ANALYSIS OF THE KHOJALY GENOCIDE FROM THE PRISM OF SUBSTANTIVE AND PROCEDURAL LEGAL NORMS: PROCEEDINGS IN ABSENTIA AND JURISDICTION PROBLEM

INTRODUCTION

The principle of *nullum crimen sine lege*, which was formed in ancient Rome and is now considered the basis of criminal law, means “if there is no law (or it is not reflected in the law), the act cannot be considered a crime”. Sometimes it is possible to meet a broader version of this phrase – *nullum crimen et poena sine lege* – “if there is no law (or it is not reflected in it), then there is no crime and punishment”.

Modern criminal statutes/laws are the main sources to focus on whether an act is a crime. However, in the Roman principle, the first part – the existence of the law – is ensured, and if the act is described as a crime, the inability to impose punishment (except for cases where the punishment is unnecessary) means that not only criminal law, but also legal science in general, cannot achieve one of its goals. As K. Gozler also mentioned, in order to be able to call a norm as a rule of human behavior, one of its 4 important elements is to be protected by a certain sanction/reaction (Gozler, 2022, pp. 36–37, 45). Of course, since law is also the rules that regulate human behavior, it should be protected. The application of punishment and other measures in criminal law also serves a certain purpose. Among them are ensuring justice, not creating an environment of impunity and others.

Analyzing the situation in the light of the genocide that took place in the city of Khojaly and its surrounding areas on February 25–26, 1992, it is possible to conclude that the criminals’ exclusion from sanctions leads to several consequences:

- The principles of justice and the necessity of responsibility in the criminal law are violated;
- There is no court verdict/decision qualifying the actions in Khojaly;
- The evaluation given to the Khojaly genocide by the legislative and executive branches of power is political in nature, in short, the lack of a court verdict is the lack of legal evaluation by an independent and impartial judiciary;
- Although the witnesses in the Khojaly Case were interrogated, taking into account the physical factors and the passage of more than 30 years, the death of both the witnesses and the victims will lead to ‘archiving’ after a certain period of time, that is, the materials for the investigation will lose their vitality and usefulness;
- When we re-analyze the physical factors, we should not forget the fact that the suspected and accused persons also die, they can thus avoid punishment;
- Even if only cultural, political, one or another field of propaganda is carried out in the introduction of the Khojaly genocide, the presence of a court verdict will create a shock effect for foreign lawyers-researchers, and *ipso facto* the Khojaly genocide will be studied more closely.

This list could be extended, but we think this is enough. Presuming that the actions in the events that took place in Khojaly are international crimes proves the importance of holding a trial. However, the hiding or death of the perpetrators (which will be explained in detail in the following pages of the article) confirms the necessity of judicial proceedings in absentia for the criminals who are still alive.

Absentee proceedings are generally inadmissible. For example, Article 14, paragraph 3(d) of the International Covenant on Civil and Political Rights provides that a person may be tried in his presence (ICCPR, 1966, page 9).
Article 6 of the European Convention on Human Rights duplicates the International Covenant to some extent. So, according to paragraph 1 of the mentioned article, everyone has the right to be judged fairly by an independent and impartial court (tribunal). According to Article 3(a), if a person is found guilty of a particular offence, then he has the right to know immediately and in detail what he is charged with (ECHR, 1950, pp. 9–10). The Constitution and laws of the Republic of Azerbaijan contain norms that stipulate that proceedings in absentia are generally inadmissible (more information will be provided on the following pages).

The more important it is for the person to participate in the court session and defend his rights, the more important it is to use the help of a lawyer, the more desirable it is for the person to be tried fairly and not to avoid punishment. Martin Bormann was tried in absentia in the Nuremberg Tribunal, which was organized to trial the criminals of the Second World War. It was claimed that Bormann escaped from the Nuremberg Tribunal and there was no evidence to confirm his death. The fact of death was confirmed much later, in 1973, by German (then Federal Republic of Germany / West Germany) officials (Holocaust Online Encyclopedia). It should not be forgotten that the trial in absentia of persons accused of committing international crimes has also taken place in the 21st century. The Special Tribunal for Lebanon and International Crimes Tribunal of Bangladesh have considerable practice of trial in absentia.

Taking into account the above, a number of issues should be explored to reach a rational conclusion. Firstly, the acts committed in Khojaly in February 1992 should be reviewed, and the acts in abstracto, which are considered crimes in criminal statutes, should be contrasted with the acts in concrete. Secondly, along with the classic tribunals, the attitude of the Special Tribunal for Lebanon, and Bangladeshi Tribunal to proceedings in absentia should be analyzed. Finally, the approach and potential options of the material and procedural legislation of the Republic of Azerbaijan should be addressed.

I. KHOJALY GENOCIDE AND SUBSTANTIVE LAW

a. Background based on reliable evidences. In the last years of the existence of the Soviet Union, in a number of zones called ‘conflict centers’, bilateral (and sometimes multilateral) propaganda was carried out, which caused conflict between nations in order to distract the population from political processes and direct them to their own problems. For example, between separatist groups in Pridnestrovie and Moldova; Abkhazians, Ossetians and Georgia, etc. One of them was related to the Nagorno-Karabakh Autonomous Oblast under the Azerbaijan SSR. Although the conflict was frozen in some of the mentioned zones after the last parliamentary session, which officially approved the dissolution of the Soviet Union on December 26, 1991, in others it entered an active phase and hostilities began.

In February 1992, before the Khojaly genocide (February 25–26), the territories actually controlled by the forces in the former Nagorno-Karabakh Autonomous Oblast are shown on the following map¹:
The situation shown on the map suggests that the city of Khojaly was under blockade before the attack on the night of February 25. In the southern direction of Khojaly city, Khankendi (Stepanakert) was dominated by Armenian armed units. Also, the 366th motorized rifle regiment of the former Soviet Union took a pro-Armenian position. The city was completely surrounded by the occupation of a number of villages located in the south-east and south-west of Khojaly. A strategic airport was located near the city. The highways were under Armenian control since October 1991 (Main data by Presidential Library, 2023, p. 10).

When the attack on the city began on the night of February 25, although the minority self-defense forces resisted to some extent, they realized that it was pointless and decided to safely transport the population to the territories controlled by Azerbaijan. The last fighting (resistance) in the city, according to archive materials, took place on February 26 at 07:00 (MFA archive, 2021, p. 10). According to the claim of the Armenians, they provided the civilians with a “humanitarian corridor”. The mentioned “corridor” was located in the north-eastern direction of the city of Khojaly and extended to the part of the road leading to Agdam controlled by the Armenians.

If we go back to the materials provided by the map, the main massacre took place at 4 points (indicated by dark explosion marks on the map), one of them is very close to the exit of Khojaly city, the second is near the “humanitarian corridor” crossing provided by the Armenians, the third, near the village of Dahraz, and finally, the last one is located in the southern direction of the village of Shelli in Aghdam. The identity of the person who killed 508 people as a result of the events is clear (Presidential Library, 2023, pp. 12–22), unfortunately, the identity of 105 people remains unknown. In addition, 155 people went missing, a number of families were completely murdered (Presidential Library, 2023, pp. 23–36). Also, some of the captured persons were illegally arrested from the villages of Pirjamil and Nakhchivani (MFA archive, 2021, p. 11).

