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CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR THE RECOGNITION AND REALIZATION OF REPRODUCTIVE RIGHTS IN THE REPUBLIC OF AZERBAIJAN: LEGAL AND PRACTICAL ASPECTS

Key words: *constitutional regulation, reproductive rights, legal framework, obligations*

Açar sözlər: *konstitusion tənzimətmə, reproduktiv hüquqlar, hüquqi baza, öhdəliklər*

Ключевые слова: *конституционное регулирование, репродуктивные права, правовая база, обязанности*

1.1 Introduction

This article deals with the regulation of reproductive rights under the constitution and law of the Republic of Azerbaijan. Also, the positive obligations of the Azerbaijan state are examined to provide reproductive rights. This study is performed to research the legislative of the Republic of Azerbaijan which is showed reproductive rights and reproductive health. Especially, This study is dealt with these rights related to other rights.

1.2 General approach

Reproductive Rights, United Nations Conference on Human Rights (1993), International Population and Development Conference (ICPD), (Cairo 1994), United Nations for Social Development World Summit (Copenhagen 1995) and the United Nations 4th World Women's Conference (Beijing,1995) gained consensus in the world public opinion. The 1994 International Conference on Population and Development in Cairo (ICPD) defined reproductive rights:

“...reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.’ Reproductive rights in WPPA ‘All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so; the responsibility of couples and individuals in the exercise of this right takes into account the needs of their living and future children, and their responsibilities toward the community’ (para. 14(f) in the Principles and Objectives).

1.3. Positive obligations of the Republic of Azerbaijan

In every country, a variety of laws, policies and practices exist that affect sexual and reproductive health and rights. They may relate to the provision of information and education on sexual and reproductive health, and/or regulate access to family planning and other basic reproductive and sexual health services. Unfortunately, these laws, policies or practices often obstruct, limit or prohibit the enjoyment of the sexual and reproductive rights. A government’s failure to act on a certain issue may also negate, or adversely affect the enjoyment of these rights. In either case restriction of sexual or reproductive rights amounts, in international law, to a violation of human rights, if a government has ratified treaties that recognize these rights. All human rights depend on state development, also reproductive rights are that.

Reproductive rights are regulated nationally as well as internationally. Namely, these rights are showed human rights declaration, international Covenant on civil and political, European Convention Human Rights The International Covenant on Economic, Social and Cultural Rights (The Economic Covenant) The Convention on the Elimination of All Forms of Discrimination Against Women (The Women’s Convention) The Convention on the Rights of the Child (The Children’s Convention), etc. All states have positive obligations about this case. These obligations contain that 1) Accept normative acts about these rights 2) provide new technology people 3) informed people, for example, public education.

The Republic of Azerbaijan as a democratic and member state fulfills all obligations. The protection of population and reproductive health in Azerbaijan, as well as throughout the world, is one of the priority directions of the country's policy. According to the Azerbaijan constitution Article 12, the highest priority objective of the state is to provide the rights and liberties of a person and citizen. Reproductive rights are one of the fundamental rights of Azerbaijan citizens because of human rights and are protected and provided. These rights regulated other constitution rights especially, Article 32(right for personal immunity) Article 34 (Right to marriage) the Article 41 (right for protection of health). Law is accepted and co-operated with other organizations by the state to provide these obligations. The law of the Republic of Azerbaijan on healthcare are adopted 26 June 1997, chapter 5 is dedicated family planning and regulation of human reproductive functions. This chapter showed 4 rights, Article 29 artificial insemination and embryo implantation, the Article 30 abortion, the Article 31 sterilization, the Article 31-1 cesarean section surgery. Every woman who has reached adulthood has the right artificial insemination and implantation of the embryo. There is a requirement that it is important to the consent of the person. Artificial insemination and implantation of the embryo are performed consent of wife or husband (single women). Artificial insemination and implantation of embryo and identity of the donor is a medical secret. The woman has the right to obtain information about the medical and legal consequences of artificial insemination, implantation of the embryo, medical and genetic examination, donor nationality and appearance, and this information is provided by a physician who intervenes.

Every woman has the right to decide on the issue of motherhood alone. Artificial abortion is performed at the woman's request for up to 12 weeks of gestation. Social disorders can be performed up to 22 weeks of gestation.

