transnational Criminal Law*

As noted above, the issue of the criminalization of illicit enrichment is reflected in Article 20 of the United Nations Convention against Corruption:

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income [14, p. 217].

Article 20 of the United Nations Convention against Corruption formulates this offense in very concise terms: the intentional commission of illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income. The threshold of significance of the increase in assets is presumed to be determined by national legislation. Authoritative criminologists regard this offense as the most effective instrument for countering corruption. Without such a provision, all rules on the declaration of income by public officials and the financial monitoring of their assets suffer from logical incompleteness [14, p. 217].

The 2003 Convention provides for a special subject of illicit enrichment – a public official. Article 2 (a) of the Convention defines a public official as follows:

For the purposes of this Convention: (a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

However, the proposal to criminalize illicit enrichment in the 2003 Convention is not a novelty. In the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, adopted by General Assembly resolution 51/191 of 16 December 1996, Member States, individually and through international and regional organizations, taking actions subject to each State's own constitution and fundamental legal principles and adopted pursuant to national laws and procedures, commit themselves to examine establishing illicit enrichment by public officials or elected representatives as an offense.

Article IX of the 1996 Inter-American Convention against Corruption also envisages the criminalization of illicit enrichment:

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

It should not be forgotten that the concealed nature of the conduct is one of its most important features. In other words, the person was aware of the property obtained by unlawful means, knew that this property had been acquired illegally, and nevertheless possessed it with such knowledge. Nor is the derivation of a benefit from such property excluded; for example, money received as a bribe may be deposited in a bank account and generate certain annual interest. Although some authors regard the acquired property as the result, the person's criminal conduct continues in another form. For instance, a person receives a bribe - at that point, the offense of bribery is completed - and subsequently unlawfully possesses and/or derives benefit from that money, which constitutes another offense. The application of the ne bis in idem principle does not arise. Although the acts are connected, they are distinct [2].

*III. Illicit Enrichment in the Domestic Law of States*

Russian Federation. Upon ratification of the 2003 United Nations Convention against Corruption, it was emphasized that the Russian Federation has jurisdiction over acts recognized as criminal offenses under Article 15, Article 16, paragraph 1, Articles 17-19, 21, and 22, Article 23, paragraph 1, and Articles 24, 25, and 27 of the Convention. Article 20 is not among the listed provisions, which has led some specialists to argue that the Russian Federation did not ratify that article. This assertion is legally untenable for the following reasons. First, the federal law ratifying the Convention does not expressly state this. Second, the text of the Convention does not obligate a signatory State to incorporate Article 20 into its national legislation; rather, it merely provides for the possibility of making illicit enrichment punishable, subject to each State's Constitution and fundamental principles of its legal system [29].

A position has been expressed in legal scholarship according to which the introduction of criminal liability for illicit enrichment in the Russian Federation would be excessive, since the idea embodied in Article 20 of the Convention - namely, the introduction of liability for illicit enrichment - is already being implemented, albeit through the use of other legal means [19].

Such legal means include the following: firstly, disciplinary liability, through the removal of a public official from the position held or occupied, dismissal from state or municipal service, or termination of employment in organizations specified by a normative legal act. Secondly, the recovery for the benefit of the State - a form of confiscation - in civil-law proceedings of material objects constituting illicit enrichment, based on an application by prosecutorial authorities. Thirdly, the possibility of a criminal procedural response by the prosecution service and other law enforcement authorities to information received concerning the illicit enrichment of a specific person [19].

Given that, in practice, the second and third measures were rarely used during 2013 - 2014, it may be concluded that Federal Law No. 230 is not fully effective, while disciplinary liability alone is incapable of effectively countering illicit enrichment. Therefore, Professor V.V. Luneev's assessment appears justified: although laws were adopted on the control of the income and expenses of public officials and on their possible internal service-related-rather than criminal-liability … there have been no real changes, and there are none to this day [29].

The legislature also recognized the need for a separate offense of illicit enrichment. In 2011, a bill aimed at combating bribery was introduced in the State Duma. The authors of the bill, deputies of the State Duma from the Communist Party of the Russian Federation, proposed adding Article 290.1, entitled Illicit Enrichment, to the Criminal Code of the

Russian Federation. Illicit enrichment was proposed to mean the acquisition by a public official of property whose value significantly, by no less than 500,000 rubles, exceeds his or her lawful income and whose origin he or she cannot reasonably explain. The offense was to be punishable by imprisonment for up to five years, with confiscation of the property acquired as a result of illicit enrichment. The sanction was to be increased where the act was committed on a large or especially large scale, up to ten years' imprisonment with confiscation of the property acquired as a result of illicit enrichment [29].

In addition to the inability of the public official to explain the origin of the object of the offense, a mandatory element of the actus reus of the offense is also presumed to be the crime-forming threshold value of the acquired property, 500,000 rubles. Taking inflation from 2011 to 2024 into account, this amount would correspond to approximately 1,300,000 rubles - about USD 16,000.

Interestingly, the State Duma of the Russian Federation did not approve the bill introduced by Communist deputy Sergei Obukhov, which would have allowed Article 20 of the Convention to be transposed into the 1996 Criminal Code of the Russian Federation. This was explained by Dmitry Gorovtsov, a member of the Expert Council of the Anti-Corruption Commission of the State Duma of the Russian Federation, who stated that this provision does not apply to either businessmen or ordinary citizens. It concerns civil servants [21, p. 574].

This concern does not arise in the Republic of Azerbaijan, since the note to Article 308 of the Criminal Code of the Republic of Azerbaijan classifies as officials persons who perform organizational and administrative or administrative and economic functions based on special authority in institutions and organizations, including public-law legal entities, as well as in commercial and non-commercial organizations, and also persons engaged in entrepreneurial activity without establishing a legal entity - paragraphs 4 and 5.

It should be noted that, under Azerbaijani criminal law, the concept of an official is broader than in the Russian Federation, as it covers the performance of organizational and administrative or administrative and economic functions not only within public authorities but also within commercial and non-commercial organizations. The Russian legislature has adopted an entirely different approach to this issue, as evidenced by the separate inclusion in the 1996 Criminal Code of the Russian Federation of Chapter 23 - Crimes against the Interests of Service in Commercial and Other Organizations.

Thus, the experts of the Council of Europe Multidisciplinary Group on Corruption - Strasbourg, 1995 considered the problem of corruption not only in the public sector, but also in the private sector, and also recognized independent agents as subjects of corruption offenses. It is evident that, guided by this approach, the legislature of the Republic of Azerbaijan did not confine the sphere of corruption solely to the framework of managerial activity in the state and municipal sectors, but significantly expanded the specific protected object of Chapter 33 of the Criminal Code by including commercial and non-commercial organizations, which were expressly referred to in the original wording of the title of Chapter 33 of the 1999 Criminal Code. Moreover, in the current version of the Criminal Code of the Republic of Azerbaijan, pursuant to paragraph 5 of the note to Article 308 of the Criminal Code, even an individual natural person engaged in entrepreneurial activity is recognized as an official [20, p. 627-628].

Ukraine. The Criminal Code of Ukraine provided for liability for illicit enrichment. According to Article 368-2 of the Criminal Code of Ukraine, the acquisition by a person authorized to perform state functions or functions of local self-government of assets of significant value, where the legality of the grounds for their acquisition is not confirmed by evidence, as well as the transfer by such person of those assets to any other person, shall be punishable by imprisonment for a term of up to two years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, and with confiscation of property - paragraph 1. The same acts committed by an official occupying a responsible position shall be punishable by imprisonment for a term of two to five years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, and with confiscation of property - paragraph 2. The acts provided for in paragraph 1 of this Article, committed by an official occupying an especially responsible position, shall be punishable by imprisonment for a term of five to ten years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, and with confiscation of property - paragraph 3. Persons authorized to perform the functions of the State or local self-government shall mean the persons specified in clause 1 of part one of Article 3 of the Law of Ukraine on Prevention of Corruption - clause 1 of the note. Assets of significant value in this Article shall mean funds or other property, as well as income derived therefrom, where their amount or value exceeds one thousand non-taxable minimum incomes of citizens, clause 2 of the note. Transfer of assets in this Article shall mean the conclusion of any legal transactions based on which ownership rights or rights of use in respect of assets arise, as well as the provision to another person of funds or other property for the conclusion of such transactions - clause 3 of the note [9].

59 People's Deputies of Ukraine filed a petition with the Constitutional Court of Ukraine seeking a declaration that Article 368-2 of the Criminal Code of Ukraine was inconsistent with the Constitution of Ukraine and therefore unconstitutional.

In the opinion of the subject entitled to lodge the constitutional petition, Article 368-2 of the Code was incompatible with the provisions of the Constitution of Ukraine concerning: the rule of law; the absence of retroactive effect of laws and other normative legal acts that do not mitigate or abolish a person's liability; the prohibition on holding a person liable for acts which, at the time of their commission, were not recognized by law as offenses; the prohibition on holding a person legally liable twice, within the same type of liability, for the same offense; the presumption of innocence; the exemption of a person from the obligation to prove his or her innocence in committing a crime; the inadmissibility of basing an accusation on assumptions; the right of a person not to give testimony or explanations concerning himself or herself, family members or close relatives; the equality of all participants in judicial proceedings before the law and the court; and the adversarial nature of the proceedings, together with the parties' freedom to submit their evidence to the court and to prove its persuasiveness before the court.

By Decision No. 1-r/2019 of 26 February 2019, the Constitutional Court of Ukraine declared Article 368-2 of the Criminal Code of Ukraine unconstitutional and invalid. As expected, the Constitutional Court based its decision on the contradiction of that provision with the principle of legal certainty, the presumption of innocence, and the right not to testify against oneself.

The Constitutional Court of Ukraine emphasizes that countering corruption in Ukraine is a matter of exceptional public and state importance, and that the criminalization of illicit enrichment is an important legal instrument for implementing state policy in this sphere. At the same time, when defining such conduct as illicit enrichment as a criminal offense, it is necessary to take due account of constitutional provisions establishing the principles of legal liability, human and citizens' rights and freedoms, as well as the guarantees thereof. Pursuant to Articles 62 and 63 of the

Constitution of Ukraine, the legislative formulation of the elements of such an offense as illicit enrichment may not: place on a person the obligation to confirm by evidence the legality of the grounds for acquiring assets into ownership, that is, to prove his or her innocence; grant the prosecution the right to require a person to confirm by evidence the legality of the grounds for acquiring assets into ownership; allow a person to be held criminally liable solely based on the absence of evidentiary confirmation of the legality of the grounds for acquiring assets into ownership. It should be noted that, of the 18 judges who considered this constitutional case, five issued separate opinions - including the presiding judge - while two judges issued dissenting opinions.

By Law No. 263-IX of 31 October 2019, the article entitled Illicit Enrichment was reintroduced into the Criminal Code of Ukraine:

Article 368-5. Illicit Enrichment

1. The acquisition by a person authorized to perform the functions of the State or local self-government of assets whose value exceeds his or her lawful income by more than three thousand subsistence minimums for non-disabled persons-shall be punishable by imprisonment for a term of five to ten years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

Note. 1. Persons authorized to perform the functions of the State or local self-government shall mean the persons specified in clause 1 and sub-clause "r" of clause 2 of part one of Article 3 of the Law of Ukraine on Prevention of Corruption.

2. The acquisition of assets shall mean their acquisition into ownership by a person authorized to perform the functions of the State or local self-government, as well as the acquisition of assets into the ownership of another natural or legal person, where it is proven that such acquisition was carried out on the instructions of the person authorized to perform the functions of the State or local self-government, or that the person authorized to perform the functions of the State or local self-government may, directly or indirectly, perform in respect of such assets actions that are equivalent in substance to the exercise of the right to dispose of them.