As for the fate of the properties in the city, according to the report published by the “Memorial” Human Rights Center in Moscow in March 1992, the people of the city did not have enough time, so they were able to take only a small part of their belongings. The remaining private property in the city was transferred by non-Azerbaijani residents of Khankendi (Stepanakert) and surrounding villages. The names of the new owners of real estates are written on the doors of houses in Khojaly (MFA archive, 2021, p. 13). Adila Ali gizi Najafova, one of the witnesses of the incident, stated in her statement that Armenian soldiers pulled out and took gold teeth of hers and her father (MFA archive, 2021, p. 33).

In relation to the massacre, the reports of international non-governmental organizations reflected the treatment of people and corpses (MFA archive, 2021, pp. 9–20). The Oslo-based Human Rights House called the act unprecedented cruelty and barbarism in its report, stressing the need to commemorate the event. The testimony of Khojaly resident Valeh Sahib oglu Huseynov, one of the witnesses of the incident, reflects the torture of prisoners (MFA archive, 2021, pp. 20, 32). These facts can be found in other witness statements. Shortly after the incident, the articles published in the press of foreign countries (BBC, Sunday Times, etc.) also expose the mentioned acts (MFA archive, 2021, pp. 21–35; Presidential Library, 2023, pp. 44–45, 51–95).

The claims of the Armenians regarding the Khojaly genocide are in this direction that “the humanitarian corridor in question was secured by armed groups. However, the Azerbaijani forces deliberately diverted the population, and in some places even shot the civilian population themselves, creating the image of Armenians committing genocide and aiming to overthrow Mutallibov (the President of Azerbaijan at that time – ed. author)”. Firstly, if a humanitarian corridor is established, the party that opened the corridor demilitarizes that zone. However, the soldiers inside the corridor opened fire on the population. Secondly, although the Armenians claimed to inform the population about the “corridor” using loudspeakers, the population did not know about it because the power level of the loudspeakers was low and regular shootings were heard until the February 25 attack. Lastly, although the Armenians tried to prove that leaflets were dropped on the city from helicopters, the observers of the Moscow-based “Memorial” Human Rights Center did not find any facts to confirm this at the scene. Only 1 out of 60 people interviewed by the observers of that center said that they knew about such a corridor. Even none of the residents of Khojaly, who were interviewed in Khankendi (Stepanakert) detention center with the participation of the observers with the deputy R. Ayrikyan, knew about the “corridor” (MFA archive, 2021, p. 11).

b. Information about the initiation and continuation of the investigation after the events

About one month after the Khojaly genocide, on March 25, 1992, the Supreme Soviet (parliament) of Azerbaijan adopted a decision “On the situation in the mountainous part of Karabakh of the Republic of Azerbaijan, the Khojaly genocide and the socio-political conditions in the Republic”. In the 4th paragraph of the decision, the creation of an authorized investigation commission was envisaged (Prezident Kitabxanasi, 2023, p. 11–12). As a logical continuation of this decision, another parliamentary decision determined the 15-member composition of the said commission. On February 17, 1993, the commission completed its work and submitted the obtained materials to the Supreme Soviet, and the Supreme Soviet made a decision and sent them to the General Prosecutor’s Office (Prezident Kitabxanasi, 2023, pp. 10, 15). By the Decision dated February 24, 1993, the Prosecutor’s Office was instructed to report on the investigation to the Milli Majlis (the Supreme Soviet was later renamed the Milli Majlis – ed. author) at least once a month (Prezident Kitabxanasi, 2023, p. 16).

The information given by the Military Prosecutor’s Office of the Republic of Azerbaijan in recent years is as follows:
- More than 80,000 investigative actions were conducted in the criminal case initiated on the Khojaly genocide, and 18,200 people were recognized as civil plaintiffs. In total, more than 2,800 examinations were carried out;
First of all, the Genocide Convention reflects the main elements of the crime of genocide in Article 2. So, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group (Genocide Conv., 1948). Article 103 (Genocide) of the Criminal Code of the Republic of Azerbaijan repeats Article 2 of the Convention as it is. In addition, although the crime reflected in Article 105 of the Code (extermination of the population) is outwardly similar to genocide, the disposition of the norm excludes the features of genocide (Criminal Code, 1999).

Secondly, Article 9 of the International Covenant on Civil and Political Rights states that everyone can be arrested, detained or deprived of liberty only in accordance with the law (ICCPR, 1966, page 6). Article 112 of the Criminal Code of the Republic of Azerbaijan (Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law) criminalizes arrest or other deprivation of liberty aimed at violating this right (Criminal Code, 1999). However, these actions must be carried out as part of a systematic attack during peace or war.

Thirdly, various articles of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment include torture and other inhumane acts against persons whose freedom is restricted (Torture Conv., 1984). Article 113 of the Criminal Code (Torture) was developed on the basis of this Convention and follows its lines. But this act must be done systematically, too (Criminal Code, 1999).

Fourthly, it should not be overlooked that when the Khojaly genocide took place, an international armed conflict was going on in those territories. Therefore, it is necessary to address war crimes. According to the Geneva Conventions, wounded persons are considered hors de combat, even if they participate as civilians, prisoners of war and soldiers. Therefore, they do not have the status of “active participant” and assault against them, looting their property, depriving them of procedural rights is considered a crime (Genevan Convention and Additional Protocols). The acts mentioned in articles 116.0.10, 116.0.11 and 116.0.18 of the Criminal Code are criminalized in accordance with the requirements of international legislation. In addition, Article 117 of the Code (Inaction during an armed conflict or issuing a criminal order) provides for the responsibility of a chief or an official for issuing orders or orders aimed at committing the crimes in question. Article 118 (Armed Robbery) refers to the looting of the property of those killed or wounded on the battlefield (Criminal Code, 1999).

One of the positive cases is the issue of retroactivity in criminal law. Thus, the general rule allows the application of retrospective force when the new version of the law or the new law either eliminates the criminal liability or makes the liability lighter. However, taking into account both the mention of the necessity of punishing the perpetrators of genocide in the Genocide Convention, the importance of applying such necessity to other international crimes, and the Constitutional Law adopted in 2006, retroactive effect is applied to international crimes (Constitutional Law of Azerbaijan On the Retroactive force, 2006).

Finally, when the disposition of the acts in question and the materials of the criminal case initiated on the Khojaly genocide and witness statements are compared, the possibility of the commission of these crimes by that armed ones arises. On the one hand, the comparison of criminal law and international agreements shows that national legal
norms are fully consistent with international acts. On the other hand, since there is no court verdict, it is impossible to call the subjects who actually committed the acts that happened in Khojaly as criminals. Because this is the requirement of the presumption of innocence. If we return to the physical factor again, the trial should be conducted in order not to violate the principle of fairness.

