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LEGAL BASES

OF CRIMINAL LIABILITY OF FOREIGNERS OR STATELESS PERSONS
IN THE REPUBLIC OF AZERBAIJAN

FUNDAMENTOS JURÍDICOS DE LA RESPONSABILIDAD PENAL DE LOS EX- TRANJEROS O APÁTRIDAS EN LA REPÚBLICA DE AZERBAIYÁN

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ABSTRACT

The article examines and analyzes the legal grounds for prosecuting foreigners and stateless persons for criminal acts committed on the territory of the Republic of Azerbaijan as well as cases in which such acts warrant expulsion of offenders from the territory of the Republic of Azerbaijan. For this, the legal statutes that govern the subject were analyzed, finding some deficiencies in the provisions of the Code of Criminal Procedure of the Republic of Azerbaijan and the Migration Code of the Republic of Azerbaijan, which determine the legal basis of the criminal responsibility of the foreigners or stateless. To eliminate these inconsistencies, a series of scientific proposals were elaborated. The work also addresses the types of punishments provided by law according to criminal acts, and the appeals of foreigners and stateless persons who comply with the norms of international law.

Keywords: types of punishment, extradition, foreigner, stateless person, criminal liability, fine, Criminal Code, Code of Criminal Procedure.

RESUMEN

El artículo examina y analiza los fundamentos jurídicos para enjuiciar a extranjeros y apátridas por actos delictivos cometidos en el territorio de la República de Azerbaiyán, así como los casos en los que dichos actos merezcan la expulsión de los infractores del territorio de la República de Azerbaiyán. Para esto se analizaron los estatutos legales que rigen el tema encontrándose algunas deficiencias en las disposiciones del Código de Procedimiento Penal de la República de Azerbaiyán y el Código de Migración de la República de Azerbaiyán, los que determinan la base jurídica de la responsabilidad penal de los extranjeros o apátridas. Para eliminar estas incongruencias se elaboraron una serie de propuestas científicas. En el trabajo se abordan además los tipos de castigos previstos por la ley de acuerdo a actos delictivos, y los recursos de apelación de extranjeros y apátridas los que cumplen la conformidad con las normas del derecho internacional.

Palabras clave: Código Penal de la República de Azerbaiyán, responsabilidad penal, tipos de castigo, extranjeros y apátridas.

INTRODUCTION

Immigrants are people who have left their country of origin to settle permanently in another country. People often migrate from their home countries in search of better economic, political or social opportunities, or to escape situations of conflict, persecution or violence. On the other hand, stateless persons are people who do not have nationality or citizenship in any country. This means that they are not entitled to the same rights and protections as the citizens of a country, such as education, health care and social security. Stateless persons can be people who have been deprived of their citizenship by their government, people who are born in a country where citizenship is based on ancestry rather than place of birth, or people who have been forced to flee their country. and they have no access to citizenship anywhere else.

Historically, the process of immigration has been of great social, economic, and cultural benefit to states. The immigration experience is long and varied and has in many cases resulted in the development of multicultural societies; many modern states are characterized by a wide variety of cultures and ethnicities that have derived from previous periods of immigration (Parry, 2023). Currently, immigration has become one of the most polarized and important issues, usually due to misperceptions and for associating immigration processes with crime.

The relationship between migration and crime is a complex and controversial issue, and there is no simple answer (Zaatut & DiPietro, 2023). Although some studies suggest that migration is related to an increase in crime, other studies suggest that the relationship is not so clear or that migration may be related to a decrease in crime (Bernat, 2017; Ousey & Kubrin, 2018). Some argue that migration can increase crime due to the presence of transnational criminal networks and the lack of legal opportunities for immigrants. In addition, immigrants may be more prone to commit crimes due to their unfamiliarity with local laws and customs, their marginalized social position, and the discrimination they may face. On the other hand, it is argued that migration can reduce crime, since immigrants may have cultural values that promote social cohesion and respect for the law. Additionally, some studies have suggested that immigrants may have lower crime rates than native residents due to their motivation to work hard and stay out of trouble with the law (Bianchi et al., 2012; Lee & Martinez, 2009).