3. Assets shall mean funds, including cash, funds held in bank accounts or deposited with banks or other financial institutions, other property, property rights, intangible assets, including cryptocurrencies, the amount of reduction of financial obligations, as well as works or services provided to the person authorized to perform the functions of the State or local self-government.

4. Lawful income of a person shall mean income lawfully received by that person from lawful sources, in particular those specified in clauses 7 and 8 of part one of Article 46 of the Law of Ukraine on Prevention of Corruption.

5. When determining the difference between the value of the acquired assets and lawful income, assets that are the subject of proceedings in cases concerning the recognition of assets as unjustified and their recovery for the benefit of the State, as well as assets recovered for the benefit of the State within the framework of such proceedings, shall not be taken into account [8].

Articles 46.7 and 46.8 of the Law of Ukraine on Prevention of Corruption define the types of income subject to declaration: income in the form of salary or monetary allowance received both at the principal place of employment and through secondary employment; fees; dividends; interest; royalties; insurance payments; alimony; charitable assistance; pensions; income from the alienation of securities and corporate rights; gifts; as well as social payments and subsidies where they are paid in monetary form; and other income. They also define the monetary assets subject to declaration: cash; funds placed in bank accounts or held in banks; contributions to credit unions and other non-bank financial institutions; funds lent to third parties; repayable financial assistance provided to third parties; funds not paid by third parties where the payment deadline has fallen due under the terms of a transaction or pursuant to a court decision; as well as assets in precious banking metals [18].

Thus, by changing its legislative drafting technique, the Ukrainian legislature was able to circumvent the inconsistency between the provision and the constitutional principles of the presumption of innocence and the privilege against self-incrimination. It did so by criminalizing not the inability to explain the origin of assets, but rather the acquisition of assets of a certain value exceeding the lawful income of a public official, which, within the meaning of the Law of Ukraine on Prevention of Corruption, is equivalent to undeclared income.

It should also be noted that this Article does not provide for criminal liability for the illicit enrichment of officials of commercial and non-commercial organizations, or of persons carrying out entrepreneurial activity without establishing a legal entity.

The special subject of this offense is limited to officials performing the functions of the State and local self-government.

Kyrgyz Republic. As early as 2012, Article 308-1, providing for liability for illicit enrichment, was introduced into the 1997 Criminal Code of the Kyrgyz Republic:

Article 308-1. Illicit Enrichment

(1) A significant increase in the assets of an official exceeding his or her lawful income, which he or she cannot reasonably explain-shall be punishable by imprisonment for a term of three to five years.

(2) The same act committed: on a large scale; by an official occupying a responsible position-shall be punishable by imprisonment for a term of six to eight years with confiscation of property.

For the purposes of this Article, a significant increase in assets shall mean an amount of money, the value of securities, other property, or benefits of a proprietary or non-proprietary nature exceeding by three thousand times the calculation index established by the legislation of the Kyrgyz Republic at the time of the commission of the offense.

The act provided for in this Article shall be deemed to have been committed on a large scale where the amount of money, the value of securities, other property, or benefits of a proprietary or non-proprietary nature exceeds by five thousand times the calculation index established by the legislation of the Kyrgyz Republic at the time of the commission of the offense [6]. On 21 January 2014, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic received a petition from citizen T. Dzh. Saatov sought recognition of the dispositions of parts 1 and 2 of Article 308-1 of the Criminal Code of the Kyrgyz Republic as being inconsistent with Article 16 § 3, Article 20 § 1, and Article 26 §§ 2 and 4 of the Constitution.

In the applicant's view, the dispositions of parts 1 and 2 of Article 308-1 of the Criminal Code openly place on the public official the burden of proving his or her innocence, contrary to Article 26 § 2 of the Constitution, which expressly provides that no one is obliged to prove his or her innocence, and relieve the prosecutor of the direct duty to prove guilt in a criminal case, imposed on him by Article 26 § 4 of the Constitution. The applicant considers that, in the contested provisions, the legislature incorrectly used the word "justify" in the phrase "which he or she cannot reasonably justify".

According to T.Zh. Saatov, the requirements of the contested provisions place public officials in an unequal position compared with other citizens of the Kyrgyz Republic who have committed a criminally punishable act, whose guilt must be proved by the public prosecutor in accordance with the Constitution and the Criminal Procedure Code of the Kyrgyz Republic. This, in his view, violates the principle of equality of all persons before the law and the court, which underlies judicial proceedings. By introducing the amendment to the Criminal Code, Article 308-1 - the legislature violated the requirements of Article 20.1 of the Constitution, as it adopted a law diminishing the rights of citizens of the Kyrgyz Republic who are classified as public officials.

The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic held that the dispositions of parts 1 and 2 of Article 308-1 of the Criminal Code of the Kyrgyz Republic were not inconsistent with Article 16, 3, Article 20 § 1, and Article 26 § 2 and 4 of the Constitution of the Kyrgyz Republic.

The Constitutional Chamber substantiated its decision as follows: the principle of the presumption of innocence applies in criminal proceedings to all subjects of an offense, irrespective of their sex, race, language, disability, ethnicity, religion, political beliefs, or other circumstances, thereby ensuring the principle of equality of all persons before the law and the court - Article 16, paragraphs 2 and 3, of the Constitution. At the same time, ensuring equal opportunities and prohibiting discrimination does not preclude a special approach to the legal regulation of the professional activities of persons holding public office. This conclusion is consistent with the legal position of the Constitutional Chamber set out in its decision in the case concerning the review of the constitutionality of subparagraph "m" of part one and part eight of Article 31 of the Law of the Kyrgyz Republic "On Public Service", delivered in connection with the application of citizen E.A. Asanov on 30 April 2014. In that decision, it was stated that the establishment of specific features in the legal regulation of service relations of public servants is determined by the objectives and principles of the organization and functioning of public service, with a view to maintaining its high standards, as well as by the specific nature of the professional activities of persons performing duties in public office. In this regard, it should be noted that, upon entering public service, a public servant voluntarily accepts the restrictions associated with the public-law status of an official acquired by him or her, and complies with the relevant requirements in accordance with the procedure established by law, which does not entail a restriction or violation of that citizen's constitutional rights. The need to prove the origin of one's assets, as an obligation of a public servant, follows from another obligation – to declare one's income, property, and property-related liabilities, the purpose of which is to detect and prevent corruption-related violations. Verification of the accuracy of the information submitted in public servants' declarations is carried out through a mechanism for checking such information, within which they may be required to provide explanations regarding the legality of a significant increase in their assets. Otherwise, the very essence of the obligation of an official to declare income, property, and property-related liabilities would be emptied of its content and would fail to achieve its purpose. In this regard, the obligation of an official to justify or prove a significant increase in his or her property exceeding his or her income is performed within the framework of the obligations arising from the specific nature of his or her public-law status and official activity, and is not regarded as proving his or her innocence in criminal proceedings [10].

On 28 October 2021, the new Criminal Code of the Kyrgyz Republic entered into force, which also provides for liability for illicit enrichment:

Article 340. Illicit Enrichment

1. The acquisition by an official into ownership or use of property whose value exceeds his or her official income confirmed by lawful sources for the last two years of employment, or the transfer by him or her of such property to close relatives or other persons-shall be punishable by imprisonment for a term of two to five years, with confiscation of property and deprivation of the right to hold certain positions or engage in certain activities.

2. The same acts committed by an official occupying a responsible position, where the value of the property exceeds the official's income as confirmed by lawful sources for the last five full years -shall be punishable by imprisonment for a term of five to eight years, with confiscation of property and deprivation of the right to hold certain positions or engage in certain activities [7].

It is noteworthy that this Article established universal elements of the actus reus, which we do not see in the criminal legislation or draft laws of other countries: the criminalizing element is the excess of the acquired or transferred property over the official income of the public official confirmed by lawful sources for the last two years of employment; the qualifying element is the excess of such property over the public official’s income confirmed by lawful sources for the last five full years.

*IV. The Problem of Criminalizing Illicit Enrichment in the Republic of Azerbaijan*

Although the Milli Majlis of the Republic of Azerbaijan ratified the 2003 United Nations Convention against Corruption in 2005, illicit enrichment has still not been criminalized in the Republic of Azerbaijan. Legal doctrine has repeatedly proposed criminalizing illicit enrichment.

According to Professor Sh.T. Samedova, to strengthen the fight against corruption, the 1999 Criminal Code of the Republic of Azerbaijan should be supplemented with a provision establishing officials' liability for illicit enrichment, in accordance with Article 20 of the 2003 United Nations Convention against Corruption. The fight against corruption is one of the most pressing issues for the Republic of Azerbaijan, since success in this sphere would strengthen the authority of state power within the country and the recognition of Azerbaijan abroad as an independent, strong, democratic, and rule-of-law State. In this regard, bringing the criminal legislation of the Republic of Azerbaijan into full conformity with international law in the field of combating corruption is of paramount importance. In this context, criminalizing illicit enrichment, in accordance with Article 20 of the 2003 United Nations Convention against Corruption, would constitute an important step in the fight against corruption. For this purpose, the author proposed introducing a new article into the Special Part of the Criminal Code with the following wording:

Article 310-1. Illicit Enrichment

Illicit enrichment, that is, a significant increase in the assets of an official exceeding his or her lawful income, which he or she cannot reasonably explain - shall be punishable by imprisonment for a term of 7 to 12 years, with deprivation of the right to hold a certain position or engage in certain activities for a term of up to 3 years [22, p. 202-203].

In our opinion, the criminalization of illicit enrichment in the form provided for in Article 20 of the 2003 Convention may raise certain questions regarding the compliance of such a provision with the constitutional principles of the Republic of Azerbaijan. Thus, one cannot but agree with the view of the Constitutional Court of Ukraine that defining the actus reus of the offense as the inability to explain the origin of property reasonably violates the principle of the presumption of innocence and the privilege against self-incrimination.

Pursuant to paragraphs I-III of Article 63 of the Constitution of the Republic of Azerbaijan, everyone has the right to the presumption of innocence. Every person accused of committing a criminal offense shall be presumed innocent until his or her guilt has been proven in the manner prescribed by law and until a final and binding court judgment to that effect has entered into force. Where there are reasonable doubts as to a person's guilt, that person may not be found guilty. A person accused of committing a criminal offense is not obliged to prove his or her innocence.

Pursuant to Article 21 of the Criminal Procedure Code of the Republic of Azerbaijan, every person accused of committing a criminal offense shall be presumed innocent until his or her guilt has been proven in accordance with the procedure provided for by that Code and until a final and binding court judgment to that effect has entered into force. It is inadmissible to find a person guilty even where there are well-founded suspicions of his or her guilt. In accordance with the provisions of that Code, doubts which cannot be eliminated in the course of proving the accusation within the relevant legal procedure shall be resolved in favor of the accused or suspect. Likewise, doubts that remain unresolved in the application of criminal and criminal procedural law shall also be resolved in his or her favor. A person accused of committing a criminal offense is not obliged to prove his or her innocence. The burden of proving the accusation and of refuting the arguments advanced in defense of the accused lies with the prosecution.

In various States, the rule on the presumption of innocence is enshrined in legislation in different forms: "the accused shall be presumed innocent until finally convicted" - Italy; "the accused in a criminal case is presumed innocent until the contrary is proved; in the event of reasonable doubt as to whether his guilt has been duly proved, he is entitled to acquittal" - United States.

