

DECLARATION OF INDEPENDENCE OF THE DEMOCRATIC REPUBLIC OF AZERBAIJAN (1918-1920) – LEGAL ANALYSIS

DEKLARÁCIE NEZÁVISLOSTI AZERBAJDŽANSKEJ DEMOKRATICKEJ REPUBLIKY (1918-1920) – PRÁVNÁ ANALÝZA

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ABSTRACT

The following article is a legal analysis of the text of the Declaration of Independence of the first democratic republic in both Muslim and Oriental worlds – Azerbaijani Democratic Republic. Detailed analysis of each point, prefaced with short historical background necessary to understand the process of forming an independent state, reveals the basis of the legal system of then Azerbaijan and could contribute to further research on this topic. Although it has existed for only 23 months, the Republic was able to function well and has left a trace in the history of Caucasus region, as well as has been used as an inspiration for Azerbaijani political elites after the collapse of the USSR in 1991, what also has been described.

ABSTRAKT

Nasledujúci článok je právnou analýzou textu Deklarácie nezávislosti prvej demokratickej republiky v moslimskom aj orientálnom svete – Azerbajdžanskej demokratickej republiky. Podrobná analýza každého bodu, predložená krátkym historickým pozadím potrebným na pochopenie procesu formovania samostatného štátu, odhaľuje základy právneho systému vtedajšieho Azerbajdžanu a môže prispieť k ďalšiemu výskumu tejto témy. Hoci republika existuje len 23 mesiacov, dokázala dobre fungovať a zanechala stopu v histórii kaukazského regiónu, ako aj inšpiráciu pre azerbajdžanské politické elity po rozpade ZSSR v roku 1991, čo bolo tiež popísané.

1. INTRODUCTION

The field of research of the given article is not well-known and discussed in Europe topic of Caucasian democracies, which have broken out in May 1918, with an emphasis on one country – Azerbaijan. The main legal document of this country – Declaration of Independence, was announced on May 28th, 1918.

This article aims to analyze and prove the thesis that Azerbaijani Declaration of Independence was a crucial and progressive legal act not only for Azerbaijan itself, but for the whole region and cultural world of Orient. It contains of the text of the Declaration and detailed analysis of every single paragraph and part of it, summarized within a brief recapitulation.

The topic is being researched by mostly Azerbaijani experts and it is quite a hard task to find any work of a European researcher. As far as it is known, nobody tried to analyze this act from the legal point of view, as most researchers have focused on the impact of the Declaration, without detailed interpretation of its content.

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2. HISTORICAL BACKGROUND FROM 1917

This part contains events connected with all of the three Caucasian states: Georgia, Armenia and Azerbaijan as it is impossible to take into consideration only one of them – they have been tied for a short period as members of one country which has failed to survive and as a result divided into three states. Decisions of one national fraction influenced decisions of others and the knowledge of these processes is essential in order to understand how and why independent Azerbaijan was created. There is a need to mention the fact, that there was not a term such as “South Caucasian identity” and these three states did not have much in common, their cooperation was based mostly on bilateral relations rather than multilateral cooperation or unification.²

1. Bolshevik revolution as a chance for the independence of the Caucasus

After the victory of February Revolution in Russia on March 9, 1917 there has been established a special committee on the initiative of Caucasian deputies of the Duma (Russian name for the parliament – author). The committee aimed to manage the Transcaucasian territory. The Special Transcaucasian Committee was finally formed on March 30, 1917. On November 15, 1917 there was established a regional government called Transcaucasian Commissariat. These bodies were formed to let Bolsheviks control Transcaucasia, which was trying to go its own way. For that reason, Petersburg decided to form a legislative body. Its deputies have been chosen among Russian Constitutional Assembly.³

2. Transcaucasian Sejm

In February 1918 there has been created a parliament on the Caucasus called *Transcaucasian Sejm*. The deputies to this body were Georgians, Armenians and Azerbaijanis. In April 1918, Transcaucasian Sejm declared independence from Russia, what has meant creating a new state – Transcaucasian Democratic Federal Republic (TDFR).⁴

