

## **Evolution of the institution of legal assistance between States in criminal matters in the Republic of Azerbaijan**

Dr. Matanat Pasha Asgarova,

PhD in jurisprudence, professor of the Department of Criminal Procedure, Criminalistics and Forensic Examination of the Justice Academy of the Ministry of Justice of the Republic of Azerbaijan, Counselor of Justice

### **Abstract**

Proceeding from the historical development of the Republic of Azerbaijan, which is associated with various invasions, seizures, forced accession, the provisions of the Constitution, criminal procedure legislation and laws, international acts to which the Republic of Azerbaijan has acceded, historical bilateral and multilateral treaties regulating issues of mutual legal assistance were analyzed. For the first time, mutual legal assistance was investigated on the basis of historical and normative acts of the Republic of Azerbaijan. Historical periods of development of the institute of legal assistance in the Republic of Azerbaijan are defined. The norms of the Holy Qu'an on the attitude to the disbelievers, treaties, mandatory observance of treaties, cooperation, and assistance were investigated. The Holy Qur'an does not distinguish between states and people, therefore, the provisions on the general conditions of assistance relate to legal assistance between States. The purpose of the study is to substantiate the idea of using historical experience to improve the institution of mutual legal assistance in criminal cases for improvement. Therefore, a detailed study of history will make it possible to form a more independent legal assistance in the fight against organized crime, which acquire a more sophisticated and specialized character.

**Keywords:** mutual legal assistance, extradition, execution, letter of rogatory, diplomatic assistance.

### **1. Introduction**

The institution of legal assistance was connected with the history and political tendencies within the state. During the historical development of the institution of legal assistance between states, the institute has been influenced always by political interventions, related to the concept of so-called political crimes, the extradition of political prisoners, etc. The history of the institution of legal assistance between states in criminal matters should be associated with the primitive communal system, more precisely with inter-communal relations. Between the tribes concluded agreements on peace, on joint military operations, on the delimitation of possessions, etc. Intertribal norms were elementary rules of the game, formed in their practice necessary for the interaction of the tribe's. These rules did not correspond to the basic characteristics of the law. It is known that not only international, but also domestic law cannot exist without a state (I.I. Lukashuk 2005). Tribal relations had the character of mutual assistance, respect and were regulated most likely by customs, so there can be no

talk of legal assistance. Therefore, legal assistance is characterized by a high level of legal organization and normative technology that are inherent to States. One of the first forms of legal assistance between States is considered the extradition of fugitive slaves. The treaty alliance between the Hittite king Hattusil and the Egyptian pharaoh Ramesses II contained a special section provisions on extradition of fugitives, provided that the parties should seize the fugitives and send back without exception. The geographical location of the territory, the natural wealth of Azerbaijan has always attracted foreign states, including neighboring states. Therefore, the history of Azerbaijan is rich in a variety of military actions of an aggressive nature against the territory of Azerbaijan. In different periods of history, Azerbaijan, or its separate territories, were part of Russia, Iran, Turkey and was the subject of dispute between individual states. Therefore, the history of legal sciences and legal regulation, as well as the history of Azerbaijan, is connected in Russia, Turkey, Iran and the European states of England, France, etc. Treaties of peace, surrender, trade, etc. also touched upon the issues of jurisdiction, extradition of criminals, etc. Almost in all treaties is felt the power of force and the victorious. Some treaties provided an exception from local jurisdiction in respect of their nationals or special proceedings rules on the involving a representative of the accused nationality and other procedural issues. Sometimes procedural questions in criminal cases were also contained in other trade treaties, etc. We believe that an excursion into the history of Azerbaijan would provide an opportunity to trace the history of legal assistance between states and understand the attitude of separate treaties between states to the territory of modern Azerbaijan.

## **2. Significance of The Study**

Legal assistance in criminal cases between states in the Republic of Azerbaijan has gone from elementary extradition of fugitive serfs, one-time assistance in diplomatic order to institutionalized legal assistance on the basis of multilateral and bilateral treaties by other states, from the lack of a legislative framework to the codification of issues of legal assistance, from the inclusion of certain norms on certain aspects of legal assistance in treaties of friendship, peace, cooperation or even surrender to the conclusion of special bilateral treaties on legal assistance in criminal matters. In some periods of history, legal assistance has included such institutions as the presence of a representative of the State of the accused in the administration of justice, the unconditional extradition of criminals who have committed a serious crime, the cruel punishment of who resist peace, the removal from jurisdiction over individual criminals, etc. Some aspects of the historical activities can be used today to regulate or improve the institution of legal assistance in criminal matters. For example, within the framework of legal assistance, the historical cruel punishment who resist peace is still relevant for Azerbaijan today within the framework of the implementation of the trilateral peace treaty based on the results of the 44-day second Karabakh war. The presence of representatives of the State of the accused, despite being provided for by the legislation of individual States and international instruments, does not cover all States.