The presumption of innocence safeguards an entire complex of human rights: the right to liberty, property, honor and dignity, and others. Externally, it protects the individual from the State and society, which might otherwise be inclined to prosecute persons whose guilt they are convinced of, even though they lack sufficient and lawfully obtained evidence.

Paragraph III of Article 63 of the Constitution releases the accused from the obligation to prove his or her innocence. Pursuant to Article 21 of the Criminal Procedure Code, "the burden of proving the accusation and refuting the evidence advanced in defense of the accused or suspect lies with the prosecution".

Proving is a concept used in judicial proceedings in two meanings: the substantiation of a certain proposition, for example, the guilt or innocence of the accused, by means of relevant arguments, i.e., logical proof; the collection, through investigative and judicial actions, of information concerning facts in the form of testimony, expert opinions, written and physical evidence, and the assessment of such evidence. The burden of proof in the above meanings lies with the bodies and officials conducting criminal prosecution: the inquiry body, the investigator, the prosecutor, and, in private prosecution cases, the victim - the private prosecutor - and his or her representative. Failure to perform, or inadequate performance of, this duty entails consequences adverse to the prosecution: termination of the case or acquittal of the defendant. The accused and the defense counsel representing his or her interests, exercising their procedural powers, put questions to persons being examined and to experts, file motions before the investigator and the court for investigative and judicial actions to be carried out to collect evidence, and submit to the investigator and the court objections and documents in their possession for inclusion in the case file as evidence. The accused gives testimony. These actions of the accused and defense counsel are a matter of the right, but not the obligation, to participate in the proceedings. Unlawful attempts to shift the burden of proof onto the accused are expressed in the decisions of the investigator or the court that are adverce to him or her - refusal of a motion to terminate the case, a conviction, dismissal of an appeal against the judgment, and others - justified on the ground that the accused or his or her defense counsel failed to present convincing evidence of innocence. The social significance of the rule prohibiting the shifting of the burden of proof onto the accused lies in the fact that it removes the dependence of the conclusions of the investigator and the court on a subjective factor: the accused’s willingness and ability to prove his or her innocence, and his or her capacity to establish the existence of mitigating circumstances or the absence of aggravating circumstances [1, p. 281-284].

The content of the presumption of innocence depends on the extent to which the principle of adversarial proceedings is implemented in legislation. Thus, in a classical adversarial process, there is no requirement for mandatory proof of the accused’s guilt as a condition for finding the accused guilty, as is present in legislation. The prosecutor is relieved of the obligation to prove guilt if the accused admits it and the court accepts that admission. In criminal proceedings, however, the prosecutor is under no circumstances relieved of the obligation to prove the accused's guilt. A confession by the suspect or accused to having committed the offense is regarded as ordinary evidence. It should also be noted that, in practice worldwide, placing the burden of proving guilt on the prosecutor does not preclude the accused from having to prove certain circumstances. Thus, pursuant to Article 31, paragraph 8, of the 2003 United Nations Convention against Corruption, “States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime...” Similar presumptions are contained in the legislation of European countries, for example, England and France, and their existence is not regarded by the European Court of Human Rights as being contrary to the presumption of innocence - judgment of 7 October 1988 in Salabiaku v. France. It also follows from this that the inaction of the accused - for example, refusal to give testimony or to put forward arguments in his or her defense - cannot be regarded as evidence of guilt. Nevertheless, exceptions to this rule also exist abroad. For example, in England, where a defendant refuses to give testimony, both at trial and during a police investigation, the court may draw “such inferences as appear proper” - such inferences will not be in the defendant’s favor. See section 35 of the Criminal Justice and Public Order Act 1994 [5, p. 292-293].

Pursuant to Article 66 of the Constitution of the Republic of Azerbaijan, no one may be compelled to testify against himself or herself, his or her spouse, children, parents, brother, or sister. The full list of relatives against whom testimony is not obligatory shall be determined by law. Pursuant to Article 20 of the Criminal Procedure Code of the Republic of Azerbaijan, no one may be compelled to testify against himself or herself or his or her close relatives, nor be subjected to any prosecution for doing so. A person who, during a preliminary investigation or trial, is requested to provide information incriminating himself or herself or his or her close relatives in the commission of a crime has the right to refuse to testify without fear of any adverse legal consequences for himself or herself.

The international legal basis of these principles is formed by Article 11 of the 1948 Universal Declaration of Human Rights and Article 14 of the 1966 International Covenant on Civil and Political Rights. In particular, pursuant to Article 14, paragraph 3 (g), of the 1966 International Covenant on Civil and Political Rights, in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality, not to be compelled to testify against himself or to confess guilt [13].

The doctrine of transnational criminal law holds that the presumption of innocence applies to public officials in a limited form [14, p. 217]. The general principles and conditions of criminal proceedings determine the overall normative framework for the conduct of criminal prosecution. Therefore, any procedural action or act will be lawful and well-founded only if carried out in full compliance with the requirements of these principles and conditions. It is precisely for this reason that the requirements of these principles and conditions, permeating all norms regulating criminal procedure, are further specified therein.

Article 9 of the Criminal Procedure Code of the Republic of Azerbaijan emphasizes the superior legal force of the fundamental principles and conditions enshrined in Articles 10-36 of the Code over any other provision of criminal procedural legislation. Consequently, where individual provisions and norms of criminal procedural legislation contradict the principles and conditions established in Articles 10-36 of the Code, the requirements of those principles and conditions must be followed.

Otherwise, the relevant procedural action or procedural act may be declared unlawful and unfounded, since it was carried out contrary to the fundamental principles and conditions of criminal proceedings.

However, in accordance with the requirements of Article 2 of the Criminal Procedure Code, where the fundamental principles and conditions of criminal proceedings are inconsistent with the rules established by the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party, they cannot serve as governing standards and, accordingly, cannot determine the lawfulness and well-foundedness of the relevant procedural action or procedural act [3, p. 52-53].

We consider that any restriction of constitutional principles, in whatever form, is inconsistent with the aims of a rule-of-law State. We also consider it inappropriate, when criminalizing illicit enrichment, to define a crime-forming threshold amount of illicitly acquired assets of an official. This is because, depending on the position of the official - the category of his or her office, the category of the body in which the official works, his or her monthly salary, and so forth - different amounts of illicitly acquired assets may affect the authority of state power and the functioning of the state apparatus in different ways. At the same time, the insignificance and low degree of public danger of illicit enrichment should remain an evaluative category. The law-enforcement authority should determine them in accordance with Article 14.2 of the Criminal Code of the Republic of Azerbaijan. However, we fully agree with the position of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic that, upon entering public service, a public servant voluntarily accepts the restrictions associated with the public-law status of an official acquired by him or her, and complies with the relevant requirements in accordance with the procedure established by law.

Thus, pursuant to Article 18.0.9 of the Law of the Republic of Azerbaijan "On Civil Service", while holding office, civil servants must annually submit to the head of the state body a financial report on their income and property status, indicating the sources, types, and amounts of any additional income [15].

Article 5 of the Law of the Republic of Azerbaijan "On Combating Corruption" of 13 January 2004 provides that officials, in the manner established by law, are obliged to submit the following information:

1. annually - information on their income, indicating the source, type, and amount;
2. information on property subject to taxation;
3. information on deposits in credit institutions, securities, and other financial assets;

4. information on participation in the activities of companies, funds, and other business entities as a shareholder or founder, and on their ownership share in such organizations;

5. information on debt exceeding 5,500 manats;

6. information on other financial and property-related obligations exceeding 1,100 manats [16].

Income information may be requested in the manner prescribed by law. Article 6 of this Law defines liability for violation of financial requirements. Officials or persons applying for office shall be notified, in the manner prescribed by law, of the requirements provided for in Article 5.1 of this Law, as well as of the legal consequences of failure to comply with those requirements. Failure by officials to comply with the requirements established by Article 5.1 of this Law, namely the untimely submission, without valid reasons, of the information provided for in that Article, or the intentional submission of incomplete or distorted information, may entail disciplinary liability for those persons. Persons in respect of whom the Constitution of the Republic of Azerbaijan and laws provide for a special procedure for bringing them to disciplinary liability may be brought to such liability in compliance with those rules. The Commission has the right to publish in the official state newspaper information on persons who fail to comply with the requirements established by Article 5.1 of this Law.

In connection with these provisions, on 24 June 2005, the Law of the Republic of Azerbaijan "On Approval of the Rules for the Submission of Financial Information by Officials" was adopted. These Rules determine the form for submitting the financial information required by Article 5.1 of the Law of the Republic of Azerbaijan "On Combating Corruption", the officials responsible for submitting such information, the bodies that receive it, and the procedure for verifying it.

Pursuant to Article 4.1 of these Rules, financial information shall be submitted in the form of a declaration. The form of the declaration and the procedure for its submission shall be determined by the relevant executive authority, taking into account the Commission's proposals. Pursuant to Article 11, "Transitional Provisions", of these Rules, after approval of the form of the declaration provided for in paragraph 4.1 of these Rules, officials are obliged to submit the declaration within four months [17].

In connection with the application of this Law, Decree No. 278 of the President of the Republic of Azerbaijan dated 9 August 2005 was adopted. This Decree established that the powers of the relevant executive authority responsible for determining the form of the declaration shall be exercised by the Cabinet of Ministers of the Republic of Azerbaijan, and instructed it, within two months, to determine the form of the declaration and the procedure for its submission, as provided for in Article 4.1 of the Rules "On the Procedure for the Submission of Financial Information by Officials", and to inform the President of the Republic of Azerbaijan thereof [11].

However, despite the provisions of the above-mentioned normative legal acts, the Cabinet of Ministers of the Republic of Azerbaijan has not yet adopted the relevant act establishing the form of such declarations.

## *V. Conclusion*

It is entirely logical that the obligation to submit a financial report on one's income and property status must be backed by sanctions, and that the non-declaration of property by a civil servant should constitute a criminal offense.

It should also be noted that it is important to criminalize the transfer of such property by an official to close relatives or other persons to prevent circumvention of the law.

To implement and sanction the above-mentioned provisions of the Law of the Republic of Azerbaijan "On Combating Corruption" concerning the submission by officials of financial information, it is first necessary for the Cabinet of Ministers of the Republic of Azerbaijan to implement Decree No. 278 of the President of the Republic of Azerbaijan and to approve the form of declarations.

After the form of financial declarations has been approved by the Cabinet of Ministers of the Republic of Azerbaijan, we propose introducing a new article into the Special Part of the 1999 Criminal Code of the Republic of Azerbaijan with the following wording:

Article 311-1. Illicit Enrichment

311-1.1. Illicit enrichment, that is, the acquisition by an official of property not reflected in the financial report submitted by that official in accordance with the legislation of the Republic of Azerbaijan, as well as the transfer by him or her of such property to close relatives or other persons-shall be punishable by imprisonment for a term of 3 to 7 years, with deprivation of the right to hold a certain position or engage in certain activities for a term of up to 3 years.

311-1.2. The acquisition by an official of property not reflected in the financial report submitted by that official in accordance with the legislation of the Republic of Azerbaijan, as well as the transfer by him or her of such property to close relatives or other persons, where committed in a significant amount - shall be punishable by imprisonment for a term of 7 to 12 years, with deprivation of the right to hold a certain position or engage in certain activities for a term of up to 3 years.

For the purposes of this Article, a significant increase in assets shall mean an amount of money, the value of securities, other property, benefits, or privileges of a proprietary nature exceeding 500,000 manats.