According to Kubrin & Ousey (2023) a significant share of the U.S. population believes that immigration increases crime. There is little doubt this belief emerges, in part, from stereotypes and prejudices depicting the foreign-born,

especially the undocumented, as criminals or terrorists who threaten the rule of law (Rumbaut & Ewing, 2007). Yet, the belief also finds support in several criminological theories, which assert plausible mechanisms whereby increased immigration leads to more crime. In contrast, other criminological theories reject this position, offering reasons why immigration reduces crime. This way, the impact of immigration on crime continues to stir heated debates in public policy circles around the world (Kayaoglu, 2022). However, leaving aside if immigration can cause an increase in crime, an interesting issue to analyze is how to judge foreigners and stateless persons for potential crimes, which will be the goal of this paper, focus particularly in the case of Azerbaijan.

Nevertheless, before continuing it should be noted that those who have committed crimes in the territory of our country are prosecuted on the basis of equality before the law. Thus, offenders, foreigners or stateless persons are equal before the law and are free from race, nationality, religion, language, sex, origin, property status, official position, beliefs, membership in political parties, trade unions and other public associations and other circumstances. regardless of whether they are prosecuted.

The principle of criminal liability is defined in our national legislation for guilt. Thus, only citizens, foreigners or stateless persons convicted of a socially dangerous act (action or omission) and its consequences can be prosecuted and punished. In addition, individuals cannot be held criminally liable for damage caused by innocence. In addition, the punishment or other criminal measures imposed on offenders must be fair, ie appropriate to the nature of the crime and the degree of public danger, the circumstances in which it was committed and the identity of the person convicted of the crime.

DEVELOPMENT

The legal grounds for criminal prosecution of foreigners or stateless persons in the Republic of Azerbaijan are regulated by the norms of the criminal legislation of the Republic of Azerbaijan in accordance with international law. Before explaining the legal basis of criminal liability of these persons, let us consider the legal nature of the concepts of crime and punishment. Although the signs of any act (action or omission) provided for in criminal law are formally present, but are not considered socially dangerous due to their insignificance, i.e., an act (action or omission that does not harm or threatens to harm an individual, society or state) is not considered a crime. In addition, only can be prosecuted sane person who has reached the age limit established by the Criminal Code of the Republic of Azerbaijan and has committed a crime. This way, only

individuals who have reached the age of sixteen before committing a crime shall be prosecuted.

It should be noted that the registration of foreigners or stateless persons in the Republic of Azerbaijan at the place of residence and location plays an important role in determining the legal basis for criminal liability. Thus, during the stay of foreigners or stateless persons in the territory of the country on legal grounds, temporary or permanent residence, are controlled by the migration service. Then, the inclusion of persons registered at the place of residence and location in the unified migration system, protection of national security, distinguishing the “place of residence” plays an important role in ensuring public order.

Pursuant to the requirements of the Criminal legislation of the Republic of Azerbaijan, criminals shall be punished. Penalties shall be imposed on foreigners and stateless persons as well as on citizens of the country who committed the crime in the territory of the Republic of Azerbaijan. Punishment is a criminal measure imposed by a court. Punishment shall be imposed on a citizen, foreigner or stateless person found guilty of committing a crime and shall consist of deprivation or restriction of his / her rights and freedoms in accordance with the Criminal Code. As a rule, punishment is applied in our society in order to restore social justice, rehabilitate the convict and prevent the commission of new crimes by both convicts and others.

According to the requirements of the law, stateless persons permanently residing in the Republic of Azerbaijan and commit crimes outside the Republic of Azerbaijan, as well as foreigners or stateless persons committing crimes against citizens of the Republic of Azerbaijan, or against the interests of the Republic of Azerbaijan outside the Republic of Azerbaijan, if they have not been convicted, these subjects shall be prosecuted in the territory of our country on the basis of the Criminal Code of the Republic of Azerbaijan.

Punishment and other measures of a criminal nature imposed on a person who has committed a crime in accordance with the Law of the Republic of Azerbaijan No 405-IVQD of June 29th, 2012, may not have the character or purpose of torture or other cruel, inhuman or degrading treatment (Ministry of Internal Affairs of the Republic of Azerbaijan, 2012). The Criminal Code of the Republic of Azerbaijan also contains provisions on the validity of crimes committed in the territory of Azerbaijan. Thus, citizens, foreigners or stateless persons who have committed crimes in the territory of the Republic of Azerbaijan are prosecuted under the Criminal Code. Then, a crime started, continued or completed in the territory of the Azerbaijan Republic shall

be considered a crime committed in the territory of the Azerbaijan Republic.