## **3. Review of Related Studies**

In the framework of this research mainly are used historical official documents and literature on the history of Azerbaijan. The problems of legal assistance were studied for the first time and there are no studies in Azerbaijan devoted to the study of the history and problems of legal assistance in criminal cases between states. Historical facts of ancient times are taken from **Ismail Mahmud (Исмаил**

**Махмуд) (1995)** and the period of the khanates from the research of **Mustafayev J.M. (Мустафаев Дж. М) (1989)**. Modern bilateral and multilateral documents were used in this study. **Sanai Mehdi (Санай Мехди) (2004)** conducted a study on the early Islamic period treaties and notes that Muhammad during his prophetic mission concluded a number of treaties with various tribes. In the absence of political unity in the Arabian Peninsula during the early Islamic period, each of the tribes was considered a separate political unit. Therefore, the conclusion of any treaty between these tribes had an international status. **Hassan ibn Muhammad Safar (Хасан ибн Мухаммад Сафар) (1996)**, exploring the issues of ambassadorial activity in the time of the Prophet, notes that there must be an interest permitted by the Shariah, and the sending of ambassadors must be associated with the conclusion of an armistice and treaties. The interest allowed by the Sharia included the opportunity adoption of Islam, establishing peace, organizing economic relations, preventing harm to Muslims, and address neighbors to establish cooperation. The Holy Qur'an says that "If you were to retaliate, retaliate to the same degree as the injury done to you. But if you resort to patience-it is better for the patient" (16:126) and **Sheikh Wahbeh al-Zuhili (Шейх Вахбех аль-Зухили) (2005)** with regard to that verse notes that Islam has adopted the ancient principle of reciprocity and is guided by it in relations with other peoples in peace and during of war, in order to ensure the triumph of justice, to establish standards of integrity and impartiality and to guarantee that the enemy does not exceed the established limits in his actions. According to **A.V. Petrovsky (Петровский, А.В.) (2013)** Sharia distinguishes have the following three categories: 1) Muslims are part of the population of the Islamic state, professing Islam, in respect of which criminal law should be fully applied; 2) Ahl az-zimma – non-Muslim believers (Christians, Jews) permanently residing in a Muslim state, paying a poll tax (jizia) and receiving for this from Muslims protection (zimma) from external enemies and a guarantee of the integrity of the person and property on an equal basis with Muslims; 3) Harbi are non-believers belonging to a hostile state, who are guaranteed the integrity of person and property while they are in the territory of the Islamic State only if they have the permission of the authorities responsibility for the commission of huddud crimes, except for the unproven accusation in adultery gazf by a Muslim, does not apply to ahl al-zimma and harbi.

#### **4.Objectives of The Study**

- To find out the periods of development of the institution of legal assistance in the Republic of Azerbaijan.
- To find out the features of development and specific historical agreements on mutual legal assistance between the states in criminal matters.
- To find out the possibilities of using and applying historical experience in modern agreements on mutual legal assistance in criminal matters between the states.

#### **5.Hypotheses of The Study**

- Historical development questions of the institution of mutual legal assistance remain unexplored in Azerbaijan.
- The legal profession is not fully aware of the historical forms and characteristics of mutual legal assistance on criminal matters between the states.
- the time-tested historical experience of mutual legal assistance between states is not considered in the formulation and concluding modern agreements on mutual legal assistance between states

## **6. Sample**

Bilateral treaties between the Russian Federation, Turkey and other States which, at various times in history, included the territory or parts of Azerbaijan and the national legislation of those countries governing legal assistance in criminal matters were analyzed.

### **6.1. Statistical Techniques Used in the Present Study**

About 30 bilateral mutual legal assistance treaties were used in the studies.

### **6.2. Data Analysis and Interpretation**

#### **6.2.1. Mutual legal assistance in the ancient and modern history period**

In ancient times, the territory of southern Azerbaijan was part of the state of Mann, the first state formation in the territory of modern Azerbaijan, which was conquered by the newly formed Median state. Geographically, the Media, Atropatena was located on the territory of present Iranian Azerbaijan in Iran and was limited to Araks, but in the 3rd century BC its power temporarily spread to modern Nakhichevan. By the beginning of the VII century, almost the entire Middle East, including Transcaucasia, was divided between two powerful rivals - Byzantium and Sassanid Iran. Between 7<sup>th</sup> and 9<sup>th</sup> centuries Azerbaijan was under Arab conquest; the territories were incorporated into the Arab Caliphate and was created of a number of independent feudal states and possessions by the end of the period and they ended Arab domination. After confrontation between the Persians and the Arabs in 637, in 642 begins the Arab conquest of Eastern Transcaucasia. In 656-661 the majority of the local population converted to Islam.

During the years 1220 and 1222, Mongol hordes pass through the territory of Azerbaijan. A few decades after the Mongol invasion, the territory of modern Azerbaijan in 1258 was included in the Mongol Iran of the Hulaguids. After the fall of the Mongol dynasty in Shirvan, the state of the Shirvanshahs was revived again. In Azerbaijan (south of Araks) on the site of the former state of Ildegizids in 1410 was formed a new Turk state Kara-Koyunlu with the capital in Tabriz, headed by the Oghuz tribe Ipe. Half a century later, in 1467, the state of Kara-Koyunlu was conquered by the related Turk tribe Ak-Koyunlu from the territory of Eastern Anatolia.

The Mongol khan Timur's death led to the imminent collapse of his empire. The countries of Transcaucasia were under the authority or in the influence sphere of the power of Kara-Koyunlu, and then Ak-Koyunlu. These states were dominated by the nobility of nomadic Turkic tribes, mainly the so-called Turkmens, that is, of Oghuz origin. In 1501, on the fragments of the state of Ak-Koyunlu, the Safavid state was formed with the capital in Tabriz, then Qazvin. Shah Ismail I Safavi, who took the title of Shah of Azerbaijan in 1501, in 1502 after the annexation of Persia, the title of Shahinshah of Azerbaijan and Persia.