II. INTERNATIONAL PRACTICE.

Despite the necessity of conducting the court process, we think that the current facts indicate the possibility of conducting the process in absentia. When referring to the official information of the Prosecutor’s Office (search announcement for 286 people, etc.), it does not seem realistic that the persons accused of the genocide will come to Azerbaijan to testify and act in accordance with other procedural requirements. First, if these individuals wanted to participate in the trial, they could have participated in the 30-year period. Second, it is certain that each of these individuals is outside the borders of AR (beyond active control) as to their current whereabouts. Even if it is confirmed that they are in the Republic of Armenia or other countries, their extradition looks impossible. Thirdly, in the course of the 2020 war between Azerbaijan and Armenia, in one of the official statements of the President, the information about the destruction of some of the accused persons who took part in the Khojaly genocide was conveyed to the people. Although the destruction of those persons is considered as the restoration of historical justice from a philosophical aspect, it should be a judicial verdict from a legal aspect. This shows the necessity of the trial of the accused persons. For example, although he did not participate in the 1992 Khojaly genocide, the trial of an Armenian soldier who committed an international crime in Karabakh and was later captured in the 2020 war was held in Baku, and Ludwig Mktrchyan and Alyosha Khosrovyan were convicted of international and other crimes. This is confirmation of the existence of such a practice. On the other hand, although the death of the accused leads to the termination of the criminal case, according to Article 39 of the Criminal Procedure Code of the Republic of Azerbaijan, it does not mean that the verdict of acquittal is issued. Due to various reasons, the number of accused persons in the Khojaly case is gradually decreasing, which reduces the possibility of legal assessment by the courts.

Regarding the issue of proceedings in absentia, the International Covenant, which we quoted at the beginning of the article, requires the court session to be held in person. When the facts are put together, there is a conflict of principles: the principle of fairness against the principle of inadmissibility of proceedings in absentia. In fact, the ratio of these two principles is slightly different. This is because the principle of fairness has a special status. So, if it is broken, the balance of the whole process is out of order. It is not for nothing that the precedent established by the European Court of Human Rights is in the direction of considering the fair trial as a whole and consistent process, and other principles are a component of fair judicial activity. Therefore, the principle of inadmissibility of proceedings in absentia must be reconciled with the principle of justice. Absentee proceedings may be held in cases which the principle of fairness can be violated. It is also necessary to pay attention to both the roots of the two principles and their compatibility with the case. Considering the formation of the principle as a procedure there where there is a competition of certain ideas and the ideas that correspond to the reality of the time prevail and suppress the ideas/theses that do not meet the requirements (Bagirov, 2022, p. 398), we can say that the holding of absentee proceedings in case of necessity meets the principle of fairness. It is useful to review the practice of the Special Tribunals of Bangladesh and Lebanon, where proceedings in absentia have been conducted in recent years.

a. Bangladeshi Tribunal (International Crimes Tribunal). The Bangladeshi Tribunal is distinguished by some of its characteristics. For example, although the term “tribunal” is used, it does not necessarily imply a tribunal which we directly understand. The “Tribunal policy” started in 2009 was not an institution like Nuremberg, Yugoslavia, and Rwanda mentioned in international law in Bangladesh. On the contrary, in addition to national courts, there are many mechanisms called “tribunals” and proposed (Fazi, Tehrani, Sharom and Khan, 2018, p. 124; Hyder, 2015, p. 2). The tribunals established in Bangladesh in 1971 to convict persons who had committed international crimes were national in nature. At this point, they should be distinguished from ordinary courts of law. Ordinary courts are the traditional link of the country’s judicial system and are reflected in the constitutions in most cases. For example, the courts (with the exception of the Constitutional Court) described in Articles 125 and 131–132 of the 1995 Constitution of Azerbaijan are of this type. Although the Constitutional Court (Article 130) is newer, we are of the opinion that over time it has become a traditional system element. However, the term “tribunal” is not used in the Constitution of Azerbaijan. Instead, Article 125 Part VI prohibits the establishment of special courts (emergency courts) and it’s a prohibitive norm (Constitution of RA, 1995).

To look for the reasons behind the creation of the Bangladesh Tribunal, we need to go back to 1971. Actually known by many as the Bangladesh-Pakistan war, in fact in 1971 two wars were going on simultaneously in East Pakistan (Bangladesh’s official name until 1971). One of them was the India-West Pakistan war (December 3–16, 1971), and the other was the East-West Pakistan conflict (March 26-December 16, 1971). However, when talking about the events of 1971, they are generalized and called “Bangladesh Liberation War” (Saikia, 2004, p. 275).

A year after the end of the war – in 1972, 73 special tribunals were organized, the purpose of which was to try the local people (collaborators) who gave any support to the West Pakistani authorities during the 1971 war (Fazi, Tehrani, Sharom and Khan, 2018, p. 122). The extent to which these tribunals achieved their goal is questionable, as although 40,000 people were arrested in 1972, only 752 were convicted and released in 1973 as a result of a general amnesty. Despite this, those fighting for a “United Pakistan” still face ill-treatment, which is called ‘victor’s justice’ (Fazi, Tehrani, Sharom and Khan, 2018, p. 122–123; Billah, Mahbub and Nisa, 2021, p. 612). An interesting aspect of the matter was the establishment of a new tribunal in Bangladesh almost 40 years after the war and the wave of tribunals. This event is primarily related to the formation of a government by a political group that made
new promises in the election campaign in Bangladesh and its ratification of the Rome Statute. Indeed, in 2010 and 2012, tribunals were established in Bangladesh. Statistics show that only in 2013–2016, the Tribunal issued death sentences to 11 people, 6 of them were executed (Ahmed and Zahor, 2019, p. 6).

Chronologically, in 2009, the Prime Minister of Bangladesh called the creation of a tribunal to try war criminals as a “national demand”. Although two tribunals were established 40 years later – in 2010 (ICT-1) and 2012 (ICT-2), they had a single legal framework. The Tribunal Act 1973 formed that framework. But the interesting part of the issue is the application of the normative act years later. If we approach the issue narrowly, there is no problem with this. Let’s gather together the necessary features of a normative act and expand the scope of the approach – these are normativity, binding force, justice, legality, existence materielle (material existence), validity, minimum effectiveness and relevance (Gozler, 2022, pp. 71–73). At least one of these features – minimum effectiveness – is doubtful for the Tribunal Act. Because, as K. Gozler also noted, “if a legal norm is continuously deprived of minimum effectiveness, it can no longer be accepted as a valid norm” (Gozler, 2022, p. 73). So, the Tribunal Act is already missing two features. It is this factor that calls into question the legality of the tribunals.