Art 5.1 of the Code of Criminal Procedure of the Republic of Azerbaijan entitled “Effect of Criminal Procedure Legislation on Foreign Citizens and Stateless Persons” states that criminal proceedings against foreign citizens or stateless persons suspected or accused of committing a crime - is carried out in accordance with the provisions of procedural law (Milli Majlis of the Republic of Azerbaijan, 2021a). As can be seen, the title and text of Art 5.1 of the Law define the term “foreigners” as the term “foreign citizens”. However, the concept of “foreign citizens” is not used in our national legislation, and there is no legal norm in our legislation. It should be noted that “foreign citizens” are employed in the legislative acts of the Russian Federation, Kazakhstan, Ukraine, as well as a number of countries. In our country, the concept of “foreign citizens” is used and recognized as the concept of “foreigner”. Thus, Art 3.0.1 of the Migration Code of the Republic of Azerbaijan states that a person who is not a citizen of the Republic of Azerbaijan and belongs to the citizenship of another state is called a foreigner (Milli Majlis of the Republic of Azerbaijan, 2021c). As can be noticed from the comparison, Art 5.1 of the Code of Criminal Procedure contradicts Art 3.0.1 of the Migration Code. In order to eliminate this contradiction and bring Art 5.1 of the Code of Criminal Procedure in line with Art 3.0.1 of the Migration Code, we propose that Art 5.1 of the Code of Criminal Procedure be reworded as follows: “The force of criminal procedure legislation on foreigners and stateless persons.” In our opinion, this proposal will help to improve the Criminal Procedure Code in accordance with the Migration Code of the Criminal Procedure Code, as well as other acts of our national legislation.

As it is known, the registration of foreigners and stateless persons in our country by place of residence and location is regulated by the Law of the Republic of Azerbaijan No 55-IQ of April 4, 1996 “On registration by place of residence and location” (Ministry of Internal Affairs of the Republic of Azerbaijan, 1996). Art 2 of the Law, entitled “Concepts of Residence and Location”, stipulates the registration of foreigners and stateless persons by place of residence and location, and distinguishes between “place of residence” and “location” according to their legal purpose.

Residence of a person are a house, apartment, service living space, dormitory, old people’s and disabled people’s house with limited health opportunities boarding schools for children, special educational institutions and other similar places of residence. Residence of a person are a house, apartment, service living space, dormitory, old people’s and disabled people’s house with limited health

opportunities boarding schools for children, special educational institutions and other similar places of residence. A person's location is a hotel, rest house, boarding house, camping, tourist base, hospital and other such public places, which is not considered as a place of residence.

The terms "place of residence" and "location", which play an important role in determining the legal basis for criminal liability of foreigners or stateless persons in our country, are included in the Law of the Republic of Azerbaijan "On place of residence and registration" but inconsistent definitions are given. For example, Art 7, Sub-paragraph 7.0.34 of the Code of Criminal Procedure of the Republic of Azerbaijan, entitled "Basic Concepts of Criminal Procedure Legislation", states that a place of residence is a temporary or permanent property owned by one or more persons. or rented space, including a house, apartment, cottage, hotel, sanatorium, boarding house, dormitory, rest house, camping, room at the tourist base, adjacent glass windows, terraces, galleries, balconies, common areas (their recreation, the basement and attic of buildings other than an apartment house, as well as the cabin of a seagoing vessel or the compartment of a long-distance train (in addition to the concept of accommodation for the purposes of this Code , his walled plot of land, car, river and sea vessel covers) (Milli Majlis of the Republic of Azerbaijan, 2021a).

As can be seen, in Art 7, subparagraph 7.0.34 of the Code of Criminal Procedure, the terms "place of residence" and "place of residence" which differ from each other in terms of their legal purpose are combined and referred to as "place of residence". We believe that the correct assessment of these concepts by distinguishing them from each other in the course of criminal prosecution could have prevented the illegal restriction of human and civil rights and freedoms. In this regard, in order to eliminate the existing contradictions, we propose to modify Art 7 of the Criminal Procedure Code of the Republic of Azerbaijan "Basic concepts of criminal procedure legislation", sub-paragraph 7.0.34 of the Law of the Republic of Azerbaijan to comply with the requirements of Art 2.