In the 16<sup>th</sup> and 18<sup>th</sup> centuries were continued a series of wars between the Ottoman Empire and the Safavids for domination in Transcaucasia and adjacent lands, for the predominance of Shiite or Sunni Islam ideology. Later Russia was joined to this struggle, which sought to expand and strengthen its influence in the East. The Russian government wants to gain a foothold on the shores of the Caspian Sea, attaching particular importance to control over Baku. The Afghans took Isfahan in 1722 was put

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the end of Safavid domination. The crisis of the Safavid state was taken advantage by the Russian and Ottoman empires.

In the summer of 1723, a Russian landing force landed in Baku and, having overcome the short resistance of the garrison, occupied the city. Following Baku, the Caspian regions up to Reshta and Astrabad were annexed to Russia. At the same time, Turkish troops invaded Georgia, and in late 1723 - early 1724 captured many areas of Eastern Transcaucasia. Russia, which has just emerged from the war with Sweden, cannot afford a new war. According to the Treaty of Constantinople (Istanbul) between Russia and the Ottoman Empire, signed on June 12 (23), 1724, Russia is assigned the Caspian regions of the Baku province, including Baku, Salyan and Lankaran, the rest of Transcaucasia is assigned to the Ottoman Empire. In 1734, the Persia ruler commander Nadir, conquered Ganja from the Ottoman Empire. In 1735, Russia, in order to avoid war with the revived Persia and in order to acquire an ally in the person of Nadirshah against the Ottoman Empire, cedes the Caspian regions of the Baku province to Persia. In March 1735, the Treaty of Ganja was signed between Persia and Russia, according to the treaty Russian troops left Baku and Derbent. Persian power over Azerbaijan is fully restored. In 1736, the ethnic Turk Nadir Shah Afshar reigned in Iran, after his killing in 1747 centrifugal tendencies intensified in the country. With the weakening of the central power during the confusion, a number of khanates led by Turkic dynasties were formed on the territory of modern Azerbaijan, Armenia and Iran (Iranian Azerbaijan): the Karabakh, the Sheki, the Shirvan, the Baku, the Ganja, the Cuba, the Nakhichevan, the Talish, the Erivan Khanates.

XY- XVI centuries are considered the period of historical development of Azerbaijani statehood. The grandson of Uzun Hasan, the outstanding statesman Shah Ismail Khatai (1501-1524) continued the work started by his grandfather and have been able to unite all the Azerbaijani lands (both northern and southern) under own rule. There was a single centralized Azerbaijani state - the Safavid state with the capital in Tabriz. In the reign of the Safavids, the culture of public administration of Azerbaijan increased even more. The Azerbaijani language, along with Persian, turned into the state language on the territory of a huge empire. As a result of successful reforms, domestic and foreign policy, the Safavid state turned into one of the powerful empires of the Middle East.

The history of Azerbaijan under the rule of the Safavids, which lasted more than 200 years, is rich with separate treaties on peace, friendship, etc., because at that time the territory of Azerbaijan was the subject of seizure between the warring states. At the beginning of the XVI century, all the states located in the neighborhood accepted the Safavids as the heirs of Kara-Koyunlu and Ak-Koyunlu. In 1510, near the city of Merv, Shah Ismail defeated the army of Sheibani Khan, who is the Uzbek Khagani, also captured Khorasan. At the end of the first year of the 16th century, the lands of the Safavid state stretched from the Amu Darya River to the Ferat River.

The Ottoman ruler Ganuni Sultan Suleiman attacked the Safavids four times in 1534, 1535, 1548 and 1554. It was clear to Ganuni that these campaigns and attacks would not yield any result, and in 1555 in Amasya, he signed a settlement agreement with Tahmasib. After the death of Tahmasib I, the struggle for power continued in Azerbaijan for some time. Taking advantage of this, the Ottoman Sultan Murad III invaded South Azerbaijan in 1578 and captured Shamakhi and Derbent. The conflicts and disagreements during a 12 years came to an end in 1590 as a result of the agreement signed in Istanbul. Abbas, who came to power at that time, with the exception of the south-east of Azerbaijan,

was forced to give the western lands to the Ottoman Empire. Shah Abbas I (1578 - 1629) as the head of the Turkic state of the Safavids made important reforms, new military units were created, persons of Persian origin were appointed to manage the state. In 1590, a peace treaty was signed in Istanbul (Istanbul) between the Ottomans and the Safavids. Under this treaty, Azerbaijan became part of the Ottoman Caliphate. The capital of the Safavid state was moved from Tabriz to the Azerbaijani city of Qazvin. During the reign of the Safavids, who continued the foreign policy of the state of Ak-Koyunlu, Azerbaijan also maintained diplomatic relations with many European states, ranging from the basins of the Black and Mediterranean Seas to distant England and Scandinavia. In the palaces of the Safavid sovereigns Shah Ismail Khatai, Shah Tahmasib, Shah Mohammed Khudabende, Shah Abbas, and others, numerous Western diplomats negotiated with a view to establishing close relationships with the Safavid state. During the Safavid rule Azerbaijan continued to play an important role in relations between East and West, as in the period of the Ak-Koyunlu state.