On April 22nd, 1918 Transcaucasia declared independence in shape of a federal republic. 4 days later there has been formed the new government with A. Chkhenkeli as a head. The new government included five Azerbaijani representatives. Forming a new legislative body did not improve the internal situation of the federation, which has been divided into three fractions according to national partition. Moreover, ethnic cleansing has started in Erevan governorate – as a result, 80 thousand Azerbaijanis became refugees. Deputies could not agree in terms of internal and foreign policy, what has resulted into partition of the TDFR in May. This country has survived only for one month.⁵

First fraction who decided to left the Sejm and Republic was Georgian. On May 25th, 1918 I. Tsereteli said that further cooperation is impossible at it has not been present during negotiations with Turkey and Georgia has no other way than to declare independence. Armenian fraction decided that if Georgia will declare independence, Armenia will do the same. On May 26th Georgia declared independence and the Transcaucasian Sejm dissolved itself.⁶

The situation in the region was more complicated due to the fact that influence zones of many countries interpenetrated there: Russia, Persia/Iran, United Kingdom, Germany and Turkey, dividing into bigger or smaller alliances tried to gain as much as possible in the meeting point of Europe and Asia.⁷

² NAZRIN GADIMOVA-AKBULUT, *Common Identity as the Missing Element in the Construction of Regionalism in the South Caucasus*, in: Journal of Caucasian Studies, May 2010, p. 52.

³ A.A. PASHAEV, (red.) *Zaqafqaziya Seyminin Müsəlman Fraksiyası və Azərbaycan Milli Şurası İclaslarının protokolları 1918-ci il*, p. 22.

⁴ TIGRAN MKRTCHYAN, VAHRAM PETROSYAN, *Integration of Transcaucasia: continued failure and hope*, in: Turkish Policy Quarterly, Spring 2009, p. 60.

⁵ AYDIN BALAYEV, *Азербайджанское национально-демократическое движение 1917-1920 гг.*, 20-22 pp.

⁶ Ibidem, p. 22.

⁷ SHABNAM YUSIFOVA, *The Recognition Of The Independence Of Azerbaijan Democratic Republic In Paris Peace Conference And The Attitude Of Iran*, Mediterranean Journal of Social Sciences, Vol 5 No 19, August 2014, Rome, p. 355.

3. LAW BACKGROUND

In aim to understand the impact and progressive character of the Declaration of Independence of the Azerbaijani Democratic Republic there is an undoubtful need for characterizing current situation in international law. In 1918 there were no declarations of basic rights for the people, countries still had a right to war and the League of Nations has not been established yet.⁸

Women right to vote was a new invention, it has been implemented in some countries across the world. In the United States, in 1918 women have protested and been arrested for their emancipation. Parallely, the act which let them have equal public rights, has been proceeded in House of Representatives and Senate.⁹ In Azerbaijan, women did not need to protest because of cultural background – suffrage and emancipation ideas were unpopular ones, if not unknown. Without any demonstrations, they have been given a right to vote.

The first multilateral treaties between the states were Geneva Convention from 1864 with further updates and Hague Conventions from 1899 and 1907. Geneva Convention established a Red Cross – organization of medical help for wounded in war without distinction to their nationality, which personnel has been guaranteed neutrality in order to help more effectively.¹⁰

First Hague Convention treated about settlement of international disputes, which aimed to create an international court, called *Permanent Court of Arbitration* and *International Bureau* as an administrative institution. Moreover, it has described the arbitration procedure between the countries.¹¹ The 4th Hague Convention from 1907 was a milestone for limiting states` right to start war and implemented a new concept – *prisoners of war*.¹²

Until 1918, all the territory of Azerbaijan has been a part of Russian empire. Elites have been discussing the idea of independence after revolution in 1905. After the 1917 revolution, Azerbaijani intelligentsia promoted their will to form an independent state based on secular democratic rules.¹³

4. TEXT OF THE DECLARATION OF INDEPENDENCE OF THE AZERBAIJANI DEMOCRATIC REPUBLIC¹⁴

A political order has set in the course of the Great Russian revolution that entailed the disintegration of the individual members of the body of state and the departure of the Russian troops from the Transcaucasia.