Experience shows that in order to avoid responsibility for crimes committed by foreigners or stateless persons outside the administrative territory of our country, they demand the application of international law. Art 11.2 of the Criminal Code of the Republic of Azerbaijan states that a crime committed by a foreigner or a stateless person in the territorial waters of the Republic of Azerbaijan, in the part of the Caspian Sea (lake) belonging to the Republic of Azerbaijan, in the airspace and economic zone over the Republic of Azerbaijan is considered a crime (Milli Majlis of the Republic of Azerbaijan, 2021a). Also, in

accordance with the Law of the Republic of Azerbaijan dated September 30th, 2013, No 745 - IVQD a foreigner or stateless person who has committed a crime on an aircraft shall be prosecuted in accordance with the Criminal Code of the Republic of Azerbaijan (Ministry of Internal Affairs of the Republic of Azerbaijan, 2013a).

The issue of criminal liability of diplomatic representatives of foreign states and other persons entitled to immunity who have committed crimes in the territory of the Republic of Azerbaijan shall be resolved in accordance with the norms of international law. Art 5.2 of the Code of Criminal Procedure of the Republic of Azerbaijan states that the specifics of criminal proceedings against persons with or without the participation of diplomatic, as well as other privileges and immunities established by international agreements to which the Republic of Azerbaijan is a party shall be specified in Articles 436-441 of this Code determined by the provisions of articles. In accordance with the requirements of the Criminal Procedure Code, persons with the right of diplomatic immunity may fall under the jurisdiction of the Republic of Azerbaijan with the express consent of the relevant foreign state or international organization.

For crimes committed by foreigners and stateless persons outside the territory of the Republic of Azerbaijan in the criminal legislation of the Republic of Azerbaijan the legal basis for criminal prosecution was also reflected. Thus, according to Art 12.1 of the Criminal Code of the Republic of Azerbaijan, citizens of the Republic of Azerbaijan and stateless persons permanently residing in the Republic of Azerbaijan for acts (actions or omissions) committed outside the Republic of Azerbaijan are subject to the legislation of both the Republic of Azerbaijan and the foreign state. If it is considered a crime and these persons have not been convicted in a foreign state, they are prosecuted under the Criminal Code of the Republic of Azerbaijan. It should be noted that this is reflected in the Law of the Republic of Azerbaijan No 183-IVQD of June 24th, 2011, added new Articles 12.1-1 and 12.2-1 to the Criminal Code of the Republic of Azerbaijan. Art 12.1-1 of this Annex states that citizens of the Azerbaijan Republic and stateless persons permanently residing in the country shall be prosecuted under this Code if they have not been convicted in a foreign state for corruption offenses and other crimes against the interests of the Azerbaijan Republic (Milli Majlis of the Republic of Azerbaijan, 2021b). In addition, according to Article 12.2-1, foreigners and stateless persons involved in corruption and other crimes against the interests of the service with the participation of officials of international organizations, members of international parliamentary assemblies, officials and judges of international courts outside the Republic of Azerbaijan, if they have committed a

crime and have not been convicted in a foreign state for that crime, they shall be held criminally liable under this Code.

According to the amendments and additions made to the Criminal Code of the Republic of Azerbaijan by the Laws of the Republic of Azerbaijan No 3323-IIQD of May 17, 2002 and No 1020-IIQD of September 30th, 2005, crimes against peace and humanity, war crimes, human trafficking, terrorism, terrorism financing, hijacking, hostage-taking, torture, piracy, illicit trafficking in drugs and psychotropic substances, production or sale of counterfeit money or securities, attacks on persons or organizations using international defense, crimes related to radioactive materials, as well as Citizens of the Republic of Azerbaijan, foreigners or stateless persons who have committed other crimes arising from international agreements to which the Republic of Azerbaijan is a party, shall be prosecuted and punished in accordance with this Code, regardless of the place of crime.