Already noted, it's possible to find a separate issue on legal assistance between States in criminal matters and commercial matters in the treaties of peace, friendship or even surrender. Article VIII of the Istanbul Treaty of between Russia and the Ottoman Empire of July 3, 1700 stated that the subjects of Russia and the Ottoman Empire should not make raids and not friendships, concerns on land and at sea, should not cause damage to anyone, those who resist peace would be severely punished. In case of violation of these actions, they will not be protected by the rules of truth, and according to the divine laws, will be punished by the severity of their guilt, robbed on both sides, will be returned to their owners. Articles XVI and XVIII of the Treaty of Surrender between the Safavid State and France of 14 September 1708 determined that in the event of a dispute between the French, as well as in the case of the murder of one of them in the course of this dispute, only the French consul could be the judge. If a Frenchman, on the one hand, and a Muslim or other Europeans on the other, are involved in a dispute or murder, the Muslim (Iranian) authorities can only conduct the investigation in the presence of the French consul. No Frenchman may be imprisoned or punished for murder without proof of guilt and without a confession.

Article X of the Treaty of Versailles between the Safavid State and France of 15 August 1715 determined that both civil and criminal proceedings between the French and representatives of other States should be decided by local authorities in the presence of the French consul. Ganja Treaty of March 10, 1735 between the Russian Empire and the Iranian State regulated the extradition of criminals. According to Art. VI of the Treaty, the parties undertook to catch and return the wanted criminals. Articles 1 and 2 of the Kyuchuk Kainarjcha Treaty between Russia and the Ottoman Empire of July 10, 1774 contained questions of legal assistance in criminal matters. It was provided that the subjects of both Empires who committed a serious crime or treason should not be accepted, protected, and should be directly returned.

The period of the Khanate in Azerbaijan continues and after their accession to Russia in 1800-1830. The treaties concluded between Russia and individual khanates also contain rules on the jurisdiction of certain cases against both Azerbaijanis and Russian citizens. A new Russian-Iranian war in 1826 ended with the victory of Russia and on February 10, 1828, a peace treaty was signed in the village of Turkmenchay near Tabriz. The "Special Act on Trade", which was concluded in the village of Turkmenchay on February 10, 1828 between Russia, despite the fact that it was devoted to trade between the two states, regulated certain procedural issues of legal assistance in criminal matters.

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Article VIII provided that in the event of murder or other criminal offence between Russian subjects, the processing and resolution of the case shall be subject exclusively to the Russian Minister, Chargé d'Affaires, or consul, the cases of Russian subjects shall be considered in the presence of an official appointed by the Russian side. Questions of legal assistance can be found also in Article VI of the Jassy Treaty between Russia and the Ottoman Empire of December 29, 1791, which stated that persons who committed crimes and fled abroad should be returned.

Some treaties contained special articles on the removal of certain cases from local jurisdiction or the mandatory participation of a representative of a person's nationality, mainly cases against a citizen of another State, which, according to current rules, is contrary to criminal and criminal procedure legislation. For example, Article XI of the Tehran Treaty between Iran and France of January 1808 provided that only consuls had the right to judge French subjects in the event of conflicts between them, and should be present at the proceedings between French and Iranian.

Through a rich natural resource, the extremely important military-strategic position, Azerbaijan remained an "apple of discord" between foreign powers, in particular Iran, Russia. The complication of international relations in the late XVIII - early XIX century showed that the acceptance of Azerbaijani khanates under the protectorate of Russia could not fully ensure the security of Azerbaijani lands. At the time of the annexation of the khanates to the territory of Russia was considered the territory of Russia during the annexation and all issues of internal management, court and punishment, ownership incomes remained at the mercy of the khans. For example, according to the Article of the Fifth Kurekchays Treaty between Russia and the Karabakh Khan on May 14, 1805, Ibrahim Khan and his heirs retained power in the Shusha Khanate and power on internal administration, trial and reprisal, possession income.

After the accession of the Azerbaijani khanates to Russia, the issues of legal assistance in criminal cases were regulated mainly by the Russian laws and the treaties of the Russian Empire related to Azerbaijan. Russian legislation of the XYIII century contained special rules on legal assistance between states in criminal cases. The Article 7 of the Treatise between Russia and China of June 13, 1858 on the Determination of Mutual Relations determines that in the event of accusation in the territory of another state of any misdemeanor or crime, the perpetrators are tried according to the laws of their state and must be sent to their state for punishment.

The judicial statutes of Russia of November 20, 1864 regulated in detail the jurisdictional issues of criminal cases against foreigners, diplomats, etc. Art. 228 of the Judicial Statute determined that foreigners, for crimes and misdemeanors committed by them in Russia, are subject to the general rules of jurisdiction, unless it is decided to remove the accused from these rules in a treatise with another foreign power. Articles 849-850 Of the Code provided for the summons accused who is abroad through publications in statements published in foreign languages and the government of a foreign state is obliged to extradite escaped criminals. According to the general rule established by Article 190 of the Facilities of Judicial Regulations 1864 of Russia, the relations of judicial bodies and officials of the Empire with judicial and other bodies of foreign states had to made by diplomatic means, through the Ministers of Justice and Foreign Affairs. The new Criminal Code with annexes in the second part regulated the issues of the scope of the criminal code, issues of extradition, etc. For example, Article 13 of the Code determines that an alien who has committed a serious crime or a crime outside Russia,

if he has not been convicted, acquitted or except from punishment, is subject of extradition according to the reciprocity.