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# THE FUTURE OF THE EUROPEAN HUMAN RIGHTS PROTECTION SYSTEM: BETWEEN UNIVERSALITY AND FRAGMENTATION

**Fidan Aliyeva***

**Abstract**

*The European human rights system, largely based on the jurisprudence of the European Convention on Human Rights and the European Court of Human Rights, has played a crucial role in promoting and protecting human rights across Europe. Nevertheless, in recent years, the system has encountered significant challenges related to its unity, legitimacy, and universality. Growing political polarization, diverse constitutional traditions, and tensions between international obligations and state sovereignty have contributed to increasing fragmentation. This study examines the relationship between universality and fragmentation within the European human rights framework, analyzing how differing state responses to Court judgments, variations in rights interpretation, and the development of alternative regional and national human rights narratives influence the consistency, effectiveness, and future development of common human rights standards in Europe.*

**Keywords:** *universality, fragmentation, European Court of Human Rights, legal pluralism, state sovereignty.*

*I. Introduction*

The protection of human rights is one of the main pillars of modern international law and constitutes an important manifestation of the interaction between the domestic legal systems of states and their international obligations. The European Human Rights Protection System is considered one of the most developed regional mechanisms of modern international law. This system was formed on the basis of the European Convention on Human Rights and the European Court of Human Rights, which monitors its implementation. The system establishes legally binding obligations for member states and provides individuals with the opportunity to protect their rights at the international level. The principle of universality, which forms its basis, confirms that all people have equal rights, regardless of their nationality, political structure and social status. However, in recent years, growing political tensions, claims to national sovereignty and legal diversity have tested the integrity of the system. In this context, the human rights protection system formed in the European space acts as one of the most effective and institutionally developed mechanisms at the regional level. The adoption of the European Convention on Human Rights and the establishment of the European Court of Human Rights to monitor its implementation have brought a single and binding legal framework for the protection of human rights and have established common standards for member states [3, p. 63]. For a long time, the European human rights system has operated on the basis of the principle of universality, aiming at the equal and unchanging application of the rights and freedoms enshrined in the Convention to all member states. The case-law of the ECtHR has not only provided for the adoption of decisions on specific cases, but also provided for the dynamic and evolving interpretation of human rights, and has created conditions for the adaptation of the Convention to modern social relations through the doctrine of the "living instrument". This approach has made a significant contribution to

* Bachelor of law, Baku State University, e-mail: fidan_04@list.ru

the formation of a common legal culture and system of values on a European scale.

However, in recent decades, the European human rights system has faced increasingly complex and multifaceted challenges. The rise of political populism, the resurgence of national identity and sovereignty, and the growing role of domestic constitutional courts have deepened tensions between international human rights mechanisms and national legal systems. The selective approach of a number of states to the implementation of ECtHR judgments, or claims that these judgments conflict with national legal principles, have raised questions about the system's coherence and effectiveness. Against the background of these processes, fragmentation tendencies are clearly observed in the European human rights system. Fragmentation manifests itself in various forms - differences in the interpretation of rights, disputes over the institutional division of powers, the formation of alternative legal approaches at the regional and national levels. At the same time, the normative intersections that arise between European Union law and human rights mechanisms operating within the framework of the Council of Europe can also be noted among the factors increasing the risk of legal fragmentation. At the same time, the phenomenon of fragmentation is not assessed unambiguously negatively. A number of lawyers and researchers evaluate this process as a manifestation of legal pluralism and democratic diversity, emphasizing that the principle of universality does not mean complete homogeneity. In this regard, the main issue is to ensure a balance between preserving common core values and minimum standards in the European human rights system and taking into account the historical, cultural and legal characteristics of the member states. It is in this context that the purpose of the study presented is to analyze the future of the European human rights protection system from the perspective of universality and fragmentation. The study will examine in detail the role of the European Court of Human Rights, the attitude of states to their obligations, modern legal and political trends, as well as institutional and normative approaches that can ensure the sustainability of the system. As a result, the work aims to formulate scientifically substantiated conclusions and recommendations on the future development directions of the European human rights system [1, p. 110].

*II. Universality and Fragmentation in the European Human Rights System*

In assessing the future protection of human rights in Europe, it is important to note some of the negative trends and developments that threaten post-war human rights standards, policies and institutions. If these trends and developments are not addressed, a bleak future for human rights is predicted in many parts of the continent. The current downward trend began after 9/11. There has been little accountability and responsibility for the involvement and responsibility for serious human rights abuses committed by European counter-terrorism policies since 9/11. These include covert rendition operations, torture, and widespread ethnic and religious profiling. Those involved in setting up and running "black sites" in Poland, Lithuania, and Romania have not publicly reported on their activities. Almost no one in Europe has been held accountable for human rights abuses committed in collaboration with the United States, and this lack of accountability weakens our system.

More recently, a number of European countries have witnessed broader democratic backsliding, raising questions about what European institutions can and should do in such situations. Membership of the European Union and the Council of Europe was supposed to strengthen emerging democratic trends in the "new" member states and prevent "old" member states from straying from the democratic path. But this has not always worked. Within the European Union, we have witnessed the case of Hungary, which adopted laws that have proven problematic from a human rights perspective. The Venice Commission, the Council of Europe's constitutional advisory body, has issued numerous critical opinions on these laws, and all these legal acts have received a record number of opinions in a short period of time [3, p. 45].

We have seen the regular arrest, prosecution and detention of journalists and human rights defenders in the Council of Europe state of Azerbaijan, but also the release of many each year through presidential amnesty. Protests have been banned in the center of Baku, the capital of Azerbaijan, since 2006. There has also been a democratic backsliding in a number of areas in Russia. One worrying development is the adoption of a new law classifying non-profit organizations that receive international funding as "foreign agents"; the law contains a number of vague provisions that are open to abuse. In Greece, an "old" EU and Council of Europe member, Europe has watched with unhelpful concern the rise of a neo-Nazi party called Golden Dawn. The party has benefited from a toxic combination of uncontrolled mass migration, economic crisis and the state's withdrawal from day-to-day security functions in Greece, which until 2010 was home to 90% of illegal migrants in the EU.

The leadership of the Golden Dawn party has direct ties to the former military junta, and many of its members have shown a blatant and brutal disregard for parliamentary democracy. Those associated with the party, including some members of parliament, have used physical violence against migrants, minorities and human rights activists. What will Europe do if Golden Dawn becomes a coalition partner in a future government? A different challenge to the European human rights system is being presented by the United Kingdom. The United Kingdom is one of Europe's oldest democracies and a founding member of the Council of Europe. The United Kingdom has limited cooperation with other European Union member states on justice and home affairs. Some politicians from the ruling Tory party have even openly questioned the very nature of the European human rights system, arguing that the United Kingdom should only implement some European Court of Human Rights rulings. The United Kingdom should not forget that recent European history has shown that in times of crisis, European states should come together, not resort to national isolation.

These negative trends in individual European countries are compounded by several broader crises that have long-term negative effects on human rights. The collapse of European Union enlargement, the political crisis surrounding the ratification of the Lisbon Treaty, and the Eurozone crisis have led to a weakening of the idea of European integration, a questioning of the value of European solidarity and cooperation, and a questioning of European "equality pressure" and European "soft power". While the weakening of the European Union has had a global impact, its impact is most immediately felt in the European Union's periphery, the Western Balkans, Turkey, and the countries of Europe's Eastern Neighborhood, where democratic conditions are no longer as strong as they once were [5, p. 172]. On top of all this, there is the economic crisis, which has undermined the full range of human rights, especially the social and economic rights of the most vulnerable groups, access to justice, the status of independent institutions such as ombudsmen and equality bodies, and more. Some of the damage will be long-lasting, especially since children and young people are the victims of austerity measures. The increase in poverty among children, the resurgence of child labor, and the decline in access to education will have long-term negative effects on an entire generation. Mass youth unemployment - the most widespread social pathology in countries experiencing economic crisis - is leading this generation to distrust the European social model, the rhetoric of solidarity, and the promises of political elites. The economic crisis is affecting a variety of social and political movements; some of them have anti-democratic methods and goals. What can be done to stop these negative trends? Is there light at the end of the tunnel? We must firmly reject the anti-human rights component of the post-Cold War so-called "war on terror", eliminate the impunity, uncover the truth and compensate the victims. Real accountability is needed at the European level. The Dick Marty Case in the PACE framework, the European Parliament and the recent judgment of the European Court of Human Rights in the El Masri case are small examples, but much more needs to be done.

The centre-piece of the European human rights system – the European Court of Human Rights and the enforcement of its judgments – needs to be strengthened. The backlog of cases has been significantly reduced, but enforcement of judgments remains problematic in many countries. We need to mobilise all Council of Europe bodies and mechanisms to promote effective enforcement. Interestingly, European Union institutions, including the European Parliament and DG Enlargement, are also calling for the enforcement of the Court's judgments. This has so far mainly concerned candidate countries. Could the European Union not be more active in promoting the enforcement of the Court's judgments in European Union Member States? There are human rights-compliant and non-human rights-compliant ways of responding to crises. What should a human rights-compliant response look like? First, governments must adhere to procedural human rights principles such as transparency, accountability and participation. The last principle - participation - is crucial because if people are not consulted and have no say in the budget and reform processes, they will do so later in the streets. Second, governments must allocate funding to ombudsmen, equality bodies and other areas of human rights infrastructure, and involve structures that help the most vulnerable groups in the human rights analysis of budgets and in monitoring the impact of austerity measures. Third, governments must establish social protection layers in line with the standards of the European Social Charter. Particular attention should be paid to children and young people. The most serious specific challenges to human rights in Europe are migration and racism, including anti-Gypsyism.

Migration outside Europe is likely to continue and there will be protests against it. The Dublin return system will weaken due to judicial difficulties, but pressure on Greece, Italy and Malta will continue. Poor national and European migration policies – criminalization of migration, long-term detention, lack of integration measures – will reinforce racism. In addition, migration will create new tensions in Central and Eastern Europe. Roma migration in Europe will continue, despite pressure from source countries. This situation will provide fodder for right-wing political movements; these movements have become entrenched in the European political landscape and have a negative impact on minority, migration, asylum and equality policies. Similar to the situation in Austria in 2000 with Jörg Haider and the populist right-wing Austrian Freedom Party, the EU, the Council of Europe, the OSCE and the United Nations have had little influence over Golden Dawn, Jobbik and similar parties; this undermines the credibility of the regional human rights regime and poses major threats to human rights in those countries. What can be done? I see no long-term alternative – there needs to be a genuine migration policy and real solidarity at European level. If we fail to establish this, southern countries will continue to resort to policies that are incompatible with human rights, such as pushback policies at sea or land borders. The European Union and its member states must resolutely and systematically involve neighbouring countries, such as Turkey, which are transit countries for migrants, including asylum seekers, in these efforts. European human rights-compliant migrant integration strategies are also needed: preventing discrimination, promoting interaction between newcomers and the host society and increasing participation. While promoting migrant integration, Roma integration strategies should also be implemented and anti - Gypsyism should be combated, access to basic education should be ensured, and Roma should be more actively involved in policy processes.

The Council of Europe, the OSCE and the EU could play a greater role in this area. In the area of anti-discrimination – one of the few human rights areas where the EU has legislative competence – the EU should require Member States, candidate countries and European Neighbourhood Policy countries to fully implement the Race Directive. Regarding racist and neo-Nazi political parties, I believe that we need to establish certain political "red lines" [3, p. 120]. There is no need to invent anything new for this; we have the "International Convention on the Elimination of All Forms of Racial Discrimination". This convention requires states to "outlaw and prohibit organizations and activities that incite and propagate racial discrimination". If countries do not prohibit such organizations, they should strictly monitor them and actively hold politicians accountable for hate speech and hate crimes. The future of human rights will also depend on the ability of human rights defenders to minimize digital risks and maximize digital opportunities. Some of the key risks include: the fragmentation of the internet with varying degrees of censorship across national boundaries; the abuse of freedom of expression online (hate speech, child abuse, terrorist training, cyberwarfare); and the growing threat to privacy through surveillance, data mining, and profiling for law enforcement, national security, marketing, and other purposes.