In the Criminal Legislation of the Republic of Azerbaijan One of the legal grounds for the criminal liability of foreigners and stateless persons is the imposition of punishment on perpetrators. Thus, citizens, foreigners or stateless persons who have committed crimes in the territory of the Republic of Azerbaijan shall be subject to the relevant types of penalties provided for in the legislation in accordance with their criminal acts. The types of punishment are as follows:

- a) a fine.
- b) deprivation of the right to drive a vehicle.
- c) deprivation of the right to hold a certain position or engage in certain activities.
- d) public works.
- e) deprivation of a special or military rank, honorary title and state award.
- f) remedial work.
- g) restrictions on military service.
- h) forced eviction from the territory of the Republic of Azerbaijan.
- i) restriction of liberty.
- j) detention in a disciplinary military unit.
- k) imprisonment for a specified period.
- l) life imprisonment.

Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 of 22 November 1984, entitled "The

Right to Appeal to Criminal Courts of Second Instance", establish that everyone convicted by a court shall have the right to have his / her sentence imposed can be reviewed by a higher court. The exercise of this right and the grounds on which it can be exercised are regulated by law (Ministry of Internal Affairs of the Republic of Azerbaijan, 2002, p. 217).

As mentioned above, foreigners or stateless persons who have committed a crime are subject to one of the penalties provided by law. Thus, deprivation of a special or military rank, honorary title and state award; restrictions on military service; Penalties such as detention in a disciplinary military unit do not apply to foreigners or stateless persons. These types of penalties apply to citizens of the Republic of Azerbaijan. Other types of punishment apply not only to citizens of the country, but also to foreigners or stateless persons. However, the form of compulsory deportation from the territory of the Republic of Azerbaijan shall be applied only to foreigners or stateless persons as an additional type of punishment. Compulsory deportation does not apply to citizens of the Republic of Azerbaijan.

As it is known, the norms of international law, Article 53 of the Constitution of the Republic of Azerbaijan, the Migration Code of the Republic of Azerbaijan approved by the Law of the Republic of Azerbaijan No 713-IVQ of July 2nd, 2013 and entered into force on August 1st, 2013 According to the requirements of other acts of our legislation, the type of punishment "compulsory deportation from the territory of the Republic of Azerbaijan" cannot be applied to the citizens of the Republic of Azerbaijan. As mentioned previously, foreigners and stateless persons living in our country are prosecuted for their crimes. For these acts, compulsory deportation from the territory of the Republic of Azerbaijan shall be applied to these persons as an additional punishment. According to Article 78.1.1 of the Migration Code of the Republic of Azerbaijan "Grounds for expulsion of foreigners and stateless persons from the territory of the Republic of Azerbaijan", foreigners and stateless persons are sentenced to deportation from the Republic of Azerbaijan for crimes committed in our country (Milli Majlis of the Republic of Azerbaijan, 2021c).

According to Art 52 of the Criminal Code of the Republic of Azerbaijan, the sentence of compulsory deportation from the territory of the Republic of Azerbaijan is imposed on foreigners or a stateless person sentenced to imprisonment for more than one year and is executed after serving the main sentence. Foreigners or stateless persons sentenced to imprisonment for a term not exceeding one year or to a non-custodial sentence may be sentenced to deportation from the territory of the Azerbaijan Republic,

taking into account the circumstances specified in Art 58.3 of the Criminal Code. When sentencing a foreigner or stateless person to imprisonment for a term not exceeding one year or a non-custodial sentence, the nature and degree of public danger, the identity of the offender, including mitigating and aggravating circumstances, and taking into account the impact of the sentence on the correction of the person and the living conditions of his family, a sentence of compulsory deportation may be imposed outside the Republic of Azerbaijan.

A penitentiary institution executing the main sentence imposed on foreigners or stateless persons sentenced to additional punishment in the form of deportation from the territory of the Azerbaijan Republic shall submit a copy of the relevant sentence to the State Migration Service of the Azerbaijan Republic two months prior to the expiration of the main sentence, the state to which it belongs, the execution of the sentence, and the status of compensation for the damage caused by the crime. Thereafter, on the day of completion of the main sentence, foreigners or stateless persons shall be handed over to the State Migration Service of the Republic of Azerbaijan, accompanied by an employee of the penitentiary institution serving the main sentence.