In the XIX century, a special law of 1911 “On the extradition of criminals at the request of foreign states” regulated in the issues of extradition of criminals in detail and the note indicates that the force of extradition treaties concluded with foreign governments is not canceled, extradition is allowed only with the condition of consideration of the case not by an extraordinary, but by a general court, and for the most significant criminal acts.

The assistance between the states was formed as part of trade relations and regulated an issue mainly of civil law. It's possible to find some aspects of legal assistance in criminal matters and criminal proceedings in the trade treaties of states. In nineteenth century, legal assistance in criminal matters between States was limited only to interaction on extradition and to certain criminal procedural aspects of legal aid. The issues of providing of legal assistance were related to the jurisdiction of criminal cases about the other state's citizens, the participation in criminal proceedings of a foreign state representative, etc.

### **6.2.2. Mutual legal assistance in the period of the Azerbaijan Democratic Republic**

The Azerbaijan Democratic Republic played an important role in the development of democratic legislation and created precedents for the legislative regulation of individual institutions despite the existence only 23 months. Analysis of the legislative acts of the Azerbaijan Democratic Republic shows that there are no special acts on legal assistance in criminal matters between States. But according to the Decree of June 23, 1918, No. 155, all existing laws in all branches of government and the court remained in force until they repealing or changing by the government established by the legal order. Therefore, the issues of legal assistance in criminal cases between states were regulated by acts of the Russian Empire.

### **6.2.3. Mutual legal assistance during the USSR**

In April 28, 1920, after joining Azerbaijan to the USSR, the legislation of the Azerbaijan SSR was determined by the union legislation. According to the constitutions of the USSR of 1924 and 1936, the representation of the USSR in international relations, the conclusion, ratification and denunciation of treaties with other states, the establishment of a general order in the relations of the union republics with foreign states were referred to the jurisdiction of the highest bodies of state power and bodies of state administration of the USSR. Analysis of multilateral and bilateral treaties of the USSR shows that due to the closed nature of society and the special nature of interstate relations dictated by the ideological considerations of the USSR, treaties were not concluded the provision of legal assistance in criminal matters. Basics of criminal proceedings of the USSR and the Union republics regulated the issues of performing certain procedural actions in criminal cases and the extradition of criminals. It was envisaged that in case of necessity to perform certain procedural actions in criminal cases outside the USSR territory, communication with judicial or administrative bodies of foreign states was carried out through the People's Commissariat for Foreign Affairs. Trial institutions of the USSR and the Union Republics may receive orders from foreign trial bodies for the performance of certain procedural actions in the USSR territory only through the People's Commissariat for Foreign Affairs. Extradition of persons is allowed in accordance the agreements of the USSR with foreign states, or under special



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agreements of the USSR Government with foreign governments, and special law issued in the manner of all-Union legislation.

The first Code of Criminal Procedure of the Republic of Azerbaijan of July 21, 1923 contains no provisions on the provision of legal assistance. After introduction an amendment to the Constitution of the USSR by the Law of February 1, 1944, according to the Article 8-a, each Union Republic had the right to enter into direct relations with foreign states, conclude agreements and exchange diplomatic and consular representatives. This right was a formal nature. The Azerbaijan SSR did not actually participate in international relations independently and through the central bodies of the USSR, but fulfilled certain instructions of foreign states under the leadership and control of the central bodies of the USSR.

After the Second World War, the USSR began active cooperation with the states of the socialist camp and other states, including in the field of legal assistance between states. But Bases of Criminal Procedure of the USSR and the Union Republics, of December 25, 1958, do not provide the provision for legal assistance in criminal cases. The absence of legislative regulation for legal assistance by the Republic of Azerbaijan existed until 1983. There were no rules regulating a legal assistance even in the second Criminal Procedure Code of the Azerbaijan SSR of December 8, 1960. Only the articles 23-1 and 32-2 of the Decree of 30 September, 1983 were introduced into the CPC provisions on the legal assistance in criminal matters. The procedure for communication on assistance was determined by the legislation of the USSR and the Azerbaijan SSR and international treaties concluded by the USSR and the Azerbaijan SSR with the respective states. Azerbaijan almost did not conclude an agreement on legal assistance, so the instructions of the union legislation were a formal nature.

Presidium of the Supreme Soviet adopted Resolution No. 9132-XI of June 21, 1988 for the ensuring of the implementation of international treaties of the USSR on legal assistance in civil, family and criminal cases, the bodies of communication were determined: The Ministry of Justice; Supreme Court; Prosecutors, Ministry of Foreign Affairs of USSR. The Plenum of the Supreme Court of the USSR discussed the issues of fulfillment of the provision of treaties with foreign states on legal assistance by the courts three times and adopted the relevant resolutions of June 19, 1959 No. 2, of May 30, 1967 No. 5 and July 11, 1972 No. 6. Plenum of the Supreme Court of June 19, 1959 No. 2 noted that, if necessary, Soviet courts may apply to the courts of foreign states the letter rogatory on legal assistance (service of documents, examining of the accused, witnesses, experts, interview of the parties, etc.). In executing of the foreign states letter rogatory shall be applied Soviet procedural legislation. However, at the request of the letter rogatory bodies may be applied a procedural legislation of the relevant foreign state, if it does not contradict Soviet legislation and questions on contradicting is decided by the Supreme Court of the USSR.