To minimize these risks and maximize the human rights potential of the Internet, the Council of Europe, the OSCE and national human rights institutions must protect the Internet as a space for open information exchange and develop strategies for raising awareness of human rights on the Internet. We are still catching up with the excellent work of NGOs and the private sector. Couldn't the Council of Europe Development Bank and the European Commission work together to finance high-speed Internet access throughout the Council of Europe, while combating unjustified restrictions? Data protection authorities must be strengthened, their existence, independence and effective functioning ensured. Finally, large-scale European digital literacy campaigns should be carried out, including in-service training for those who did not grow up with technologies such as Facebook, Twitter, YouTube, blogs. There are other promising new trends. At the international level, the UN Universal Periodic Review process is playing a constructive role in many European countries, encouraging dialogue between civil society and governments and advancing more systematic human rights work at the national level. European states are ratifying the OPCAT and establishing national preventive mechanisms to prevent torture in prisons. Despite budgetary crises, the OSCE continues to do its useful work. The Representative on Freedom of the Media and the High Commissioner on National Minorities play a unique role. OSCE missions are an international human rights presence in the Western Balkans and the South Caucasus. OSCE election monitoring continues to be of high quality.

The EU has started to put human rights on the agenda, both within the EU and in its external relations. The increased role of the European Parliament in human rights and the creation of a Special Representative for Human Rights under Lady Ashton are noteworthy. The next major step will be the ratification of the European Convention by the European Commission, which will increase coherence in the European legal area. It is important that the next structural funds are used in favor of human rights – in particular on migration, social inclusion, including Roma, disability rights, prisons and other places of detention. The brave human rights defenders and NGO activists I have met in various European countries give me hope. They are strong, patient, intelligent people, and there are many of them in Europe. We must respect NGOs that have been active, professional, and sustainable for many years for their human rights achievements in recent decades. We cannot allow these achievements to be undermined.

The Essence of the Principle of Universality - Universality refers to the indivisibility, inviolability and universality of human rights. In the European context, this principle is implemented through the uniform application of the ECHR and the binding nature of its decisions. The case law developed by the Court has led to the emergence of common standards in areas such as freedom of expression, the prohibition of torture, a fair trial and the right to privacy. The ECHR ensures that human rights develop in line with the requirements of the times by interpreting the Convention as a "living document". At the same time, the European Human Rights System faces risks of fragmentation. Some states have difficulty in adapting ECtHR judgments to their national legal systems or seek to limit their implementation. The fact that national constitutional courts sometimes give precedence to domestic law creates legal contradictions. At the same time, populist political discourses increase distrust in international human rights mechanisms and undermine the legitimacy of the system.

The Role of Dialogue and Cooperation - Strengthening legal dialogue between national courts and the ECtHR is crucial in preventing fragmentation. Cooperation between state authorities, civil society institutions and international organizations serves to strengthen a human rights culture. The future of the system depends on striking the right balance between universality and national specificity. Improving the effectiveness of the ECtHR, strengthening the supervision of the implementation of its decisions and expanding human rights awareness should be key priorities. The European Human Rights System is currently at a crucial stage. While upholding the principle of universality, the proper management of legal and political diversity will ensure the sustainability of the system. If this balance is achieved, the system will remain a mainstay of democracy, the rule of law and human dignity in Europe.

### *III. Conclusion*

The European human rights system has followed a complex trajectory between universality and fragmentation since the post-war period. The lack of accountability of many European states in cases such as post-9/11 counter-terrorism measures, covert "rendition" operations, torture and ethno-religious profiling weaken human rights standards and undermine the credibility of the system. At the same time, democratic regression in a number of countries, the lack of compliance of national legislation with human rights principles despite the monitoring mechanisms of the Council of Europe and the EU, and the rise of political populism and right-wing extremist movements pose serious challenges to the stability of the system. In addition, issues of migration and racism, the economic crisis, mass youth unemployment, child poverty and the risk of digital rights violations pose new and complex challenges to the protection of human rights. These trends show that the protection of human rights in Europe does not depend solely on institutional presence, but also on the active and sustained participation of civil society, NGOs and international influence mechanisms. It is encouraging that institutions such as the European Court of Human Rights, the Council of Europe, the EU and the OSCE still play an important role in strengthening the system. Ratification of the OPCAT, the establishment of national preventive mechanisms, policies aimed at the integration of migrants and Roma, the protection of digital rights and the active participation of NGOs create real opportunities for the protection of human rights. In order to strengthen human rights in the future, governments must ensure transparency, accountability and citizen participation, strengthen social protection systems, prevent discrimination and implement human rights-compliant policies at both national and regional levels. Such an approach would counter fragmentation in Europe while preserving the principles of universality and ensure that the human rights system functions as an exemplary model both on the continent and globally. If the European human rights system is protected not only by the strong action of institutions, but also by civil society, international bodies and political will, it can maintain the balance between universality and fragmentation and provide a credible guarantee of human rights for future generations on the continent.

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# CLIMATE MIGRANTS IN LEGAL LIMBO: A COMPARATIVE ANALYSIS OF LEGAL APPROACHES TO BRIDGING THE PROTECTION GAP

**Hamida Sadigova***

**Abstract**

*Climate change is displacing millions through rising sea levels and environmental disasters, yet cross-border climate migrants remain in a "legal limbo", lacking recognition under existing international frameworks. This article examines why instruments, such as the 1951 Refugee Convention, fail to protect them and proposes a realistic legal solution. Through comparative legal analysis, it evaluates five pathways against their political feasibility and protection efficacy, drawing on case studies, including Ioane Teitiota v. New Zealand. The study finds that asylum mechanisms fail because environmental degradation does not constitute "persecution", while state sovereignty and the difficulty of proving climate causation make a single global treaty highly unlikely. Rather than one legal tool, the article advocates a hybrid, multi-level governance framework combining regional agreements, flexible visas, and human rights interpretation into a decentralized but coherent system for protecting climate migrants.*

***Keywords:*** *climate migrants, international law, protection gap, legal limbo, climate-induced displacement, hybrid governance framework.*

*I. Introduction*

For the first time in modern history, sovereign borders are being redrawn not by war or diplomacy, but by the changing climate. The World Bank projects that more than 216 million people could be forced to migrate by mid-century due to climate change [43]. By the end of 2023, almost three-quarters of forcibly displaced people faced overlapping conflict and climate risks – in the Democratic Republic of the Congo, Somalia, Sudan, Syria, and Yemen – a convergence that, combined with fragile governance and limited adaptation capacity, disproportionately affects women and children and makes it harder to isolate climate change as the legal basis for protection [41, p. 23]. The Internal Displacement Monitoring Centre estimates that an annual average of 32 million people worldwide is already displaced by floods, droughts, and cyclones, a figure projected to double under a +1.5°C scenario and more than tripling under a +5°C scenario. More than 60% of this displacement occurs in low- and lower-middle-income countries, many already hosting populations displaced by conflict [15, p. 4]. Despite this scale, affected individuals remain in a legal limbo.

This uncertainty is most acute at the international level. While internal displacement provides useful context, this article deliberately concentrates on cross-border migration: internally displaced persons remain under their own state's jurisdiction, whereas cross-border climate migrants exit the reach of national legal frameworks altogether, making international protection the only mechanism capable of offering consistent, durable, rights-based safeguards. Climate-induced cross-border migration is further distinct from conflict- or economy-driven migration in being global, long-term, and unpredictable in character.

The central argument of this study is that no single legal instrument can address the complexity of climate-induced displacement. Instead, this article advocates a hybrid, multi-level governance framework integrating five distinct pathways: (a) a new global

* Bachelor of law, Baku State University, e-mail: shamida0707@gmail.com

convention, (b) regional and bilateral instruments, (c) soft law and institutional cooperation, (d) climate-specific visas, and (e) reinterpretation of the "right to life." The analysis proceeds as follows: Section II examines the terminological debate to identify the most accurate legal categorization for climate-displaced persons; Section III analyzes systemic gaps in the current international regime; Section IV supports this with case studies; Section V provides a comparative evaluation of the five pathways, including their mechanics and respective advantages and limitations; and Section VI addresses structural barriers to implementation - chiefly state sovereignty and the "causality problem" of isolating climate drivers from other migration factors.

The methodology is grounded in comparative legal analysis, assessed through the dual lenses of legal feasibility and protection efficacy. While prior scholarship has typically analyzed these pathways in isolation, this article's originality lies in synthesizing them into a coherent, synergistic model - arguing that the future of climate migration law depends not on a single global instrument but on a pragmatic hybrid framework capable of closing the international protection gap.

### *II. Who Are Climate Migrants? Navigating the Terminological Debate in International Law*

International law differentiates between migrants, refugees, and internally displaced persons. This article's focus is cross-border movement; internal displacement, while relevant as context, is not its subject.

The most protected category is the refugee: "a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality" [19, p. 171]. Refugees are compelled to cross borders by threats to life, liberty, or security and cannot safely return home. Because climate hazards do not constitute persecution in the legal sense, climate-affected persons cannot claim refugee status.

Since "refugee" does not legally apply, the broader term "migrant" is often used instead - "an individual who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons" [19, p. 132]. This shift carries its own difficulties: unlike "refugee", "migrant" lacks a clear, universally accepted legal definition, and consequently no distinct set of rights attaches to it beyond general protections for non-nationals and international human rights law.

This distinction is decisive for who receives protection. For recognized refugees, non-refoulement acts as an absolute shield against return to danger; because a rising sea or a drought is not a "persecutor", climate-affected people fall outside this protection, and contracting states retain sovereign discretion over the entry of non-nationals who do not meet refugee criteria [35]. This produces a troubling paradox: although people are compelled to leave by environmental hazards beyond their control, the "migrant" label implies an element of choice that states may invoke to justify deportation.

This definitional gap has led the International Organization for Migration (IOM) to adopt "migrant" as an umbrella term, distinguishing it from "refugee" by the absence of persecution. Accordingly, "climate migration" and "climate change-related migration" are increasingly preferred because "migration" encompasses all forms of human movement-internal or cross-border, voluntary or forced - without requiring a specific legal definition [25, p. 22-23]. This breadth is double-edged: "climate refugees" oversimplifies mobility and may exclude those unable to prove a direct causal link to climate change, while "climate migrant" may still imply voluntariness. Nevertheless, "climate migrant" more accurately captures this reality and is increasingly favored in the literature and by the IOM [37].

Early academic, media, and NGO discourse used "environmental refugee" to emphasize the forced nature of displacement, but UN agencies and the IOM rejected the term because "refugee" carries a precise legal meaning under the 1951 Convention that cannot appropriately be extended to environmental causes [33, p. 4]. The IOM's preferred alternative, "environmental migrant", better fits existing legal frameworks but remains problematic for the same reason: it lacks an internationally recognized legal definition and may still imply voluntariness [33, p. 4].

Climate migration is also not a monolithic phenomenon. The Foresight Report on Migration and Global Environmental Change divides it into two categories based on temporal and causal factors: short-term displacement from sudden events (hurricanes, floods) and long-term displacement from slow-onset processes (sea-level rise, prolonged drought) [24, p. 6]. Each requires a different legal response — temporary protection for short-term evacuees, and permanent resettlement or defined legal status for long-term migrants.