The issues that raise doubts about the fairness of the tribunal are not limited to this. The mentioned situation raises doubts about the fairness of the tribunal, especially the fact that people who did not commit genocide and war crimes, but whose political views are in favor of “United Pakistan” (including the leaders of the current opposition) became the target of the tribunal, which makes one think that the authors compare the tribunal with the kangaroo court (Islam, 2011, pp. 129–130). The rationale is that, firstly, the presence of defense attorneys in court is not adequately ensured, secondly, the judges’ support for the current regime casts doubt on their impartiality, thirdly, the trials tend to characterize the acts as crimes against humanity rather than war crimes, and finally, the evidences are not reliable. The most terrible fact is that some people were brought to criminal responsibility, which would have been 4–8 years old in the 1971 war (Islam, 2011, p. 131). Additionally, the members of the three-judge tribunal panel could be judges of the Supreme Court of Bangladesh. This shows that no international judge or prosecutor was present at the tribunal. The same situation was observed in the appellate instance (Hossain Mollah, 2020, p. 656). Moreover, the two wars we are talking about should be compared in essence. The military operations between India and Pakistan are of an international nature. But the second one was actually a non-international conflict to begin with because there was no independent state called Bangladesh. From December 3, 1971, with India’s military intervention, it began to take on an international character. In our opinion, this case is included in the scope of the concept of hybrid/mixed armed conflict reflected in the theory. The literature shows that the lack of a legal definition of such cases results in them not fitting into the category of armed conflict defined by international humanitarian law, which in itself causes a problem (Vite, 2009, pp. 85–86). The Bangladesh Tribunal, evaluating that period as an international conflict, does not consider the period until December 03 as an internal conflict. On the contrary, the position of the tribunal in the Sayeedi Case is that the events of March-December are the Bangladesh-Pakistan war. The rationale is linked to the March 1971 declaration of the independence of Bangladesh by a leader of the movement, Bangabandhu, before his arrest (The chief prosecutor vs. Delowar Hossain Sayeedi, para. 8). In particular, in paragraph 9 of the verdict, the tribunal’s strong defense of one of the important features of the state – the army factor (using the phrase United India-Bangladesh army) reaffirms its position. We believe that although it actually controls some zones in the territory of current Bangladesh, it is not correct to consider Bangladesh as an independent state until there is a fact of recognition. Bangladesh was first recognized as an independent state after the war – in 1972 by the United Kingdom, according to the National Archives, which is controlled by the United Kingdom government. In our opinion, the most optimal way is to treat the conflict as a non-international armed conflict in the period before Indian intervention, which in any case cannot be equated with the elimination of obligations. We think that the position of the tribunal regarding the interpretation of war is one-sided. Even the Tribunal Act of 1973 includes a number of crimes, including genocide, deportation, enslavement, persecution on religious, ethnic, national grounds, etc., which are crimes against humanity. It is considered that although the Bangladesh Tribunal reminds of the practice of the Nuremberg Tribunal, unlike its statute, the sign of a state of war in crimes against humanity has been purposefully removed. In 1971, while customary international law required a causal connection of crimes against humanity with a state of war, the Bangladesh Tribunal rejected this condition on the basis of “the possibility that such crimes could be committed in peacetime” (Billah, Saripan, Rahmat and et., 2022, pp. 2–3). Some authors consider the establishment of the tribunal to be contrary to the Tripartite Agreement concluded between Pakistan, India and Bangladesh, aside from explaining the circumstances (Fazi, Tehrani, Sharom and Khan, 2018, p. 123–124).

If we look at the events that took place in Bangladesh in the 70s of the last century, the fact that a crime was committed is clear. So, according to the available information, as a result of the attack on the university, people among the staff were captured and then shot (1), markets with a large number of people were set on fire (2), as a result of the attack on the police headquarters with tanks, no one survived (3), including the firing of various calibers of weapons against civilians within 48 hours (4), the conviction of the population for aiding a group opposed to the government of Pakistan, and the shooting of mobs including Hindu students without any trial (5) (Macdermot, 1973, pp. 477–478) makes us think about the problem. However, it has become an absolute obligation of the states not to violate the right to a fair trial, and to take appropriate measures if it is violated. Because in our opinion, the absence of absolute obligation reduces the effect of protecting the right, which is considered inseparable and indivisible. It is rightly noted in the literature that the right to a fair trial has already become jus cogens, and previous tribunals have also established this right by playing an important role in the formation of jus cogens (Yugoslavia, Rwanda) (Fazi, Tehrani, Ahmed and Ali Shah, 2019, pp. 81–83).
Summing up the conclusion and the existing facts, it can be said that the most important aspect of the Bangladesh Tribunal that is lacking is the non-compliance with the principle of judicial independence. The tribunal, which is under excessive political influence, is effectively under the control of the government. This is confirmed by the fact that dissidents became targets of the tribunal, along with those who committed crimes during the war. In the legal literature, one of the proposals for a more effective and legal operation of the tribunal is to improve its statute in accordance with international law, in other words, the tribunal’s statute should “combine domestic law with international law” (Billah, Mahbub and Nisa, 2021, p. 612). The non-compliance of some aspects of the Tribunal’s verdict with international law (for example, the Bangladeshi use of the term “international armed conflict”), as well as the violation of generally accepted principles of international law, suggest this. However, the proposal of the authors who made this proposal to harmonize the statutes and activities of the Bangladesh Tribunal in the example of the Extraordinary Courts of Cambodia (ECCC) with the UN sounds good from the perspective of the rights and freedoms of the accused, but it does not seem reasonable in the political reality (Billah, Mahbub and Nisa, 2021, pp. 612–613). On the one hand, the tribunal in this context is a domestic court, i.e. a internal business of Bangladesh. On the other hand, the fact that the accused are Pakistani soldiers, that is, citizens of another state, the crimes in the indictment are crimes against peace and humanity and war crimes gives the right of universal jurisdiction to Bangladesh.

Another topic of discussion regarding the Bangladesh tribunal is related to the charge. Thus, the Bangladeshi side uses retroactive force in relation to criminal law, which is also criticized by lawyers. It is believed that the use of retroactive force in cases of aggravating responsibility in criminal law contradicts the principle of fairness. Some authors point out the retroactivity of the tribunal as an example of the recent Lebanese Special Tribunal. Thus, the non-retroactive rule can be considered a “mandatory/imperative norm” of International Criminal Law (Billah, 2020, p. 182), as provided for in paragraph 76 of the recent verdict of the Special Tribunal for Lebanon on the Ayyash case. In our opinion, the will of the authors is flawed, because if we are talking about crimes against peace and humanity and war crimes, then criminal law can be applied retroactively. Moreover, we have what we mentioned in the list of crimes contained in Article 3 of the Tribunal Act 197311.

The position of the Bangladesh Tribunal on the absentee trial is somewhat interesting. So, citing Article 10A of the Tribunal Act 1973, if there is reason to assume that the accused fled or hid so that he could not be brought for trial, he can conduct a judicial review without his participation in the manner established by the procedural rules for such a trial.