The Soviet Union concluded more than 40 treaties with foreign states on legal assistance. The Treaty between the USSR and the People's Republic of Albania of 1958, the People's Republic of Hungary of 15 July 1958, the Democratic People's Republic of Korea of 16 December 1957, the Romanian People's Republic of 3 April 1958, the Republic of Finland of 11 August 1978, the Republic of Iraq of 22 June 1973 on the Legal Assistance in Civil, Family, Marriage and Criminal Matters contained similar provisions on the scope of legal assistance: execution of certain procedural actions: preparing and forwarding documents, conducting searches, seizure, forwarding and delivering of material

evidence, conducting an examination, hearing of the accused, witnesses, experts, interviewing the parties and other persons, direct judicial inspection, as well as by handing over documents. There are conditions for extradition, the obligation to bring a criminal case, etc. Soviet period of the legal assistance development between the states is characterized by the fact that until the eighties of the last century, the provision of legal assistance was legally within the competence only of the central bodies of the USSR, was of a permanent conventional and contractual nature. The Union Republics, including the Republic of Azerbaijan, executed the requests letters of foreign states under the control of the central bodies of the USSR. Even after the recognition of the union republics of the possibility concluding international treaties in 1944 the legislative consolidation of this procedural right in the eighties of the past century was of a formal nature.

#### **6.2.4. Mutual legal assistance after the restoration of the state independence**

August 30, 1991, the Supreme Soviet of Azerbaijan adopted the Declaration “On the Restoration of the State Independence of the Republic of Azerbaijan”, and on October 18, was adopted the Constitutional Act “On the State Independence of the Republic of Azerbaijan”, which established the foundations of the state, political and economic structure of independent Azerbaijan. During the independence period of the Republic of Azerbaijan, began the processes to improve and adopt new legislation of the Republic of Azerbaijan. Chapter LVII CPC “Legal assistance in criminal matters”, regulates the procedural and other acts relating to legal assistance in the Republics and was adopted the Law “On Legal Assistance in Criminal Matters” of 29 June 2001. The Republic has acceded to the main international conventions on legal assistance between states, is a party to the Chisinau and Minsk Conventions, the European Convention on Mutual Assistance in Criminal Matters of 1959 with the Additional Protocol of 1978.

#### **6.2.5. Mutual legal assistance questions i the Holy Quran**

One of the fundamental principles of Islam is cooperation and refers to cooperation between peoples, tribes: “O people! We created you from a male and a female, and made you races and tribes, that you may know one another. The best among you in the sight of God is the most righteous. God is All-Knowing, Well-Experienced” (Holy Qur’an, 49:13) Holy Qur’an provides for the mandatory following of promises and agreements: «... And honor your pledge, because the pledge involves responsibility” (Holy Qur’an, 17:34). “Fulfill God’s covenant when you make a covenant, and do not break your oaths after ratifying them. You have made God your guarantor, and God knows what you do” (Holy Qur’an, 16:91). The Holy Quran provides a preventing the commission and assistance in suppressing. The Quran does not distinguish between states and people, but defines the general conditions of assistance: “...Were it not that God repels people by means of others: monasteries, churches, synagogues, and mosques- where the name of God is mentioned much-would have been demolished. God supports whoever supports Him. God is Strong and Mighty” (Holy Qur’an, 22:40); “And cooperate with one another in virtuous conduct and conscience, and do not cooperate with one another in sin and hostility. And fear God. God is severe in punishment” (Holy Qur’an, 5:2); “And fight in the cause of God those who fight you, but do not commit aggression; God does not love the aggressors” (Holy Qur’an, 2:190). We believe that the issues concerning non-Muslim believers, treaties, obligatory respecting of the treaties of the Holy Qur’an and the treaty practice of the Prophet also apply to legal assistance between tribes and other peoples in respect of criminals, extradition and

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other matters Azerbaijan, as a Muslim state before joining to the USSR, was also guided by the norms of Muslim law on assistance, which influenced the conclusion and execution of treaties.

### **7.Recommendations**

- In the periodizing of the institution of mutual legal assistance history starting point should be from ancient history to modern history, the history of the institution of legal assistance should not be limited to the modern history of Azerbaijan.
- The presence of representatives of the State of the accused, despite being provided for by the legislation of individual States and international instruments, have to cover all States.
- In different periods of the history of states united religious, linguistic, kinship relations, etc., which facilitated interstate relations, including legal assistance in criminal cases. History shows that even these unifying elements did not help the reliable protection of states from invasion and war. Therefore, respect for States and the establishment of relations in accordance with international law is a reliable basis for relations between States, including the legal assistance in criminal matters.
- Mutual legal assistance should also develop in the direction of unilateral execution of foreign states requests without preliminary declarations of reciprocity.
- Various conflicts have become part of the modern world. Certain provisions of historic mutual legal assistance treaties, such as the cruel punishment of peace resisters on both sides, should be included in modern peace and cooperation agreements.
- Provisions of the Holy Qur'an and the treaty practice of the Prophet have to applied to the conclusion of mutual legal assistance agreements and the execution of specific judicial requests for mutual assistance.