*III. The Legal Vacuum: Why Existing International Frameworks Fail Climate Migrants*

No universally binding instrument explicitly defines or protects individuals displaced solely or primarily by climate change. The 1951 Refugee Convention grants refugee status only to those fleeing persecution based on race, religion, nationality, social group, or political belief who cross an international border; climate change falls outside this framework entirely [35, p. 6]. Adopted after the Second World War and largely unchanged since entering into force in 1954, the Convention reflects the structural rigidity of international refugee law and its limited capacity to address contemporary drivers of displacement [42, p. 12].

The core of this protection gap lies in the rigid interpretation of Article 1(A)(2), which reflects the Convention's historical focus on civil and political rights and does not recognize environmental harm as an independent ground for asylum. Climate-induced movement results from environmental processes interacting with poverty, food insecurity, and weak governance, exacerbating protection needs, particularly for women and children [41, p. 23]. Without legal recognition, climate-displaced individuals are often treated as irregular migrants subject to deportation, detention, or exclusion from aid, rendering their displacement legally "invisible" despite its scale [20, p. 122]. Some scholars, including Professor Monica Iyer, argue that non-refoulement under human rights law could provide protection without amending the 1951 Convention, although many states resist this for fear of expanding their obligations [6].

Human rights law offers a broader, if partial, foundation. Instruments such as the International Covenant on Civil and Political Rights [39] and the European Convention on Human Rights [4] guarantee the right to life, adequate housing, and health, but were not designed to regulate cross-border movement and provide no specific mechanism for climate displacement. The International Covenant on Economic, Social and Cultural Rights similarly affirms rights relevant to climate-affected populations - an adequate standard of living, the highest attainable standard of health - without addressing displacement directly [40].

A further limitation concerns duty-bearers: states are obliged to protect only individuals within their jurisdiction, understood as "effective control", as illustrated in Banković v. Belgium and Others, where the court denied extraterritorial responsibility. States contributing to climate change do not exercise such control over its remote impacts abroad; human rights law therefore creates no right to migrate or be admitted, and climate migrants may still be refused entry [26, p. 386-388]. Once within a state's jurisdiction, individuals may invoke protections such as non-refoulement, as in Soering v. United Kingdom, but enforcement remains weak and state practice inconsistent — human rights law thus provides an important normative basis without effective, immediate protection [26, p. 386-388].

Given these limitations, the solution may lie less in treaty text than in reframing the underlying narrative. Professor Randall Abate argues that climate migration can be framed either as a national security concern - casting migrants as a threat to resource distribution and host-community stability - or as a human rights issue emphasizing state obligations to protect and humanize migrants. A human rights lens is necessary given the scale of prospective displacement, and connects to the "right to stay" grounded in Article 12 of the ICCPR, which supports enabling vulnerable populations to remain in their homelands rather than being forcibly displaced - in effect, protecting freedom of movement, including freedom from forced migration [6]. This approach also moves beyond a humanitarian "charity" framing, where wealthier states act as benefactors, toward one grounded in dignity, agency, and the responsibility of major emitters for the consequences of climate change [6].

*IV. From Pacific Islands to Courtrooms: Three Landmark Cases on Climate Displacement*

Ioane Teitiota v. New Zealand: The First Climate Case Before the UN Human Rights Committee. A key illustration of the protection gap is Ioane Teitiota v. New Zealand, the first case to directly link climate change to an asylum claim. Teitiota, a citizen of Kiribati, argued that New Zealand's 2015 deportation decision violated Article 6(1) of the ICCPR, given that rising sea levels, salinization, and land erosion on Tarawa had produced housing shortages, land disputes, and general insecurity forcing him to migrate. Although his claim to refugee status under the 1951 Convention was denied by national courts, the UN Human Rights Committee held that climate change may place the right to life at risk, and that state failure to act adequately, nationally or internationally, could in future amount to violations of Articles 6 and 7 of the ICCPR [34, p. 1-5].

Domestic authorities had considered Kiribati's National Adaptation Programme of Action and expert testimony on environmental and demographic pressures, but found no specific risk attributable to the Kiribati government that would render deportation arbitrary; the Supreme Court upheld this, holding that environmental degradation alone does not confer refugee or protected-person status [34, p. 2]. The Committee, recalling General Comments 31 and 36 on states' duty to protect against foreseeable threats to life, acknowledged that climate change could threaten the right to life and justify future protection, but concluded the risks Teitiota faced were not "personal, imminent, or substantial enough" to violate Article 6 - Kiribati's uninhabitability, while foreseeable, did not meet the threshold of immediate risk [34, p. 9]. This reactive posture (addressing harm only after it crystallizes rather than establishing preventive rules) is itself a broader limitation of the current framework. Although Teitiota did not secure protection, the decision marked significant progress in recognizing climate change as a human rights issue and brought global attention to the legal difficulties climate migrants face.

AD (Tuvalu): Humanitarian Discretion as a Substitute for Legal Protection. In re: AD (Tuvalu) involved a family from Tuvalu which is among the nations most vulnerable to sea-level rise, coastal erosion, and extreme weather and whose New Zealand residence visa applications were denied after years on temporary visas [17, p. 1-2]. Appealing under Article 154 of the Immigration Act 2009, which permits contesting deportation on humanitarian grounds within 42 days [16], the family did not have their claim decided on whether climate change alone could justify protection. Instead, the Immigration and Protection Tribunal granted residency on the basis of "exceptional humanitarian circumstances" (domestic discretionary category) weighing family ties, integration, the children's best interests, and the applicant's heightened vulnerability due to disability and climate-related risk in Tuvalu [17, p. 2].

Unlike Teitiota, where international law offered no relief, this case shows that domestic tribunals can provide protection through humanitarian discretion even absent binding precedent. It underscores how climate risk can compound pre-existing vulnerability (here, disability) and the inability of family in the country of origin to ensure safety from cyclones and storm surges but the relief remains a case-specific exercise of compassionate discretion rather than an international protection obligation [9, p. 2-10].

In 0907346 (2009) RRTA 1168, a Kiribati national sought a Protection (Class XA) visa from Australia's Refugee Review Tribunal, arguing that return would expose him to fatal environmental harm from salinization, crop destruction, and sea-level rise amounting to "serious harm" [31, p. 4-6]. Despite detailed evidence, such as recurrent king-tide flooding, acute shortages of food, water, shelter, and energy, and land already disappearing beneath rising seas, the Tribunal found no well-founded fear of persecution under the 1951 Convention's enumerated grounds [35], illustrating that even severe, well-evidenced environmental collapse does not satisfy the Convention's persecution requirement. Because Article 39A of the Migration Act 1958 ties Class XA visas to Refugee Convention criteria [29], quota-based visa mechanisms of this kind cannot close the protection gap for climate-displaced persons.

Together with Teitiota, this case confirms a persistent gap across jurisdictions: clear, severe climate harm does not meet traditional persecution criteria. Comparable pressures are emerging beyond the Pacific, for instance in the Sahel, where rising sea levels, floods, and desertification increasingly drive cross-border movement, underscoring that the protection gap is global rather than region-specific [30, p. 1]. These cases demonstrate that claims that do not fall under the conventional definitions of persecution and refugee status continue to present challenges for courts. Even though some of them have granted relief for humanitarian or other reasons, decisions they made are still unique and do not set precedent.

*V. Five Pathways to Protection: A Comparative Legal Analysis*

*1) A Dedicated Global Convention.* The first proposed solution to the protection gap is a dedicated international convention on climate induced migration. While theoretically the most comprehensive solution, its implementation remains distant due to eroding political consensus and the high economic costs of new state obligations. Under such a convention, climate migrants would receive formal legal recognition and access to both temporary protection and long term integration, extending beyond humanitarian aid to education, employment, social integration, and resettlement. A dedicated financing mechanism would ensure predictable and equitable resource allocation, reframing migrants from a perceived threat into an opportunity for international cooperation and shared resilience.

Balancing migrant rights against state sovereignty nonetheless remains formidable. McAdam shows that states have consistently preferred ad hoc, discretionary responses over binding obligations, reflecting a broader reluctance to commit to permanent protection; even where domestic provisions exist, they are applied inconsistently and driven by politics. The

Montserrat case illustrates this tension: even the UK, responsible for its own overseas territory, was reluctant to assume long term obligations for those displaced [27, p. 107-109].

Drawing on fieldwork from Tuvalu, Kiribati, and Bangladesh, McAdam identifies five reasons why a universal treaty has not been adopted. First, because migration typically results from several interrelated factors, isolating climate change as the sole cause, and thus defining the legal scope and beneficiaries, is difficult. Second, absent a clear legal or ethical basis, a treaty limited to "climate refugees" might unjustifiably privilege them over other forced migrants, such as those fleeing poverty. Third, individualized status determination is ill suited to situations of mass displacement. Fourth, formalizing the term "climate refugees" risks hardening legal definitions and excluding those in urgent need. Finally, there has historically been little political will to negotiate such an agreement, reflecting broader global disparities and conflicting agendas [28, p. 3-5].

A growing number of scholars also oppose amending the 1951 Refugee Convention, whether directly or through an additional protocol, to bring climate migrants within the refugee definition. Political refugees would risk losing specialized protection and becoming "collateral victims" and because the 1951 framework centers on individual rights enforcement, it is poorly equipped to address the collective rights essential to those displaced by environmental collapse [26, p. 405]. While McAdam suggests regional arrangements such as the Niue Declaration on Climate Change may prove more effective in the short term [28, p. 22], proponents of a global treaty counter that the transboundary nature of climate change demands a universal response. Benoit Mayer accordingly proposes five guiding principles for a comprehensive international regime: an early and sustainable response, respect for individual and collective rights, a global approach to climate migration, burden sharing, and subsidiarity [26, p. 388].

An effective response must be not only timely but sustainable, preventing further displacement and long term humanitarian crises. It must also move beyond traditional individual rights models: climate change often threatens entire communities or nations, requiring legal recognition of their shared identity and survival as a group. Because climate change is inherently global, responses must likewise be global in geographical and material scope, since insecurity from displacement in one region can quickly translate into insecurity for distant, unaffected nations. Burden sharing is similarly central: reflecting the position of many developing states, those most responsible for environmental damage should bear the greatest financial burden, a demand Mayer captures through Meles Zenawi's statement that "those who did the damage will have to pay." This principle draws on the Principle of Common but Differentiated Responsibility (PCDR) established in the 1992 Rio Declaration, which grounds a financing mechanism ensuring that while migration is a common challenge, financial obligations are differentiated according to each state's historical contribution to global warming. Finally, subsidiarity requires that decisions be made at the most effective level, whether local, national, or international, preserving flexibility [26, p. 389-398].

Although Mayer's principles offer a strong normative foundation, translating such broad and often competing principles into binding obligations would require a degree of political consensus and institutional coordination the international community currently lacks.

*2) Regional and Bilateral Agreements.* The multidimensional nature of climate induced displacement, and the difficulty of isolating it from other socio-economic and political factors, complicates any comprehensive international agreement capable of effectively protecting affected individuals. Because the stages and vulnerabilities of climate related displacement vary by state, a universal "one size fits all" approach risks ignoring the cultural and livelihood characteristics of displaced communities; well designed regional solutions tailored to the needs of both states and migrants are therefore preferable. This regional emphasis is echoed by UNHCR: in a 2011 statement, António Guterres noted that primary responsibility for protecting and ensuring the well-being of climate displaced populations rests first with the states concerned [2, p. 282-283].