Another problem of the tribunal is that some terms are not clearly stated. For example, the Tribunal Act of 1973 puts criminal prosecution authorities in a difficult position by not defining rape acts or other sexual acts (Takai, 2011, pp. 405–406). Other one is that in the Tribunal Act, the groups to which the genocide is directed (ethnic, religious, etc.) is the addition of the term “political group”, which is an artificial extension of the term. The literature rightly notes that “such an addition results in questioning the real meaning of genocide, since there is no such group under legal protection in the 1948 Genocide Convention” (Billah, 2021, p. 6). At the same time, the lack of experience of judges appointed for the tribunal in the field of International Criminal Law, financial difficulties in organizing the tribunal, and the attitude of the Bangladeshi legislation to international treaties are listed. However, no matter how perfect the Bangladeshi national legislation is, no matter how necessary the organization of a tribunal is, these cannot serve as an excuse to act contrary to an international obligation (Beringmeier, 2018, p. 17).

Such a position of Bangladesh causes justified criticism in the literature. For example, the tribunal’s violation of the principle of fairness puts war criminals in the status of “suddenly victims of an unfair trial”, which causes sympathy for them in the population. Even the violation of the principle of equality of arms during the trial of General Yamashita by americans, known as the “ultracriminal”, formed such an atmosphere of support for him. The Bangladesh Tribunal has similar consequences (Zahurul Haque, 2018, pp. 263–264).

b. Special Tribunal for Lebanon. One of the important topics for the field of International Criminal Law is the Lebanese Special Tribunal. However, its most important feature is that, unlike the Bangladeshi practice, the Lebanese tribunal was not a national court and was not intended to eliminate opposition. Also, it was the first special tribunal created for crimes of an international nature. If we look at the history of the incident, the victim of the incident was not just the prime minister, although in 2005 the assassination attempt was organized as a kind of “revenge” movement for the political moves of Lebanese Prime Minister Rafiq al-Hariri. According to information published on the official website of the Lebanese Special Tribunal, the number of persons recognized as victims is 27012. The fact that the victims are quite a minority compared to the classical international tribunals leads to discussions about its legitimacy. In the literature, it is noted that the validity of the international tribunal is measured by the fact that it can simultaneously defend the interests of a large number of victims. This is also influenced by the political environment of the criminal area. For example, the Yugoslav tribunal had a large number of victims, and the political environment was significantly more complex in terms of the security and protection of the rights of Bosnians, Serbs and other ethnic groups (Wierda, Nassar and Maalouf, 2007, p. 1072). In Lebanon, however, the situation does not quite match these two criteria. The rapid Organization of a tribunal in Lebanon was the Prevention of the expansion of its neighbor – Syria (pax Syriana). Later, the statements of the Syrian representative to the UN give reason to say the same (Wetzel and Mitri, 2008, pp. 88, 96).

The establishment of a Special Tribunal in Lebanon has led to discussions in the literature about it, mainly in two directions – state sovereignty (1) and absentee proceedings (2).

The events of 2005, which were widely studied in the field of politics along with law, caused significant changes in the current region, as well as differences in Syria’s view of Lebanon. If we go back to the formal and
In short, the first statement is more domestic and cannot be equated with the second statement. Interpreting the said actions in order to avoid persecution, arrest or similar situations, knowing that one has committed an illegal act.

The word means the state of not being present in a certain place, and the second word means immediate hiding and evading actions. In addition to these, in the articles defending the legality of the creation of the Special Tribunal in Lebanon, the fact that its main goal is the fight against terrorism, “the necessity of such an intervention within the legal globalization environment” and the focus on the fate of the victims of international criminal law and human rights are widely discussed including the doctrines of “responsibility to protect” and “emergency law” (Humphrey, 2011, p. 5).

In particular, the second – emergency law – is a theory that subordinates national courts to international jurisdiction and fights the environment of political impunity by turning political crises into a legal issue. One of its goals is to strengthen the pillars of the rule of law and state sovereignty. In other words, it is the emergence of the right to intervene based on the requirements of legal globalization in humanitarian crises caused by war or a repressive environment (Humphrey, 2011, pp. 5, 7).

History shows that tribunals tend to take different approaches. This situation is also valid for Lebanon. The Lebanese Special Tribunal is important in revealing the legal gaps in the international acts against terrorism. Such gaps are not only about the emergence of new crimes (for example, cyber terrorism), but also about the improvement of the elements of the criminal composition (for example, terrorism on psychological grounds) (Michael, 2011). Also, unlike its traditional predecessors, the tribunal has included terrorism within its jurisdiction and attempted to define it, even though it has attempted to include terrorism in crimes against humanity, but has failed theoretically (Serra, 2008).

The Lebanese Special Tribunal is essentially a hybrid tribunal. The main reason for this is that such tribunals are internationalized courts (Serra, 2008), that is, they apply national legal norms provided they are harmonized with international standards. Thus, procedural legal norms are applied in accordance with international standards, while substantive legal norms are based on Lebanese criminal law (Article 2 of the Statute of the Tribunal13). According to the Rules of Procedure of the Lebanese Special Tribunal14, it is possible to say that. Of particular interest to the authors was the excessive reliance on Lebanese criminal law. The controversial point is that there is a different approach to the terrorist act in Lebanon at the state level. On the one hand, the Lebanese Criminal Code comprehensively describes the signs of a terrorist act (for example, an act of public danger with the aim of creating a state of alarm by using explosives, … general-poisonous substances, etc.), on the other hand, the Lebanese Council of Justice declares that shooting a political figure in broad daylight should not be considered an act of terrorism because the act was committed using a firearm. That firearm cannot create the situation mentioned as “state of excitement” in the Lebanese Criminal Code (Bouhabib, 2010, p. 191). Contrary to this dichotomy, there is also an opinion that in the Lebanese criminal law, the absence of the elements of the terrorist act in violation of international standards allows its application, while its validity necessitates its application (Ambos, 2011, p. 664).

As for the issue of proceedings in absentia, the STL allows the verdict to be issued in absentia against the accused person. The reason remains the same: the impossibility of bringing the accused to court. Although Article 16 (rights of the accused) of the Statute of the STL stipulates that his case should be heard with his participation, on October 17, 2011, the investigative judge asked the tribunal panel to hear the proceedings in absentia (Gardner, 2011, p. 98). Such motion was related to the factor mentioned earlier.

In any procedural source, the conditions for conducting proceedings in absentia must be expressed with high precision. Because otherwise, it can result in fraude à la loi – abuse of the law. Circumstances and grounds for deviating from the principle of inadmissibility of proceedings in absentia must be specific enough. That is, based on abstract considerations, holding proceedings in absentia disturbs the balance in the fair trial process. For this reason, either the laws of the state or the tribunal should determine the mentioned grounds.

The STL Rules of Procedure include a number of norms that are directly or indirectly related to absentee proceedings. For example, Rule 22 states that, where appropriate, the president of the tribunal, the investigating judge or the chamber may discuss matters of cooperation with Lebanon or third countries with the head of the tribunal’s legal protection department. Even Rule 105 provides such an opportunity for the accused to participate through video-conference, but his defense must be present in the courtroom in person. We can consider the naming of Rule 106 as one of the successful steps of STL for the criminal process. Thus, the so-called determination of the intention to avoid the investigation or the impossibility of participation is referred to in three cases:

- The accused voluntarily refuses to participate, orally or in writing;
- State authorities do not transfer the accused person to the Tribunal within a reasonable period of time;
- Although all steps are taken to have the accused person present, he or she absconds or otherwise cannot be found.