### **8.Conclusion**

Analyzing the results of the research the history of legal assistance between states in criminal cases can be identified as follows:

1) the ancient period and the Middle Ages of interstate relations in the field of legal assistance in criminal matters from the states of Manna, Media, Caucasian Albania to Islamization, is characterized by an almost complete absence of relations in the field of legal assistance, but there are isolated cases of such relations mainly associated with the extradition of criminals;

2) the period of the Kara-Koyunlu and Ak-Koyunlu states and the formation of diplomatic relations, which is characterized by a diplomatic solution to the issues of legal assistance in criminal matters;

3. the period of the Shirvanshahs, Safavid states before the murder of Nadir Shah in 1747, the period of strengthening statehood and interstate relations, which is characterized by the contractual solution of legal assistance in criminal cases. Treaties of friendship, peace and surrender, trade treaties contained provisions on the jurisdiction of criminal cases, extradition of criminals and some procedural issues.

4. the period of khanates covers before their accession to Russia in the early XVIII century, is characterized by the strengthening of local rulers, trade relations. Legal assistance had non-recurred nature and covered extradition issues;

5. the period of accession of the khanates to Russia until 1917, characterized by the improvement of the Russian Empire legislation, the conclusion of contracts in the field of civil and criminal law, a large number of special treaties in the field of civil and criminal law, by episodic cases of legal assistance and was limited;

6) the period of the Azerbaijan Democratic Republic from 1918 to the creation of the USSR, are concluded a treaty on friendship, cooperation and peace with other states, are developed democratic institutions, are adopted legislative acts, but due to the action of only 23 months, the ADR could not prepare the necessary legislative acts and expand the activities for the legal assistance through the conclusion of bilateral treaties.

During this period, according to the Decree of June 23, 1918, No. 155 "On the temporary preservation in force of previously existing laws", all currently existing laws in all branches of government and the court remained in force until canceling or changing by the government. Therefore, the issues of legal assistance in criminal matters between states were regulated by the above-mentioned legislative acts of the Russian Empire.

7. The Soviet period before the declaration of independence until 1991, characterized by the fact that legal assistance belonged to the authority of the central bodies of the USSR and the relevant bodies of the Union republics, including the Azerbaijan SSR, execution of the judicial requests of foreign states under the control of central bodies, despite the receipt in 1944 of the formal opportunity to participate in state relations until the 80s of the last century, this activity was fragmentary in nature. 80s are characterized by the legislative consolidation of the legal assistance provisions on domestic legislation, but again it is impossible to talk about active and independent activity, all judicial requests were carried out under the control and guidance of the central bodies of the USSR;

8. The period of independent Azerbaijan is characterized by the strengthening of interstate relations, legislation in the field of legal assistance in criminal matters, accession to multilateral treaties, the conclusion of bilateral treaties on legal assistance in criminal cases.

The history of Azerbaijan is rich in numerous facts of seizure, transfer of territory to other states, which left an imprint on the legal regulation of legal assistance. After the Islamization of Azerbaijan in the Middle Ages before Azerbaijan joined the USSR, Azerbaijani law was almost Islamic law and the provisions of Muslim law regulated the issues of legal assistance between states.

Despite the fact that Azerbaijan is a secular state, the majority of the population professes Islam and cannot be denied the influence of the Quran norms to interstate, including relations on legal assistance in criminal matters.

## References

- [1]. Azərbaycan Respublikasının hüquqi yardım sahəsində ikitərəfli beynəlxalq müqavilələrinin toplusu. Bakı 2021, 615 c. Retrieved from <https://www.justice.gov.az/documents/categories/694.pdf>.