Regional compacts inspired by the Cartagena Declaration and free movement protocols such as those of ECOWAS and the Pacific Islands Forum enable states to create climate mobility pathways, including temporary protection, work visas, and relocation frameworks, while harmonizing procedures and establishing shared funding for adaptation and resettlement. Bilateral agreements can likewise support shared humanitarian programs, ensuring efficient resource distribution and reducing administrative burdens. Together these instruments complement a Convention by offering adaptive solutions consistent with broader protection principles [20, p. 125].

Regional instruments such as the OAU Convention and the Cartagena Declaration also take a broader view of refugee status than persecution alone. The OAU Convention recognizes as refugees persons who fled external aggression, occupation, or serious disruption of public order, while the Cartagena Declaration extends this to widespread violence, internal conflict, and massive human rights violations. Scholars including Cohen and Bradley suggest environmental disasters could fall within these categories given their capacity to destabilize societies, and McAdam observes that returning persons to disaster affected areas may violate their basic human rights. These regional approaches thus allow a more flexible understanding of displacement that may, in some cases, offer indirect protection to climate displaced persons [2, p. 276-278].

These frameworks nonetheless remain applied unevenly across regions. The European Union's relatively advanced subsidiary protection framework is limited by a restrictive interpretation of "serious harm" and its emphasis on individualized persecution, while Africa's broader definition under the 1969 OAU Refugee Convention is constrained in practice by limited institutional capacity and resources [8, p. 128-129]. Approaches across the Americas vary by state; the Organization of American States has recognized climate displacement as a regional challenge, but implementation remains uneven among members [8, p. 128-129]. The Asia Pacific region has addressed disaster related displacement through the Nansen Initiative and the Platform on Disaster Displacement, yet these remain largely framework level responses, constrained by coordination challenges and divergent national approaches [8, p. 128-129]. The Middle East presents one of the weakest protection landscapes, where displacement is overshadowed by security and political concerns, while Small Island States, despite leading international advocacy for loss and damage mechanisms, have not translated this into enforceable protection obligations [8, p. 128-129]. The Arctic region has begun developing rights based approaches recognizing Indigenous peoples' cultural and subsistence ties to land, though these remain limited in scope and legally underdeveloped [8, p. 128-129]. Overall, this comparative picture shows emerging protective innovations undermined by inadequate funding and coordination; without consistent international standards, protection gaps and forum shopping persist, complicating region specific policy responses [8, p. 128-129].

Regional cooperation, though pragmatic, remains constrained by structural limitations affecting its long term effectiveness. A central weakness is the failure to address the enduring nature of climate displacement: migrants who relocate under temporary arrangements are often unable to return due to continuing environmental degradation, leaving temporary protection schemes insufficient and individuals in uncertain legal situations absent clearer pathways to residence or visa extension. Restrictive and inconsistent durations of stay compound this problem: some mechanisms permit indefinite residence, while others, such as regimes granting only 90 days, fall far short of the often permanent nature of climate displacement. Such restrictive time limits also reduce the economic benefits of migration for both migrants and host states by preventing long term integration and the stable contribution of remittances and labor [32, p. 47-48].

Climate adaptation and migration management are further constrained by insufficient and unstable funding, especially in vulnerable developing regions. Proposed financing tools, including sovereign backed instruments, relocation funds, climate land banks, and private sector micro-credit schemes, remain fragmented and inconsistently applied, limiting the durable protection and integration these frameworks can offer absent coordinated financial support [32, p. 49-50].

Finally, regional frameworks often neglect socio-cultural integration, focusing on legal status and economic participation while overlooking migrants' capacity to integrate into host societies. Without structured cultural inclusion policies, migrants risk marginalization or segregation. Non-state actors, including schools, religious institutions, and civil society organizations, play a crucial role here by providing social support networks and fostering belonging, while cultural initiatives such as the "Multi Kulti Kitchen" project in Bulgaria, "Grandhotel Cosmopolis" and "Give Something Back to Berlin" create spaces for cultural exchange and community building [32, p. 48-49].

Despite these limitations, regional frameworks still offer a flexible, context specific response to climate induced displacement when paired with complementary mechanisms. Their fragmented and structurally limited nature, however, confirms that they cannot function alone, making it necessary to turn to soft law and institutional cooperation.

*3) Soft law and ınstitutional cooperation.* Soft law making offers an important advantage in global governance by enabling participation from non-traditional actors, including NGOs, social movements, the private sector, and individuals. Unlike treaties, which bind only state parties, soft law instruments (often described as "consensus based norms") are more flexible and inclusive in formation. Yet soft law also presents challenges: while it broadens inclusivity, it may contribute to fragmentation and incoherence within the international legal system, and can allow states to avoid binding obligations, weakening enforceability. Nevertheless, as the Chatham House Inclusive Governance Initiative highlights, soft law need not conflict with hard law provided it remains complementary to formal legal frameworks [1, p. 21-22].

The Nansen Initiative offers one of the most significant practical examples of such soft law in this context. Established in 2012, it were  three years intergovernmental process led by Norway and Switzerland to address cross-border displacement caused by natural disasters and climate change, seeking international consensus on protection principles through seven regional consultations. These produced the Agenda for the Protection of Cross-Border Displaced Persons, endorsed by 109 states, outlining practical measures to prevent displacement and improve protection. Although the initiative concluded in 2015, its work continued through the Platform on Disaster Displacement, launched in 2016 to implement the agenda and strengthen cooperation between states and organizations such as UNHCR. The Platform favors regional solutions and flexible integration into existing legal systems over a uniform global framework, encouraging practical tools such as humanitarian visas, temporary protection, and suspension of deportation [2, p. 286-298].

With UNHCR support, "climate induced displacement" could be formally integrated into refugee protection terminology, strengthening the legitimacy of regional responses, though this would require closer UNHCR-state cooperation and a sustainable financing mechanism. No dedicated fund for climate displacement currently exists, but the Green Climate Fund, established under the UNFCCC as a key climate finance institution with independent structure and equal developed and developing country representation on its board, offers a potential model, notwithstanding that it was not designed for displacement specifically [2, p. 290-292].

The Fund's governance includes representation from small island developing states and least developed countries, reflecting an inclusive, regionally balanced structure; the World Bank serves only as interim trustee for financial assets and reporting, with decision-making retained by the Board. Its resources derive mainly from grants and loans by developed states under the UNFCCC, and by 2018 it had received pledges from 43 governments totalling around 10.3 billion USD since 2014, supporting projects that included over 600 million USD allocated to 19 regional initiatives by 2017 [2, p. 292-293]. Climate induced displacement is not yet, however, recognized as a distinct funding category within the programme; it has been suggested that the Fund allocate resources specifically to national adaptation plans addressing displacement, which could enhance cooperation between UNHCR and the UNFCCC and encourage stronger state-organization partnerships [2, p. 294-295].

The Paris Agreement offers a further example of effective soft law in global environmental governance. Adopted in 2015 to keep the increase in global temperature well below 2°C above pre-industrial levels, its commitments are not legally binding, yet its effectiveness derives from broad participation and the political pressure it generates among signatories. The WTO similarly illustrates how soft law principles can shape global economic governance: though its rules are not always strictly enforceable, agreements such as the GATT have substantially reduced trade barriers and supported economic integration, while its dispute settlement mechanism provides a structured means of managing interstate conflict. These examples confirm that soft law's non-binding, flexible character allows for wide participation and adaptability and, when broadly supported, can still produce meaningful international outcomes [5, p. 189].

This gradual institutionalization of soft law is reflected in UN climate negotiations. The Conference of the Parties (COP) under the UNFCCC shows growing recognition of climate displacement through evolving soft law mechanisms, although COP29 produced mixed results. On one hand, the summit reinforced attention to human mobility through the operationalisation of the Fund for Responding to Loss and Damage, which explicitly includes "displacement, relocation and migration" within its mandate, while its final text urged Parties to include migrants and refugees in climate finance considerations, signalling an emerging but still weak normative acknowledgment [3]. On the other hand, COP29 was widely criticised for its lack of ambition, setting climate finance at around $300 billion annually by 2035, well below developing countries' estimated needs. Displacement remains severely underfunded within the Loss and Damage Fund, with pledges of around $731 million falling far short of estimated annual needs, while displacement costs remain largely excluded from systematic assessment; fewer than one-sixth of countries include displacement in their Nationally Determined Contributions and only half address it in their National Adaptation Plans [3]. COP29 thus confirms that although climate-induced displacement is gaining visibility, responses remain fragmented, underfunded, and largely voluntary, reflecting soft law's dependence on political will.

Several states and regional organizations have also adopted soft law approaches individually. The Pacific Islands Forum, composed of highly climate-vulnerable states, adopted the Boe Declaration on Regional Security in 2018, linking climate change to regional security and calling for stronger cooperation on protection, relocation, and integration. In 2017, the European Commission identified climate change as a driver of migration and encouraged its integration into existing legal frameworks emphasizing human rights and coordinated response. New Zealand established a technical working group in 2018 on climate change and managed retreat, recommending community involvement, planned relocation, and adaptive strategies. These examples confirm that soft law enables flexible, practical responses whose effectiveness ultimately depends on state implementation and political will [5, p. 190-191].

Soft law and institutional cooperation are essential but insufficient alone; a more effective response requires a hybrid approach integrating these frameworks with practical legal tools such as climate visa schemes.

*4) Climate and humanitarian visa schemes.* These complementary pathways, as described by UNHCR, are alternative legal routes allowing refugees to safely enter and remain in host countries while gaining access to long term socio-economic opportunities. A humanitarian visa is one such option: it provides a legal pathway for vulnerable individuals to enter a third country when their safety, dignity, or fundamental rights are threatened at home, often serving as a means to access asylum procedures or obtain temporary protection upon arrival. Unlike resettlement, which involves the organized, permanent transfer of recognized refugees under international frameworks, the humanitarian visa functions as an entry tool enabling individuals to reach safety and pursue protection once inside the country [21, p. 15-16].

Despite this potential, humanitarian visas remain rarely used within the global protection system. Kanyangi notes that more than 110 million people were forcibly displaced in 2023, yet fewer than 100,000 humanitarian visas were issued annually, concentrated largely in Europe, Latin America, and Australia and typically limited to family reunification or targeted crises; Brazil, for example, granted just over 43,000 humanitarian visas to Haitian nationals between 2012 and 2017 following the 2010 earthquake. By contrast, many African countries, despite high levels of climate-related displacement, have not developed comparable pathways, highlighting the limited use of humanitarian visas for environmental displacement [21, p. 17-18].

Humanitarian visas are, in practical terms, short-term, limited-validity permits allowing at-risk persons to legally and safely enter another country, usually to seek asylum or temporary protection, and are typically granted to those fleeing conflict, disasters, or serious human rights abuses. France's humanitarian corridor initiative, for example, has enabled safe admission of refugees from Syria, Iraq, and Lebanon, though at the broader EU level their use remains inconsistent: EU law permits Member States to issue such visas but imposes no obligation to do so, leaving application dependent on national policy. As Kanyangi observes, such programmes remain narrow, temporary, and crisis specific; many climate displaced Africans face additional barriers tied to consular proximity, political willingness, or family ties, and humanitarian visas have almost never been applied specifically to climate related displacement. Their use elsewhere nonetheless demonstrates that governments already possess the legal authority and practical capacity to implement such systems [21, p. 156-159].