Left to their devices, the peoples of the Transcaucasia took it upon themselves to arrange their own fates and established the Transcaucasian Democratic Federative Republic. However, the Georgian people thought it best to separate itself from the Transcaucasian Democratic Federative Republic and form the independent Georgian Democratic Republic. The current political situation of Azerbaijan related to the end to the war between Russia and the Ottoman Empire as well as the unprecedented anarchy within the country dictate to Azerbaijan that consists of the Eastern and the Southern Transcaucasia imperatively the necessity of incepting a state organisation of its own so as to lead the peoples of Azerbaijan out of the difficult internal and external position in which they have found themselves. Therefore, the Muslim National Council of Azerbaijan elected by popular vote now declares publicly:

⁸ <https://www.britannica.com/topic/League-of-Nations> (access: 17.11.2021).

⁹ <https://www.loc.gov/collections/women-of-protest/articles-and-essays/historical-timeline-of-the-national-womans-party/1918-to-1920/>.

¹⁰ <https://ihl-databases.icrc.org/ihl/INTRO/120>.

¹¹ <https://docs.pca-cpa.org/2016/01/1899-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> .

¹² <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1907&context=ils>.

¹³ <https://ge.boell.org/en/2018/05/28/democratic-republic-azerbaijan-1918-20-origins-milestones-and-legacy>.

¹⁴ full text: <https://meclis.gov.az/news-az.php?id=14&lang=en> (access 3.11.2021).

1. From this day onwards, the people of Azerbaijan are the bearers of sovereign rights whilst Azerbaijan is henceforth a rightful independent state that encompasses the Southeast Transcaucasia.
2. The Democratic Republic is now set as a form of political organisation of the independent Azerbaijan.
3. The Azerbaijan Democratic Republic seeks to establish good neighbourly relations with all the members of the international community and, in particular, with the neighbouring nations and states.
4. The Azerbaijan Democratic Republic guarantees, within its boundaries, the civil and political rights to all the citizens indiscriminately of ethnicities, religion, social status and sex.
5. The Azerbaijan Democratic Republic provides an ample scope for development to all the peoples that populate its territory.
6. The National Council elected by popular vote and the Provisional Government accountable to the National Council shall remain the supreme authority of Azerbaijan as a whole until such time as the Constituent Assembly is convened.

5. LEGAL ANALYSIS OF THE POINTS OF THE DECLARATION OF INDEPENDENCE OF THE AZERBAIJANI DEMOCRATIC REPUBLIC

Preamble

Preamble is a solemn introduction of the constitution, taking into consideration historical narration, fundamental goals of the country, may refer to the religion or national identity. It contains a description of the past of the country and underlines the most significant events.¹⁵

The preamble of the Declaration of Independence of the Azerbaijani Democratic Republic focuses on historical events which have occurred within less than one year before its resolution. The three facts mentioned are: change of the power in Russia, end of Russian-Ottoman war and breakdown of an idea of the Transcaucasian Federation.

Further, it underlines the need of Azerbaijani people to self-determination and will to establish a sovereign state in order to stop internal anarchy and give a possibility for Muslim peoples of Caucasus to live in an independent country.

Article 1

The first provision constitutes Azerbaijan (full name: Azerbaijani Democratic Republic, further written as ADR) as a sovereign entity of international relations. From the moment of entry into force it becomes a base for establishment of diplomatic relations at an equal level with other entities of the international law, access to international organizations and respect of other countries to the borders of ADR. The notation about the sovereignty has meant in practice an ability to decide about the state without any third-party entities.

The territory of the state has been described in a very general way – *the Southeast Transcaucasia*, what has meant that the borders would be established in a detailed way in future. It is likely that such a notation has been written down because of current geopolitical situation, just as a remark that this exact part of Transcaucasia becomes independent.