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- [2]. Azərbaycan Respublikasının Dövlət Müstəqilliyi haqqında Konstitusiyası (1998-ci il tarixli, № 907-IQ qanunla təsdiq edilmişdir). Retrieved from <http://e-qanun.az/framework/46950>.
- [3]. Azərbaycan Respublikasının Cinayət-prosessual Məcəlləsi (14 iyul 2000-ci il tarixli, № 907-IQ qanunla təsdiq edilmişdir). Retrieved from <http://e-qanun.az/framework/46950>.
- [4]. Azərbaycan Respublikasının dövlət müstəqilliyi haqqında Konstitusiyası, 18 oktyabr 1991-ci il. № 222-XII. Retrieved from <http://www.e-qanun.az/framework/6693>.
- [5]. Azərbaycan Respublikasının dövlət müstəqilliyini bərpa etmək haqqında Bəyannamə barəsində Azərbaycan Respublikasının Ali Soveti qərarı. 30 avqust 1991-ci il, № 179-XII. URL: <http://www.e-qanun.az/framework/6592>.
- [6]. Бунйатов, З. Азербайджан в VII-IX вв. Баку: Издательство Академии Наук Азербайджанской ССР –1965, – 404 с.,
- [7]. Санаи Мехди. Мусульманское право и политика: Учебное пособие. –М.: Институт философии РАН, – 2004. 45–66.
- [8]. Cinayət işlərinə dair hüquqi yardım haqqında Azərbaycan Respublikasının Qanunu, 29 iyun 2001-ci il, № 163-IIQ. Retrieved from <http://www.e-qanun.az/framework/2804>.
- [9]. Договор между Союзом Советских Социалистических Республик и Народной Республикой Албанией об оказании правовой помощи по гражданским, семейно-брачным и уголовным делам" (30.06.1958). Retrieved from <http://docs.cntd.ru/document/1900395>.
- [10]. Исмаил, Махмуд. История Азербайджана (с древнейших времен до начала XX века). Управление делами Президента Азербайджанской Республики. Президентская библиотека Баку, 1995.-254 с. Retrieved from <https://files.preslib.az/projects/azerbaijan/rus/gl3.pdf>
- [11]. Лукашук И.И. Международное право. Общая часть: учеб. для студентов юрид. фак. и вузов / И.И. Лукашук; Рос.акад. наук, Ин-т государства и права, Академ. правовой ун-т. — Изд. 3-е, перераб. и доп. — М.: Волтерс Клувер, 2005, 66.
- [12]. Мустафаев Дж. М. Северные ханства Азербайджана и Россия (конец XVIII —начало XIX вв.). —Баку: Элм, 1989, 22-42.
- [13]. Новое Уголовное Уложение с приложениями. Высочайше утвержденное решение 22 марта 1903 г. С. - Петербург.Издание Каменноостровского Юридического Книжного Магазина В. П. Анисимова.1903, 255 с.
- [14]. Основы уголовного судопроизводства Союза ССР и союзных республик. Президиум Центрального Исполнительного Комитета СССР от 31 октября 1924 года. Retrieved from [http://www.libussr.ru/doc\\_ussr/ussr\\_2234.htm](http://www.libussr.ru/doc_ussr/ussr_2234.htm)
- [15]. Основы уголовного судопроизводства Союза ССР и союзных Республик, утвержденный Указом Президиума ВС СССР от 25 декабря 1958 года. Retrieved from [http://www.libussr.ru/doc\\_ussr/ussr\\_5359.htm](http://www.libussr.ru/doc_ussr/ussr_5359.htm)
- [16]. Петровский, А.В. Мусульманское уголовное право и особенности уголовного законодательства мусульманских государств: монография / А.В. Петровский. Краснодар: Кубанский гос. ун-т, 2013,24-25.
- [17]. Постановление Верховного Суда СССР от 19 июня 1959 года №2 «О вопросах, связанных с выполнением судами договоров с иностранными государствами об оказании правовой помощи по гражданским, семейным и уголовным делам» (в ред. Постановления Пленума Верховного Суда СССР от 11.07.1972 N 6). Retrieved from <http://russia.bestpravo.ru/ussr/data04/tex16023.htm>
- [18]. Российский Закон 1911 г. "О выдаче преступников по требованиям иностранных государств" П.А.Столыпин. Программа реформ П.А.Столыпина. В 2-х томах. Документы и материалы. Том 2. Retrieved from [http://www.hrono.ru/libris/stolypin/stpn2\\_09.html](http://www.hrono.ru/libris/stolypin/stpn2_09.html)
- [19]. Сборник специальных международных договоров Российской Федерации по вопросам правовой помощи и правовых отношений по гражданским, семейным, уголовным и иным делам. В 2-х томах. Т. 2 - М.: ТИССО-Полиграф, 2006. - 608 с.
- [20]. Судебные уставы 20 ноября 1864 года, с изложением рассуждений, на коих они основаны. Устав Уголовного судопроизводства. Часть вторая. Основные положения уголовного судопроизводства. Издание государственной Канцелярии. Из личной библиотеки доцента юридического факультета МГУ имени М.Л. Ломоносова Трусова А.И. стр. 104, 105, 308-309. Retrieved from <http://civil.consultant.ru/reprint/books/118/136.html>

- [21]. The treaty of alliance between Hattusili, king of the Hittites, and the Pharaoh Ramesses II of Egypt. Retrieved from [https://www2.uned.es/geo-1-historia-antigua-universal/EGIPTO%20HISTORIA/RAMSES\\_II\\_TRATADO\\_KADESH\\_VERSION\\_HITITA.htm](https://www2.uned.es/geo-1-historia-antigua-universal/EGIPTO%20HISTORIA/RAMSES_II_TRATADO_KADESH_VERSION_HITITA.htm)
- [22]. The Holy Qur'an. Arabic text and English translation/ Translated by Maulawi Sher'Ali. Islam International Publication Limited. Islamabad -2015, 836 p. Retrieved from <https://www.alislam.org/quran/Holy-Quran-English.pdf>
- [23]. Трактаг между Россией и Китаем об определении взаимных отношений. Retrieved from [ru.wikipedia.org/wiki/Тяньцзиньские\\_трактаты\\_\(1858\)](ru.wikipedia.org/wiki/Тяньцзиньские_трактаты_(1858))
- [24]. Учреждения судебных установлений 1864 г. Retrieved from <http://constitution.garant.ru/history/act1600-1918/3450/>
- [25]. Уголовно-процессуальный кодекс Азербайджанской ССР от 8 декабря 1960 года. Баку, Коммунист, 1961-70 с.
- [26]. Хасан ибн Мухаммад Сафар. Посольская деятельность во времена Пророка, ее особенности и цели// Хасанийские чтения в Священный месяц Рамадан 1996. Ежегодный сборник докладов. Москва. С. 169–187. Retrieved from [http://www.idmedina.ru/books/history\\_culture/mavlid/4/4-safar.htm](http://www.idmedina.ru/books/history_culture/mavlid/4/4-safar.htm)
- [27]. Шейх Вахбех аль-Зухили. Ислам и международное право// Международный журнал Красного Креста, Том 87, номер 858, июнь 2005, с.47-65.