The issue that attracts attention in the norm is the use of the expression abscond instead of absent. The first word means the state of not being present in a certain place, and the second word means immediate hiding and evading actions in order to avoid persecution, arrest or similar situations, knowing that one has committed an illegal act. In short, the first statement is more domestic and cannot be equated with the second statement. Interpreting the said

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norm, M. Gardner comes to the conclusion that abscond does not apply to cases where the defendant actively flees or where his whereabouts are otherwise unknown, but does not apply to the case where he continues to live openly at home, relying on the state authorities not to arrest him (Gardner, 2011, p. 115).

III. AZERBAIJANI CRIMINAL PROCEDURAL LEGISLATION

a. Court jurisdiction. As the basis of the legislative system of the Republic of Azerbaijan, the Constitution of the Republic of Azerbaijan defines the foundations of judicial power. According to Article 125 of the Constitution, judicial power in the republic is exercised only by courts. At the same time, according to Part VI of that article, it is prohibited to apply unspecified legal methods and create emergency (special) courts for the purpose of changing the powers of courts (Constitution of the RA, 1995).

The first behavior prohibited in the mentioned norm is the application of certain legal methods that lead to the change of judicial powers. “Unspecified” should be understood as methods not prescribed by law. The legislator chose this way to avoid potential arbitrariness. Judiciary powers in question are reflected in the international agreements, the Constitution, and most importantly, the Law “On Courts and Judges” which the Republic of Azerbaijan is a supporter of. In addition to defining the judicial system in Azerbaijan in detail, that law determines which cases they are competent for. However, there are many blanket norms in this law. For example, although Article 25 determines the procedure for the Felony Court to hear criminal cases attributed to it by law, it is important to refer to the Criminal Code and the Criminal Procedure Code in order to clarify which acts are specific serious or particularly serious crimes, including jurisdictional issues (Law On Courts and Judges, 1997).

In Article 23 of the Criminal Procedure Code, instead of the expression “change of judicial powers”, the expression “usurpation of judicial powers” is used. This emerges the question – is “change” the same as “appropriation”? Or the question can be put another way – does “changing judicial powers using unspecified legal methods” mean “usurpation” in all cases? We believe that the second is broader and includes the first. However, the main obstacle to creating a potential tribunal on Khojaly is another prohibition of the Constitution.

Another behavior prohibited by Part VI of Article 125 of the Constitution is the establishment of special courts. Unfortunately, neither the Constitution nor the Law “On Courts and Judges” indicates the meaning of this term. The Cambridge Dictionary defines an emergency (special) court as: a court created for an exceptional and temporary purpose (such as a commission to try alleged war criminals or a tribunal to hear claims for war damages against a state by nationals of the victorious state)15. In addition, we should note that special court should not be confused with specialized court, even though they are similar in English. Specialized courts are courts with a narrower jurisdiction compared to district (city) courts, and their activities are legal, but the creation of an emergency court is illegal in Azerbaijan. Therefore, it is not possible for Azerbaijan to establish a Tribunal by adopting a separate law on the example of Bangladesh in the current conditions. The Lebanese experience is somewhat controversial. Because, unlike in Bangladesh, the tribunal in Lebanon was established by an international power in agreement with the government. In other words, its creation had passed a certain international procedure, and most importantly, the UN was also interested in the creation of such an institution. In this case, it is necessary to analyze the force ratio of international agreements and the Constitution of Azerbaijan. As we mentioned at the beginning of this article, taking into account the requirement of Article 151 of the Constitution, the Constitution has a higher legal force. As a result, it is impossible to create any tribunal in Azerbaijan. For this to happen, the text of the Constitution must be changed / amended.

As a result of the interpretation of Article 125, the only way out is to conduct criminal proceedings in courts established by law in the Republic of Azerbaijan. It is assumed that the persons accused of committing crimes in the Khojaly genocide are military personnel. According to Articles 68 and 74 of the Criminal Procedure Code, the court competent to hear cases in such cases, even if the crime was committed with the participation of a non-military person (1), or if at least one of the criminal cases to be joined falls under the jurisdiction of the military court (2), are considered military courts. If we approach the issue in general, in our opinion, taking into account the requirement of Article 216 of that code and the territorial jurisdiction, the competent court to hear the Khojaly Case is the Ganja Military Court (Code of Criminal Procedure, 2000).

b. Discontinuance/suspension of criminal prosecution and the ratio of absentee proceedings

Article 53 of the Criminal Procedure Code of the Republic of Azerbaijan specifies the grounds for stopping criminal prosecution. Three of them attract special attention – hiding from the investigation or court of the person who should be involved/brought as an accused person (in original – təqirləndirilən şəxs qismində cəlb edilməli olan şəxin istintaq və ya məhkəmədən gizlənməsi) (53.1.3), temporary impossibility of participation in the criminal process due to the person being outside the borders of the Republic of Azerbaijan (in original – şəxin Azərbaycan Respublikası hüdudlarından kənarda olmasına görə cəlb edilməsi) (53.1.4) and extradition of the persecuted person (in original – təqirlən şəxin keçirməsi) (53.1.5) (Code of Criminal Procedure, 2000). Let’s analyze these three cases separately.

First, the meaning of the expression gizlənmə (hide/hiding) must be considered. According to the explanatory dictionary of the Azerbaijani language, hiding means to be in a covered (örtülü in Azerbaijani) place so that others cannot see or find it (Azərbaycan dilinin əlavə ışığını) Ikinci cild, 2006, p. 254) The word örtülü (covered) in this context is used figuratively and means to be hidden (Azərbaycan dilinin əlavə ışığı). Üçüncü cild, 2006, p. 554). By summarizing them, it is possible to give such a definition: hiding – a set of actions aimed at not being found, containing a certain place or places. In fact, if we go a little further, the Special Tribunal for Lebanon can be considered the equivalent of the term abscond in Rule 106.
Another expression that needs linguistic analysis in Article 53.1.3 is *the person who should be involved/brought as an accused person*. This statement clearly shows that the expression “should be involved/brought” indicates that the rules contained in articles 223–225 of the Code of Criminal Procedure of Azerbaijan should not be applied, but that the application of these rules is necessary. A very interesting nuance is revealed here – if the new criminal procedural code had not been adopted in 2000, the prosecution of persons suspected of committing a crime in Khojaly would have had to be stopped. However, if we pay attention to the chronology of the events, in 1992-1993, investigative actions were already started and decisions were made to involve the accused person (President Kitabxanasi, 2023, pp. 10–16). When the Criminal Procedure Code entered into force in 2000, the rules for bringing the mentioned persons as accused persons had already been followed (for example, according to Article 223 of the Code, the investigator makes a reasoned decision, etc.). Therefore, Article 53.1.3 is not an obstacle for the continuation of the case and absentee trial.