Recent legal scholarship and UNHCR guidance accordingly suggest humanitarian visas could help address climate related displacement, since such movement typically lacks targeted persecution and falls outside the 1951 Refugee Convention; they may offer temporary protection for both sudden disasters, such as floods or cyclones, and gradual changes such as drought or sea-level rise. Scholars including McAdam and Kälin support their use as part of broader "complementary protection" tools, though humanitarian visas "are not a panacea": they rarely ensure long term security absent pathways to residency, depend on state discretion rather than binding law, and most systems respond to sudden crises rather than slow onset impacts, which are harder to define as emergencies [21, p. 156-159].

Their practical benefits remain significant nonetheless. Humanitarian visas grant legal entry and residence status, preventing deportation and reducing exposure to exploitation faced by undocumented migrants, while enabling access to healthcare, education, and employment. They also provide greater mobility, allowing relocation to countries with better living conditions, and help ease pressure on heavily affected states by distributing responsibility more fairly, reflecting international solidarity and a more cooperative global response to displacement [21, p. 160-161].

The New Zealand-Pacific migration framework illustrates how such visa-based approaches function in practice. New Zealand's visa policy, shaped by government priorities and public support, produced the Pacific Access Visa in 2002. Pacific migration today is managed through permanent routes, including the Pacific Access Category (PAC) and the Samoa Quota Scheme (SQC), offering annual residency places to nationals meeting requirements such as employment offers and language skills, and temporary migration mainly through the Recognised Seasonal Employer (RSE) scheme, which allows Pacific workers to fill agricultural labor shortages for up to seven months while requiring employers to provide adequate conditions [7, p. 17-18].

In practice, however, PAC and SQC provide only limited access, as demand far exceeds supply (in 2019, roughly 12,000 applications competed for only 650 PAC places), while strict language, income, and employment requirements exclude many lower-income Pacific Islanders, relatively few of whom in Kiribati or Tuvalu can afford migration. The RSE scheme is similarly insufficient for climate related displacement, being temporary, non residency generating, and requiring workers to leave New Zealand before reapplying. Both schemes serve labor market needs rather than protection, benefiting Pacific communities chiefly through remittances; while they improve incomes and living standards, neither is designed for long term climate protection, underscoring the need for a dedicated climate migration visa [7, p. 19].

Several practical considerations support such a scheme. It would align with New Zealand's long-standing relationship with the Pacific, where migration has historically been common and Pacific peoples now form a significant part of the population, building on existing mobility arrangements such as past work permit and visa waiver schemes. It would also serve New Zealand's own interests: with declining net migration and rapidly growing Pacific populations, planned and gradual migration would be more manageable than unmanaged climate driven inflows. Finally, absent legal migration pathways, the risk of forced mass relocation increases, an outcome widely viewed as undesirable given its effects on livelihoods, rights, and cultural ties to land, making voluntary, structured migration the preferable approach [7, p. 25-27].

This concern is closely tied to human rights protection. Mass migration is generally regarded as a "last resort" given its implications for the right to self-determination under the ICCPR, which guarantees peoples' freedom to determine their political, economic, social, and cultural development; any relocation should accordingly involve collective participation in decisions about adaptation, destination, and process. Protecting these rights in forced migration is nonetheless difficult, as financial constraints, urgency, and logistical pressure can undermine meaningful community decision-making, while cultural preservation becomes harder still when displaced populations become minorities in new environments [7, p. 25-27]. A visa model such as that proposed by Kanyangi could help reduce reliance on mass relocation and mitigate these risks.

Comparative evidence further strengthens the case for expanding New Zealand's protection framework. New Zealand accepts relatively few asylum seekers and refugees compared with states of similar economic size and population. Finland, a frequent comparator given its similar population (around 5 million) and GDP, received 51,372 asylum applications over the past five years, approved 19,321, and accepted 5,850 quota refugees; New Zealand, by contrast, recorded only 2,049 applications, approved 507, and admitted 4,676 quota refugees over the same period. This persistent gap suggests New Zealand's protection framework is comparatively limited, making a climate-specific visa scheme a logical extension of its existing humanitarian commitments [7, p. 29-30].

*5) Reinterpreting the right to life under the ICCPR.* Some humanitarian organizations and scholars have proposed the most direct solution: revising the 1951 Refugee Convention's definition to explicitly include those displaced by climate change. Others counter that this would further weaken an international humanitarian protection system already under significant strain, given that the global number of forcibly displaced persons has reached record levels, placing substantial pressure on existing frameworks and leaving many receiving states facing serious administrative and institutional challenges in managing asylum procedures [18].

A further possible solution lies in reinterpreting states' treaty obligations, particularly the right to life. At present, the United States and many other countries do not interpret the ICCPR to permit application of non-refoulement to climate migrants, nor do they read the prohibition on arbitrary deprivation of life under Article 6 as imposing a positive obligation to protect individuals from climate related threats; current U.S. policy relies on a strict, narrow textual interpretation, providing only minimal protection while focusing primarily on addressing climate change's root causes [13, p. 117].

A 2021 White House Report on Climate Change and Migration, however, signals the Biden administration's intent to expand legal protection for climate affected individuals, recognizing climate change as a key driver of migration. Because Article 6 does not define "life" in detail, its content depends on interpretation, and the United States could depart from a strict reading by applying the ordinary meaning canon, under which "life" would extend beyond biological survival to conditions necessary for a dignified human existence. This broader understanding is reflected in Ioane Teitiota v. New Zealand, where the tribunal acknowledged that severe climate impacts may threaten enjoyment of the right to life, suggesting that "life" cannot be limited strictly to physical survival [13, p. 117-118].

Under this ordinary meaning, a person whose home is submerged, whose land can no longer provide food, or who faces toxic living conditions from environmental degradation and natural disaster cannot realistically continue to live in that environment; a broader interpretation of the right to life could accordingly allow states to apply non-refoulement to protect those who can no longer remain in their countries due to sea-level rise or extreme weather [13, p. 118-119]. U.S. courts have not, however, yet relied on the ordinary meaning canon in interpreting any ICCPR provision, so linking the right to life with non-refoulement in this context would represent a novel legal approach [13, p. 119]. Declining political support for refugee protection in several states further raises concerns that expanding the refugee definition could provoke additional resistance and undermine the existing protection regime.

Nevertheless, existing mechanisms are unlikely to prove sufficient. As long as major global powers fail to meet their commitments to reduce carbon emissions and continue to scale back international humanitarian assistance, the number of people seeking to escape climate impacts will continue to grow. Although not all will require international migration, the current global system offers very limited legal pathways for cross-border movement; absent change, many will either be forced into irregular migration or remain in deteriorating home regions.

*VI. Why Protection Remains Elusive: Structural Barriers to Implementation*

State Sovereignty vs. Human Rights Obligations. UNHCR has explored how individuals falling outside refugee or migration law might still find protection through human rights and humanitarian frameworks after climate disasters, but practical application remains uncertain, since effectiveness depends on state sovereignty and the consistency of state conduct, creating an inherent tension between sovereignty and human rights protection [23]. This reflects the historically Westphalian conception of sovereignty as exclusive state authority over territory and internal affairs: despite growing emphasis on transnational cooperation, migration control remains tied to a non-interference model resting on state consent. Cross-border climate displacement makes this especially visible, as states assert border control to limit entry, leaving climate migrants without legal status whenever international commitments hinge on consent that is not forthcoming, raising serious ethical and legal concerns given that those affected are compelled to move by harm entirely beyond their control [14, p. 211-217].

The Financing Gap: Who Pays for Climate Displacement? Options include a dedicated Climate Displacement Fund grounded in the UNFCCC's "common but differentiated responsibilities" principle [38, Art. 3(1)], modeled on the Green Climate Fund and offering states assuming new obligations targeted assistance for integration, infrastructure, and administrative capacity [11, p. 1-3, 52-58], consistent with the shared-responsibility emphasis of the Global Compact for Safe, Orderly and Regular Migration [36, p. 23]. Debt-for-Climate Swaps, rerouting sovereign debt into resilience investment, offer a further avenue, with the Fund well positioned to support such swaps [12]. Additional financing can come from development banks, green and impact bonds, national relocation funds, climate land banks established ahead of need, and private-sector microcredit schemes [32, p. 50].

The Causality Problem. A central obstacle to binding legal protection is political and economic sensitivity: recognizing climate migrants as a protected category could sharply increase asylum claims and pressure on host states, while a clear causal link between environmental hazards and cross-border movement is inherently difficult to establish, since climate change typically interacts with pre-existing vulnerabilities (conflict, poverty, food insecurity) to produce complex, protracted displacement [41, p. 23]. Precise cross-border data are scarce, as visa systems do not capture climate change as a distinct relocation reason, and migration drivers are frequently multi-causal (livelihood loss, resource conflict, disaster frequency), with many moving internally before crossing a border, compounding the absence of a universally accepted legal definition [22, p. 92-93].

Establishing climate change as a direct cause requires complex assessment: long-term data and risk forecasting to determine whether hazards produce temporary, semi-permanent, or permanent displacement, and whether it crossed an international border. McAdam questions the appropriateness of a separate "climate-displaced persons" category, noting that much human mobility may stem not from the origin country's conduct but from broader economic and political structures perpetuating inequality between wealthy and poor states. Proving climate causation is, in practice, close to impossible given displaced persons' lack of access to scientific data and analytical capacity, undermining the efficiency and fairness of any status-determination process; a convention placing this burden on asylum seekers would be unlikely to function as an effective protection mechanism [10, p. 180-181].

## *VII. Conclusion*

The comparative analysis confirms that no single mechanism suffices alone: absent stronger emissions commitments and sustained humanitarian assistance, climate-driven displacement will continue to outpace the limited legal pathways currently available, leaving many to migrate irregularly or remain in deteriorating conditions at home.

Climate-induced displacement remains one of the most pressing yet underdeveloped areas of international law, raising legal, humanitarian, and institutional questions outside conventional categories of protection. The system built on the 1951 Refugee Convention and human rights law was designed around persecution and conflict, not the gradual but accelerating effects of environmental change, leaving climate migrants in a grey legal area: unable to meet the definition of "refugee" and largely unaddressed even by progressive instruments such as the Paris Agreement, which says nothing about human displacement. This discrepancy underscores the urgency of reform.

Absent a cohesive international framework, climate migrants remain dependent on domestic laws that vary widely in scope, coherence, and political will; national initiatives in states such as Bangladesh and Pakistan remain limited in reach and reactive rather than part of a proactive global response. Some legal innovation is nonetheless visible: case law such as Teitiota has begun to recognize that environmental degradation can endanger fundamental rights, including the right to life, even without establishing climate change as an independent ground for refugee protection. But case-by-case recognition is no substitute for structural reform.

A universal, consistent, and enforceable legal response is no longer hypothetical but an urgent necessity. Such a framework should specify the types and causes of displacement it covers, define who qualifies as a climate migrant, and establish clear state obligations, including safe relocation routes and equitable responsibility-sharing. An intergovernmental working group under UNHCR and IOM could initiate this process toward a protocol supplementing the Refugee Convention, with regional organizations such as the EU or African Union piloting agreements that could later inform global adoption, grounded in human dignity, climate justice, and solidarity.

This article accordingly argues that the most effective, realistic solution is not one model replacing another, but a hybrid framework combining three mechanisms: regional cooperation as the structural basis, soft law to ensure coordination and norm development, and climate visa schemes as practical entry pathways. This combination allows protection to function simultaneously at the regional, normative, and individual mobility levels, making the system both politically feasible and practically responsive.

The scale of climate migration makes this legal loophole impossible to ignore. As climate change accelerates, an effective international legal framework for protection is no longer a question of "if" but of "when." The urgency lies not merely in acknowledging the gap, but in implementing this hybrid framework before displacement reaches a scale that renders reactive solutions structurally insufficient.

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