In accordance with the norms of international law and the principles of humanism of the criminal legislation of the Republic of Azerbaijan, the type of punishment of compulsory deportation from the territory of the Republic of Azerbaijan does not apply to the following foreigners or stateless persons:

- a) persons permanently residing in the territory of the Azerbaijan Republic for five years before the entry into force of a conviction.
- b) persons who are married to a citizen of the Republic of Azerbaijan before the entry into force of a conviction.
- c) persons born in the Republic of Azerbaijan.
- d) persons whose parents are citizens of the Azerbaijan Republic.
- e) persons who have refugee status or have been granted political asylum by the Republic of Azerbaijan.
- f) minors under the care of a citizen of the Republic of Azerbaijan.
- g) persons with incapacity or group I disabilities.
- h) persons whose deportation is presumed to be subject to torture or persecution in the country of destination or whose deportation is contrary to the interests of national security.

If there are no grounds for foreigners or stateless persons released from serving their sentences under the migration legislation to reside in the country, the State Migration Service of the Azerbaijan Republic shall decide to deport them from the Republic of Azerbaijan by restricting their entry into the country. Art 79.2 of the Migration Code of the Republic of Azerbaijan states that the decision on deportation also restricts the entry of foreigners and stateless persons into the country for up to 5 years (Milli Majlis of the Republic of Azerbaijan, 2021c).

It should be noted that in accordance with the requirements of international law, there must be legal grounds for the forced expulsion of foreigners or stateless persons from the country of residence. Art 1 of the Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms entitled "Procedural Guarantees for the Expulsion of Foreigners", states that , except for the execution of decisions made in accordance with the law, cannot be removed and must have the following capabilities:

- a) to present arguments against his expulsion.
- b) to request a reconsideration of his case.
- c) to be represented before a competent authority or a person or persons appointed by such authority for these purposes.

As required by the Convention, a foreigner residing in the territory of any state may not be expelled from that territory without legal grounds. In addition, these entities have the right to present well-founded arguments against expulsion from the country and to request a reconsideration of their case. Part II of the same article states that a foreigner may be deported if the expulsion is necessary in the interests of public order or on condition of national security (Ministry of Internal Affairs of the Republic of Azerbaijan, 2002, p. 216).

In accordance with the requirements of this convention, in most countries of the world, foreigners or stateless persons are deported in cases where they may endanger the national security, public order or public health. One of the grounds for deporting them is that they will be prosecuted for their crimes. No country wants previously convicted foreigners and stateless persons to live on its territory. For this reason, in most countries of the world, such convicts are forcibly deported. In this case, they have to present arguments against his expulsion or demand a reconsideration of his case, and so on. can be removed without respecting their rights. These provisions of the convention apply to both foreigners who have committed an administrative offense and those who are suspected of committing a criminal offense.

Art 52.1-1 added to the Criminal Code of the Republic of Azerbaijan by the Law of the Republic of Azerbaijan No 833-IVQD of December 2nd, 2013 (Ministry of Internal Affairs of the Republic of Azerbaijan, 2013b), states that the right to enter the Republic of Azerbaijan is imposed on a person sentenced to deportation limited to payment or withdrawal. Compulsory expulsion of foreigners or stateless persons convicted of crimes in the territory of the Republic of Azerbaijan and administrative expulsion of these persons for committing administrative offenses have also been determined. Thus, according to Art 81.1 of the Migration Code of the Republic of Azerbaijan, deportation of foreigners and stateless persons from the territory of the Republic of Azerbaijan is carried out in the following directions: stateless person - to the country of his / her previous permanent residence, to the country of his / her direct arrival in the Republic of Azerbaijan, to the country wishing to accept him / her and to the applicant; a person with dual citizenship - to the country of permanent residence or closer contact (Milli Majlis of the Republic of Azerbaijan, 2021c). Persons must leave the country within 48 hours in accordance with Art 166 of the Penitentiary Code of the Republic of Azerbaijan and Art 79.5 of the Migration Code of the Republic of Azerbaijan in case of forced deportation. Their departure from the territory of the Republic of Azerbaijan during this period shall be ensured by the State Migration Service of the Republic of Azerbaijan.

According to the Migration Legislation of the Republic of Azerbaijan, no decision is made on deportation of "refugee" status, as well as foreigners and stateless persons granted political asylum by the Republic of Azerbaijan. Also, foreigners and stateless persons considered to be victims of human trafficking shall not be deported for a period of one year, and foreigners and stateless persons providing assistance to criminal prosecution bodies shall not be deported until the end of the criminal proceedings. No decision is made to exclude children who are victims of human trafficking.