Article 2

This article establishes the political system in the newly created state and is a precedent in the world of both Islam and the Orient, as Azerbaijan becomes the first democratic republic in the above-mentioned cultural circles. The importance of this article is not visible from the point of view of the present day, but in those times and conditions it was a breakthrough record, opening a new page in the history of the region.

¹⁵ LIAV ORGAD, *The preamble in constitutional interpretation*.

In practice, this meant the election of power by citizens in popular voting, the inability to concentrate three powers - legislative, executive and judiciary - in the hands of one person, and the fulfillment of the necessary condition - granting voting rights to a wide group of people.

The republican system was a complete novelty for Azerbaijan, which did not have democratic traditions. Deciding on this type of rule, Azerbaijani leaders have set themselves an ambitious goal. Despite the lack of experience and the need to build state structures from the very beginning, the Azerbaijani state was able to function efficiently throughout its existence.

Article 3

The third provision is relatively vague and can be viewed as a general clause as a whole. It concerns external policy and heralds the peaceful attitude of the state authorities in order to establish at least correct relations with other countries, primarily towards Turkey and Great Britain - at that time Azerbaijan's closest allies. It is noteworthy that despite the tense relations with Armenia, the authorities in Baku saw a real possibility of resolving disputes and entering a new stage of inter-state relations.

This provision is also of strategic importance - it was established to emphasize the sovereignty of Azerbaijan and transform it into a full-fledged subject of international relations, which is necessary for the recognition of the new state by the international community.

It may be interpreted as a sign that Azerbaijan will try to seek international recognition through diplomatic channels. This article is a short description of the main goals of country's foreign policy, focusing on friendly relations with neighbors meaning both states and nationalities. It is worth noting here that the ethnic and national composition of Azerbaijan was not uniform, the same applies to the entire Caucasus, inhabited for centuries by many nationalities often fighting with each other. Azerbaijani Declaration of Independence may be seen as an attempt to find a peaceful solution for the conflicted region.

Article 4

This article should be divided into two parts. The first deals with state borders, guaranteed by the broadly understood state. In a narrow interpretation, this means guarantees from the authorities, with the help of the armed forces, in a broader interpretation - all ADR citizens.

The second part gives concrete expression to the concept of "citizen". The last word is of particular importance, as it means granting civil rights to women, which is also the first such case in the Orient world and ahead of most European countries. As early as May 1918, Azerbaijani women were given the opportunity to decide about the political fate of their country. The same right was granted to the followers of all religions and representatives of various nationalities living in Azerbaijan, regardless of their social class or property owned by them.

This meant the equal civil and political rights of men and women, peasants and aristocrats, Azerbaijanis and non-Azerbaijanis inhabiting ADR. The second sentence of the fourth provision clearly demonstrates the broadly understood tolerance of the authors of this legal act and is a bold step – it should be remembered that the authors of the Declaration of Independence were Muslim politicians and such a provision was not seen before in any country with Muslim majority or traditions.

Article 5

The reasons for such a record can be found in the history of Azerbaijan - it was a country always inhabited by many ethnicities and nations. This article is another example of tolerance, specifically ethnic in this case. It allows freedom of cultural and linguistic activity for representatives of all ethnic groups living in the country, while protecting their heritage from oblivion.

According to the rulers, the multiethnicity of Azerbaijan has become not a problem, but a positive feature. By legally guaranteeing freedom of development to representatives of the non-Azerbaijani population, the authorities in Baku gained a political ally and support among the

broad groups of the country's population, especially those oppressed during the times of the Russian Empire. Many ethnic groups have gained a sense of security - the specter of resettlement or re-education has moved away.

Article 6

The last article is a transitional provision ensuring at the same time continuity of power. It establishes the supreme authority - the Provisional Government and the controlling bodies - the National Council and the National Assembly. All three bodies are collegial, which prevents the introduction of absolute power and at the same time guarantees a democratic system. The civic empowerment of the last two bodies, which had been elected in nationwide elections, was emphasized.