Secondly, article 53.1.4 should consider *müvəqqəti istərikən mükmənsülüləyi* (the temporary impossibility of participation in criminal proceedings). The main issue here is how to interpret the expression müvəqqəti (temporary). According to the explanatory dictionary of the Azerbaijani language, it means – not forever, transitory, short-living (Azerbaiyancan dilsinin izahlı lüğəti. Üçüncü cild, 2006, p. 442). We believe that, taking into account the transitory feature, the suspension of the criminal prosecution due to the impossibility of the participation of the accused person in the criminal process due to the fact that the accused person is outside the borders of the state *begins from the moment when the fact* that the person is outside Azerbaijan is *known to the investigative body or the court and continues until it is concluded that this situation is permanent*. Unlike the starting point, the end point requires a subjective-objective assessment. Due to the fact that the term “temporary” is not reflected in the criminal procedural law and it is impossible to reflect a specific time period in the law, the facts of each criminal case should be given a differential assessment. For example, it cannot be considered reasonable that the period of more than 30 years in the Khojaly Case is still temporary. On the other hand, it is not realistic for the accused persons to come to Azerbaijan and participate in the investigative bodies or the court. Therefore, the “temporary” criterion exists until the conclusion that participation is unrealistic, hopeless.

Lastly, the issue of *extradition* in Article 53.1.5 should be analyzed. According to the information of the Prosecutor’s Office, 286 accused persons have been searched65, and if the citizenships and locations of these persons are determined, an application should be made to request them from the relevant state. At this time, it is necessary to pay attention to the extradition law of that foreign country. Taking into account the presence of accused persons in the Khojaly Case in different countries of the world, the analysis of the relevant laws of the alleged countries is the subject of a separate article. Here, it is enough to mention the necessity of their analysis. The starting moment of the suspension of criminal prosecution due to extradition is the moment of application to the relevant country as a result of determining the location of those persons. The last moment is somewhat controversial. Generally speaking, the last moment is the non-abstract response of the state to which the extradition request is addressed. When we say non-abstract response, we mean *concreteness that has the nature of confirmation or denial*. The possibility of the non-provision of the response we are talking about and the purposeful prolongation by a foreign state cannot be ignored. In such a case, in order to specify the last moment, it is necessary to look again at Article 53.1.5: “when the issue of extradition by a foreign state is established in the rule established by law”. According to the Commentary of the Criminal Procedural Code of the Republic of Azerbaijan, “the rule established by law” in connection with the extradition procedure (appeal to a foreign state, review of bilateral agreements, etc.) is such conditions that the proceedings stop until they are resolved (Commentary of the Code, 2016, p. 150). Also, the suspension decision is issued after the extradition request (Commentary, 2016, p. 150–151). Although the authors of the commentary noted these features, they did not address the issue of deliberate extension by a foreign state. In our opinion, the renewal of proceedings in the mentioned cases depends on the approach of the relevant criminal procedure body. We believe that the subjective assessment of Articles 53.1.3–53.1.4 can be applied mutatis mutandis to Article 53.1.5. A subjective assessment is necessary if intentional acts of extension of extradition significantly prejudice the administration of justice.

Although the starting and last moments of these three cases are proposed by us, it is also necessary to review Article 53.6 of the Criminal Procedure Code. According to this norm, criminal prosecution are not renewed *until the grounds that led to its suspension disappear*. If we approach the issue lex lata, it is necessary to wait for the grounds in articles 53.1.3–53.1.5 to disappear completely. This can result in abuse of law like the examples we gave. If we approach the issue lex ferenda and analyze Article 53.6 with Article 8 of the Code, the disappearance of the grounds should be determined by a subjective-objective assessment. Example: If a person who should be brought as an accused hides from the investigation and trial, the prosecution stops and its fate remains uncertain. In this case, the criminal proceedings cannot achieve a number of goals (to fully and objectively investigate the circumstances of the case, to bring the perpetrators to responsibility, etc.). In order to solve this contradiction, the ratio of the rights and freedoms of the accused person with the need to solve the crime should be considered.

If the accused person’s participation is possible and he intends to realize his desire to participate, if proceedings are carried out in absentia despite this, the right to a fair trial of that person is violated. However, if a person hides on purpose (absconds), if he has no intention of participating in the criminal process, the need to discover the crime comes to the fore. In particular, the Khojaly Case is of great importance in terms of the principle of legal certainty in the destiny of the Azerbaijani people, state and national self-awareness. In any case, we believe that Article 53 and related articles of the Criminal Procedure Code should be improved. Because the low level of precision in
the law increases the possibility of fraude à la loi. We think that rule 106 of the Rules of Procedure of the Lebanese Special Tribunal, which is called the determination of the intention to avoid the investigation or the impossibility of participation, can be considered as a good example.

As for the trial phase, according to Article 311.2 of the Criminal Procedure Code, a trial in absentia is allowed only in exceptional cases – the deliberate refusal/avoid of the accused person to appear in court outside the state (əltkə hüdudlarından komaradan olan şəxin gəlməkdən qəsdən boyun qaçırması) (1), and the person accused of a crime that does not cause a great public danger, without preventing a comprehensive, complete and objective investigation of all the cases related to the criminal prosecution, files a petition for consideration of the charge brought against him in the court without his presence (2). In essence, there is some problem with the phrase “the deliberate refusal/avoid of the accused person to appear in court outside the state”. To avoid (boyun qaçırmaq) means to refuse, not to accept, not to undertake (Azərbaycan dilinin izahlı lüğəti. Birinci cild, 2006, p. 343). Therefore, this act can only be committed intentionally/deliberately, and the use of the term “deliberately” (qəsdən) in the norm is superfluous. In particular, it is related to the expression of gizlanma (hiding/abscond) in Article 53.

There are only 2 important differences between these norms:

1. The first difference is in dispositions. While Article 53 talks about the person who should be involved as an accused person, the subject under Article 311 is already an accused person, that is, by fulfilling the requirements of Articles 223–225 of the Criminal Procedure Code of Azerbaijan, the person in question has already acquired the status of an accused person;
2. The second difference emerges on the basis of the first difference. There is no question of stopping the proceedings under Article 311. If either of the two cases mentioned above occurs, a trial will be held in absentia and a verdict will be issued.

Article 311 of the Code emphasizes the obligation of the presence of the accused’s defense counsel during the review conducted without the presence of the accused. Therefore, the accused’s non-participation is not equal to the failure to protect his rights. In general, if you look at the Constitution of the Republic of Azerbaijan, there are some articles that are not only a certain right, but also a guarantee and a certain protection mechanism (Asgarov, 2011, pp. 125–127, 137–138). For example, Article 60 of the Constitution is devoted to administrative and judicial protection. The main aspect that distinguishes rights from guarantees is the presence of a certain mechanism in the latter. Those protection mechanisms are also reflected in the state’s laws and other normative acts. As an example, it is necessary to refer to the Criminal Procedure Code to get acquainted with the mechanism of protection of the rights of the accused. If we return to the Khojaly Case, the defense mechanism is valid for accused persons who evade investigation and trial. But they show by their respective actions that they are not interested in using this provision. Therefore, taking into account the requirements of Article 311 and other relevant articles, holding a trial in absentia is inevitable for the Khojaly Case.