Some contradictions in the norms of our national legislation are regarding the costs of forced eviction of foreigners and stateless persons from the territory of the Republic of Azerbaijan. Thus, Art 166.10 of the Code of Execution of Punishments of the Republic of Azerbaijan states that the costs of deportation from the territory of the Republic of Azerbaijan shall be paid by the convict himself or by diplomatic and consular missions of the state to which he belongs (Milli Majlis of the Republic of Azerbaijan, 2020, p. 255). In connection with this norm, Art 80.9 of the Migration Code of the Republic of Azerbaijan states that the costs of expulsion of foreigners and stateless persons

from the territory of the Republic of Azerbaijan shall be borne by them. In order to refine between the two normative legal acts, we propose that the first sentence of Art 166.10 of the Code of Execution of Punishments of the Republic of Azerbaijan be brought into line with the second sentence of Art 80.9 of the Migration Code of the Republic of Azerbaijan. In the absence of funds for the removal of these persons, such costs shall be borne by the persons, departments, enterprises and organizations that received them (Milli Majlis of the Republic of Azerbaijan, 2021c).

In our national legislation in accordance with the requirements of international law Arrest or involuntary deportation of foreigners or stateless persons without any grounds shall not be permitted. Art 9 of the Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A (III) of December 10th, 1948, states that no one shall be subjected to arbitrary arrest, detention or deportation. Art 10 of the Declaration further states that in order to determine the rights and obligations of each person and to determine whether the criminal charges against him are well-founded, an independent and impartial tribunal shall, in full equality, openly and fairly comply with all requirements of justice. has the right to demand compliance (United Nations, 1948).

According to the declaration, everyone charged with a criminal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Also, no heavier penalty can be imposed than the one that can be applied at the time of the crime.

Let us consider the form in which the right of foreigners or stateless persons to defend themselves in court in international legal instruments is applied in the territory of Azerbaijan. In accordance with the grounds for deportation of foreigners and stateless persons from the territory of the Republic of Azerbaijan in accordance with our national legislation, the State Migration Service of the Republic of Azerbaijan shall make a decision on deportation of such persons. Art 79.8 of the Migration Code of the Republic of Azerbaijan states that the decision on deportation may be appealed in court. Filing an appeal does not suspend the execution of the decision on exclusion (Milli Majlis of the Republic of Azerbaijan, 2021c).

This article does not suspend the execution of the decision on expulsion, even if the foreigner or stateless person appeals to the court against the decision on deportation.

That is, the decision must be enforced, regardless of whether the foreigner or stateless person has applied to the court or not. However, the filing of a complaint must immediately suspend the execution of the decision to withdraw. Otherwise, the rights of foreigners or stateless persons to apply to a court established by international law and national law may be violated. This is contrary to international law and violates the right of foreigners or stateless persons to go to court. In this regard, we propose that the second sentence of Art 79.8 of the Migration Code of the Republic of Azerbaijan be given as follows: "Filing an appeal suspends the execution of the decision to withdraw."

One of the legal bases of criminal liability in the criminal legislation of the Republic of Azerbaijan is the legal norm connected with "Restriction of freedom". This legal norm applies only to citizens of the Republic of Azerbaijan. Restrictions of liberty do not apply to foreigners or stateless persons in accordance with the requirements of international conventions. Art 52.1-1 was added to the Criminal Code of the Republic of Azerbaijan in the new edition entitled "Restriction of Freedom" by the Law of the Republic of Azerbaijan No 816-IVQD dated October 20th, 2017. According to this art, the penalty of restriction of liberty is the detention of a convict at the place of residence without complete isolation from society. The court restricts the convict from leaving the place of residence (completely or at certain times of the day) and certain territorial boundaries. Restriction of liberty is imposed for a period of six months to five years.

There are scientifically and legally unfounded misconceptions in the legal doctrine that the restriction of liberty applies not only to citizens but also to foreigners or stateless persons. In this regard, our national legislation contains a special norm that does not restrict the freedom of foreigners or stateless persons. Thus, according to Art 52-1.6 of the Criminal Code of the Republic of Azerbaijan, restriction of liberty is not imposed on servicemen, foreigners and stateless persons, as well as persons without permanent residence in the territory of the Republic of Azerbaijan (Milli Majlis of the Republic of Azerbaijan, 2021b).