6. RELATION OF THE AZERBAIJANI DEMOCRATIC REPUBLIC TO MODERN AZERBAIJAN

In 1991 after the USSR collapsed, in the preamble of *The Constitutional Act on the State Independence of the Republic of Azerbaijan* it was declared that all the time that former ADR was under Soviet rule is treated as an occupation period. Article 2 states that nowadays Azerbaijan is a successor of ADR, article 3 invalidates all the law passed during Soviet rule with an exception stated in article 4 – Constitution from 1978, but only partially as the sections which are contradictive with the new Constitutional Act are not in power anymore.¹⁶

Article 11 treats about the system of the state – democracy has been chosen with law as a supreme factor of its existence. In article 12 there is another reference to the Republic of 1918-1920, that is secularism. The 1995 Constitution refers to that of 1918 in the preamble by expressing the wish to establish good neighborly relations, in Article 7 by specifying the system of state as democratic, law-governed, secular, unitary republic. Religion is separated from the state, as says Article 18, where there is also guaranteed the equality of all religions inside Azerbaijan.¹⁷

References to the Article 5 of the Declaration of Independence from 1918 are reflected in Article 25 point III of 1995 Constitution: *Everyone has equal rights and freedoms irrespective of race, ethnicity, religion, sex, origin, property status, social position, convictions, political party, trade union organization and social unity affiliation. Limitations or recognition of rights and freedoms because of race, ethnicity, social status, language, origin, convictions and religion are prohibited.*¹⁸

Article 2 of the Declaration of Independence is visible in Articles 54 , 55 and 56 of modern Constitution, where there is stated that citizens of Azerbaijan: *have the right to participate in the Government* (55, I) and *have the right to elect and be elected to the government organs and also to participate in referenda* (56, I).¹⁹

7. CONCLUSIONS

To sum this article up, several points should be noted. The first is the undoubtedly modern character of the Declaration of Independence of the ADR, as evidenced by the provisions on equality with respect to sex, religion, race or nationality, as well as the choice of the political system - a democratic republic. It should be emphasized that Azerbaijan did not have any democratic traditions on which it could be based. The country's leading politicians have proved that it is possible not to renounce the Muslim religion and at the same time pursue a progressive policy, both internal and external.

¹⁶ https://republic.preslib.az/en_d2.html.

¹⁷ https://www.constituteproject.org/constitution/Azerbaijan_2016.pdf?lang=en.

¹⁸ Ibidem.

¹⁹ Ibidem.

Foreign policy was oriented towards good neighborly relations despite difficult position - change of power in Russia, tense relations with Armenia. ADR was to be a state of law, modern and recognized by other countries as a sovereign entity of the international relations. Unfortunately, as a result of the attack of Soviet army to the Caucasus, no one of the newly-formed republics (Armenia, Azerbaijan, Georgia) survived.

It is worth to ask a question at this point, what if these states would not be annexed by the Soviet Union? This question is very important in the case of Nagorno-Karabakh conflict, because the situation intensified after the collapse of USSR, and the war resulted in occupation of 20% of Azerbaijan territory by Armenian separatists.²⁰ On the contrary, have these countries had any chance to resist such a powerful, in comparison to them, state as the Soviet Union was and preserve their sovereignty?

For further research, an issue of comparison of constitutional acts of Azerbaijan from 1918 and 1991 could be a topic worth studying. Moreover, confrontation of situation *de iure* and *de facto* in this country nowadays is also an interesting subject to discuss.

KEY WORDS

Azerbaijan, Azerbaijani Democratic Republic, Declaration of Independence of the Azerbaijani Democratic Republic, Transcaucasian Sejm, Transcaucasia

KLÚČOVÉ SLOVÁ

Azerbajdžan, Azerbajdžanská demokratická republika, Deklarácia nezávislosti Azerbajdžanskej demokratickej republiky, Zakaukazský Sejm, Zakaukazsko

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