It can be artificially aborted according to medical guidelines and with the consent of the woman, regardless of her pregnancy term.

Medical sterilization is used to deprive a person of the ability to produce offspring or to protect her from pregnancy. Medical sterilization is done only based on a written request from the interventionist and medical instructions. Persons found guilty of illegal medical sterilization are responsible for the law. The Court notes that sterilization constitutes a major interference with a person's reproductive health status in *V.C v Slovakia* cases. As it concerns one of the essential bodily functions of human beings, it bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life. It may be legitimately performed at the request of the person concerned, for example as a method of contraception, or for therapeutic purposes where the medical necessity has been convincingly established. Court defined that the state protects sterilization which it without women's opinion.

... Applicant asked her whether she wanted to have more children. The applicant responded in the affirmative but was told by the medical personnel that if she had one more child, either she or the baby would die. The applicant started to cry and as she was convinced that her next pregnancy would be fatal, she told the medical personnel "Do what you want to do". She was then asked to sign the delivery record under the note indicating that she had requested sterilization. The applicant did not understand the term sterilization and she signed the form out of fear that there would otherwise be fatal consequences. As she was in the last stage of labor, her recognition and cognitive abilities were influenced by labor and pain. (*V.C v Slovakia*) Consequently, The court holds unanimously that there has been a violation of Article 8 of the Convention, because not request the opinion of the applicant and not informed. The principle of patients' autonomy in their relationship with health care professionals is explored in the Explanatory Report to the Convention on Human Rights and Biomedicine. A requirement of respect for, inter alia, women's right to autonomy and choice in the context of health care is set out in point 31(e) of General Recommendation No. 24 adopted by CEDAW in 1999. The Universal Declaration on Bioethics and Human Rights, albeit after the facts of the present case, confirms the above considerations.

Cesarean section surgery is operated in state and non-state medical institutions.

The Republic of Azerbaijan co-operated international organizations and one of the international organizations are United Nation Fund Population. UNFPA is the lead UN agency for delivering a world where every pregnancy is wanted, every childbirth is safe and every young person's potential is fulfilled. UNFPA started its assistance to the Republic of Azerbaijan in 1994 to address the reproductive health concerns of the population. This milestone year also marked the initiation of a long-term partnership with the Republican Centre for Family Planning, which has delivered a comprehensive range of reproductive health services to the population. The concerted efforts of the organization to advocate for strengthened national health systems for improved family planning led to the adoption of the first-ever National Reproductive Health Strategy of the Republic of Azerbaijan (2008-2015). According to the National Reproductive Health Strategy, the reproduc-

tive health of the population is largely due to the following reasons: 1. Lack of a sufficient legislative basis, 2. Lack of information about healthy life and reproductive health of people also teenagers, 3. Inadequate and consistent reproductive health services, 4. Lack of technology in reproductive health services which institutions serving.

1.4 Conclusion

Reproductive rights are the constitutional rights of Azerbaijan citizens and are protected by the state. These rights are recognized and respected by the state. According to the constitution and laws, these rights are part of human rights. The state adopts new norms, joined the convention, co-operated international organizations, etc.

Literature

1. The Constitution of the Republic of Azerbaijan. 1995
2. The law of Republic of Azerbaijan on protection of public health. 1997
3. National Reproductive Health Strategy of the Republic of Azerbaijan (2008-2015).
4. Gençlere verilen üreme sağlığı bilgi ve davranışlarına etkisi, İzmir 2008.
5. V.C. v Slovakia
6. <http://hudoc.echr.coe.int/eng?i=001-59588>
7. http://unazerbaijan.org/en/un_agencies/united-nations-population-fund/
8. http://unazerbaijan.org/en/un_agencies/world-health-organizatio

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Признание и осуществление репродуктивных прав в рамках Конституции и законодательства Азербайджанской Республики: правовые и практические аспекты **Резюме**

Целью государства является улучшение репродуктивного здоровья всех слоев населения Азербайджана. Для достижения этой цели необходим общий подход. Конкретные задачи и программы должны быть определены для решения проблем и достижения цели. Поскольку репродуктивные права тесно связаны, цель может быть достигнута только с помощью комплексных мер. В статье анализируются нормы по этим вопросам и вносятся предложения и рекомендации.

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