It should be noted that one of the legal grounds for criminal liability of foreigners or stateless persons in the criminal law is the legal norms related to the extradition of those who have committed a crime. Art 13.2 of the Criminal Code of the Republic of Azerbaijan, as amended by the Law of the Republic of Azerbaijan No 360-IIQD of July 2nd, 2002, stipulating that foreigners or stateless persons who have committed crimes outside the Republic of Azerbaijan and are in the Republic of Azerbaijan shall be prosecuted

under the Law of the Republic of Azerbaijan No 132-IIQ of May 15th, 2001 "On extradition of criminals" for the execution of the imposed sentence (Ministry of Internal Affairs of the Republic of Azerbaijan, 2001). They may be transferred to a foreign state in accordance with other legislative acts of the Azerbaijan Republic and international agreements to which the Azerbaijan Republic is a party.

Finally, "On extradition" of the European Convention on Extradition of December 13th, 1957, its Additional Protocol of October 15th, 1975 and the Second Additional Protocol of March 17th, 1978, the Law of the Republic of Azerbaijan No 132-IIQ of May 15th, 2001 stipulates that a person requested to be extradited by a foreign state shall be sentenced to at least one year of imprisonment only if the act committed by him is a crime in accordance with the legislation of the Azerbaijan Republic and the requesting state, or a heavier sentence (Ministry of Internal Affairs of the Republic of Azerbaijan, 2001).

CONCLUSIONS

In this paper, the legal bases for judging foreigners and stateless persons in the state of Azerbaijan after committing criminal offenses were analyzed. If foreigners or stateless persons who have committed a crime outside the territory of the Azerbaijan Republic are not extradited to a foreign state and the act (action or omission) is considered a crime under the Criminal Code of the Azerbaijan Republic, they shall be prosecuted in the Azerbaijan Republic. Also, in accordance with Art 151 of the Constitution of the Republic of Azerbaijan, international agreements in which Azerbaijan is a party are respected, regulating such important things like extradition of criminals. This art states that if there is a conflict between the normative legal acts included in the legislative system of the Azerbaijan Republic (except for the Constitution of the Azerbaijan Republic and acts adopted by referendum) and interstate agreements to which the Azerbaijan Republic is a party, those international agreements shall apply.

One of the legal grounds for the release of foreigners or stateless persons from criminal liability in the criminal legislation of the Republic of Azerbaijan is the adoption of an amnesty act or pardon decision on those persons. Guided by the principle of equality before the law, persons who have committed crimes in the Republic of Azerbaijan shall be prosecuted. The law also makes humane decisions about these individuals without discrimination. One of such humane decisions is the adoption of the Amnesty Act on criminals. As it is known, the Amnesty Act is adopted by the Milli Majlis (National Parliament) of the Republic of Azerbaijan in respect of persons who are not individually identified. The amnesty act applies to both citizens of

our country and foreigners or stateless persons. Thus, foreigners or stateless persons who have committed a crime may be released from criminal liability under an amnesty act. Those convicted of a crime may be released from punishment, or the term of their sentence may be reduced, or the unserved part of their sentence may be commuted to a lighter sentence, or the sentence of the convicted person may be revoked.

One of the humane decisions applied to citizens convicted of crimes in the territory of the Republic of Azerbaijan is the decision to pardon. The pardon decision applies not only to citizens of the country, but also to foreigners or stateless persons. Pardon shall be granted by the President of the Republic of Azerbaijan in respect of an individually determined citizen, foreigner or stateless person. A citizen, foreigner or stateless person convicted of a crime may be released from serving the remainder of his sentence by a pardon, or his sentence may be reduced or the unserved part of his sentence may be replaced by a lighter sentence.

Also, as a rule, life imprisonment may be replaced by pardon for a period not exceeding twenty-five years. In addition, a person pardoned may have his conviction overturned. Thus, the study revealed that the Criminal Code of the Republic of Azerbaijan, adopted in accordance with international law, establishes legal norms governing the legal basis of criminal liability of foreigners or stateless persons living in our country, but there are still some shortcomings in this area. We have made a number of scientifically and legally sound proposals to eliminate these shortcomings. We believe that these proposals will help to further improve the criminal legislation of the Republic of Azerbaijan.

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