CONCLUSION. As one of the very limited number of scientific studies conducted in the Republic of Azerbaijan regarding Khojaly events in absentia in recent years, in this article we approached the Khojaly events from the perspective of both material law and procedural law. Also, during the selection of evidence, we tried to achieve an objective study of the issue using archival materials, that is, primary evidence. This analysis led to different results.

Firstly, the study of archival materials related to Khojaly events suggests that the events that took place in Khojaly city in February 1992 should be given a legal assessment in court. Because the absence of a court verdict only theoretically allows to describe that act as any crime. There must be a valid court order as proof of the guilt of certain persons, which is also a requirement of the presumption of innocence.

Secondly, taking into account the collision of the principles of fairness and the inadmissibility of absentee trial proceedings, the current situation should be investigated for its solution. For this, not only what happened in 2023, but the events from 1992 to now should be considered. For example, research has shown that the adoption of a new criminal procedure code in 2000 eliminates the application of a provision in Article 53. Also, the principle of law should not lead to abuse. Thus, the hiding of the accused persons in other countries should not result in their remaining unpunished.

Thirdly, it is useful to use the comparative analysis method along with the historical method. A comparison of the practice of Bangladesh and Lebanon among themselves, as well as with the legislation of the Republic of Azerbaijan, as well as the difference between the approach of classical tribunals and modern trends, is necessary in conducting a potential judicial review of the Khojaly Case. The study showed that a tribunal on the example of Bangladesh cannot be established in Azerbaijan. Although the creation of a tribunal in the Lebanese example is theoretically possible, it is not considered politically successful. Because agreement with the UN and other procedural rules will cause some delay in the already delayed justice. The non-implementation of UN resolutions on the occupation of Armenia for 30 years gives us reason to come to this conclusion.

Fourthly, holding a court review is not illegal both from the perspective of international law and national legislation. The analysis of the norms of Article 53 of the CPC and the meeting of the circumstances prove the elimination of the circumstances that give grounds for stopping the criminal prosecution. Absentee trial (Article 311) is procedurally more fundamental.

Fifthly, although the legislation allows for absentee trial, we think that the law should be seriously changed. The Rules of Procedure of the Lebanese Special Tribunal are a good example for better regulation of public relations. Logical errors in the law should also be corrected.

Sixthly, the other necessity of holding a trial is the death of the accused persons due to certain reasons, the death of witnesses and victims in the case leads to the reduction of primary evidence and the failure to prove the
actions of the accused persons in court. Taking into account the importance of the events of Khojaly for Azerbaijan, like the events of 1918\(^2\), the holding of the trial is also important for the restoration of historical justice.

**Seventhly**, holding a court hearing in absentia does not mean that the desired actions have been carried out. The requirements of the legislation should be taken into account and a rational judgment should be made. We think that the judicial process should not be politicized as in the example of Bangladesh, the case should be looked at objectively, impartially and comprehensively, Bangladeshi explanations should not be put forward. Failed attempts at definition like the Special Tribunal for Lebanon should be avoided. Also, procedural equality, litigation and other such principles should not be violated, and all opportunities should be mobilized for the professional legal protection of accused persons who do not participate.

**Finally**, instead of creating a special court, one advantage of a national court adapted to international standards is the availability of higher appeals. For example, if there is one higher instance in the Lebanese Special Tribunal, if the Khojaly Case is tried, there will be two higher instances and additional mechanisms.

Putting these findings together, a judicial hearing is necessary to combat the climate of political impunity, and it is not fair to agree that these acts will remain a mere piece of archival material for years. Of course, in order to carry out this process, a number of formal-procedural requirements are needed, such as the prosecution’s decision to renew the proceedings, sending the case to court. However, the most important issue is the emergence of the political will to conduct a judicial review, taking into account the existence of legal grounds. The research carried out by us confirms the possibility of judicial review both by international norms and by the Azerbaijani criminal and criminal procedural legislation.

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1. The map was taken from the archive collection published by the Ministry of Foreign Affairs of the Republic of Azerbaijan on February 22, 2021.
5. For example, in Neumeister vs. Austria, the ECtHR considers principles such as procedural equality and adversary to be an integral part of independent, fair and impartial judicial activity. This suggests that the principle of fairness is always in a special position compared to other principles, and when applying others, it is first checked whether they are fair or not. For additional information: Neumeister vs. Austria (27.06.1968). ECtHR, par. 43. URL: https://hudoc.echr.coe.int/eng/?i=001-57544 (Access: 02.04.2023).
6. This term does not mean the specialized courts like commercial courts, administrative courts and etc. – Author.
11. Information provided by GenProsecutor’s Office of Azerbaijan, op.cit.
16. Information provided by GenProsecutor’s Office of Azerbaijan, op.cit.

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17 The map was taken from the archive collection published by the Ministry of Foreign Affairs of the Republic of Azerbaijan on February 22, 2021.
18 Azərbaycan Respublikasının Baş Prokurorluğu internet sahifəsi. URL: https://genprosecutor.gov.az/az/page/azerbaycan/sulh-ve-insanligi-veyahhihine-cinayetter (access: 01.03.2023); https://genprosecutor.gov.az/az/post/2011 (access: 01.03.2023);
21 For example, in Neumeister vs. Austria, the ECtHR considers principles such as procedural equality and adversary to be an integral part of independent, fair and impartial judicial activity. This suggests that the principle of fairness is always in a special position compared to other principles, and when applying others, it is first checked whether they are fair or not. For additional information: Neumeister vs. Austria (27.06.1968). ECtHR, par. 43. URL: https://hudoc.echr.coe.int/eng/?i=001-57544 (Access: 02.04.2023).
22 This term does not mean the specialized courts like commercial courts, administrative courts and etc. – Author.
23 For additional information: URL: https://www.thedailystar.net/news-detail-73557 (access: 25.02.2023).
27 Information provided by GenProsecutor’s Office of Azerbaijan, op.cit.
32 Information provided by GenProsecutor’s Office of Azerbaijan, op.cit.

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**Summary**

**Siyavuş Bagirov.** *Analysis of the Khojaly Genocide from the prism of substantive and procedural legal norms: proceedings in absentia and jurisdiction problem.*

This article is the first study that addresses both the material and procedural grounds of whether the Khojaly Tribunal can be created or not in the Republic of Azerbaijan. The first goal of the study is to analyze the legal bases of the Khojaly Tribunal, and to compare national legislation with international standards during the analysis of these bases. So, in the first part of the article, the main information about the events of Khojaly is reflected. Our main reason for adding this part to the article is to draw attention to the necessity of the Khojaly Case trial and the fact that there are sufficient grounds for it. Also, the practices of the Bangladesh and Lebanese Tribunals were studied, which were reflected in the Azerbaijani legal literature for the first time. In the last part, we have allocated space to the problems of the Criminal Procedure Code of Azerbaijan, as well as the interpretation of articles 53 and 311 of practice.

**Key words:** suspension of prosecution, international crime, extradition, principles of criminal justice, Special Tribunal for Lebanon, Bangladesh Tribunal.