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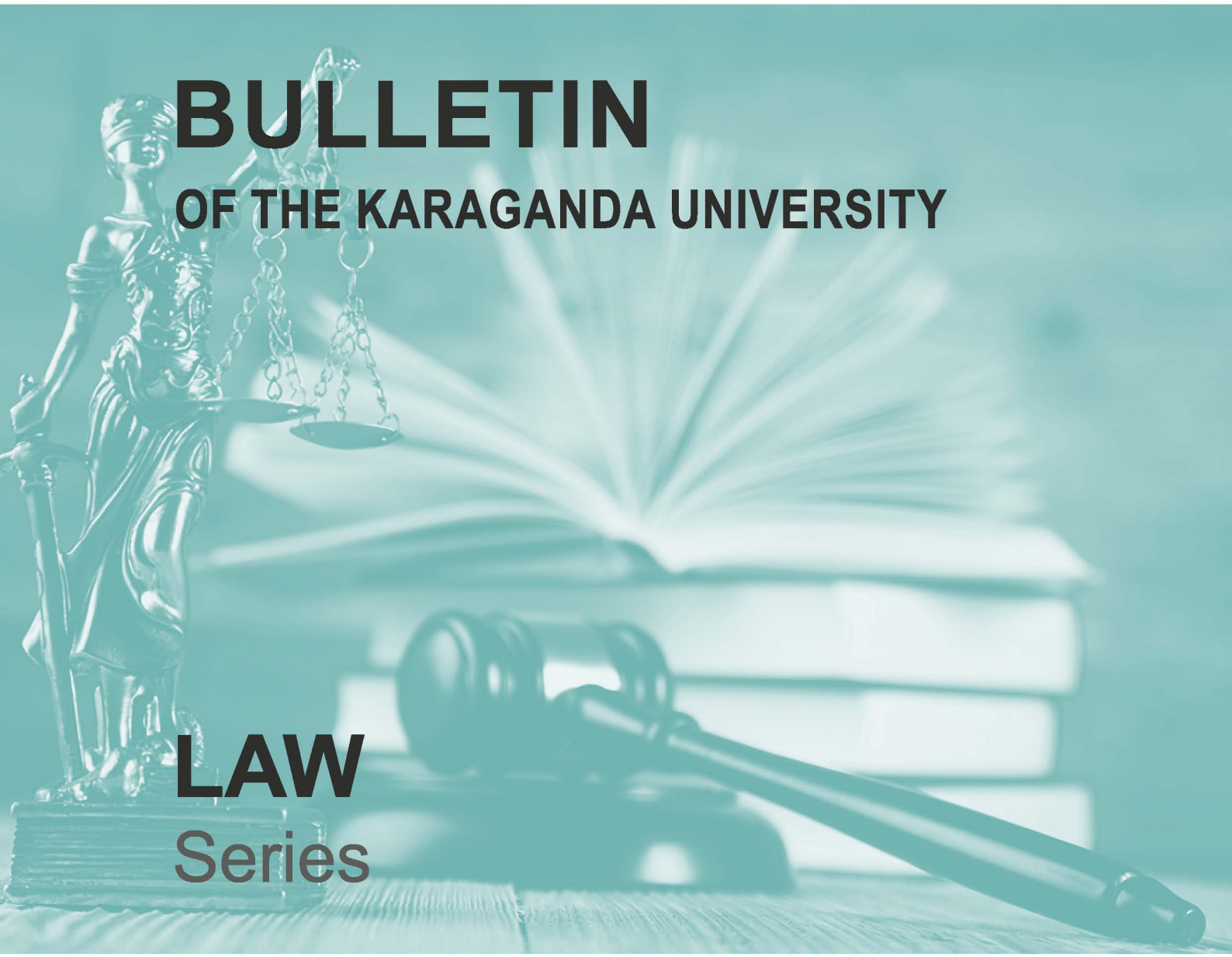

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Features of the constitutional and legal regulation of the energy security system of the Republic of Kazakhstan: current state and prospects

The article discusses issues related to the definition of mechanisms and legislative provision of energy security. The relevance of the study is due to the emergence of new challenges and threats in this area, which requires timely response and legislative consolidation of the necessary measures. Energy security is an essential aspect of national security, as it directly affects the stability of the State, its economic development and the social well-being of citizens. In the legislation of the Republic of Kazakhstan, the concept of "energy security" is characterized by its versatility and breadth, however, there is no clear definition in regulatory legal acts. In some cases, it is mentioned only descriptively. In turn, the Constitution of the Republic of Kazakhstan, laws and other regulatory legal acts do not provide a sufficiently clear definition of the concept of "energy security". It is necessary to develop an algorithm of legal argumentation for a clear and precise definition of this term in legislation. This will create a more specific and understandable legal framework for ensuring energy security. As a result, we will be able to better understand what responsibilities the state, private companies and citizens have in protecting energy resources and infrastructure. Since energy security is an integral part of national security, the precise definition of this concept in the legislation of the Republic of Kazakhstan will contribute to strengthening stability in the state. This will allow the government to coordinate its efforts to protect energy resources more effectively and make the country more resilient to external and internal threats.

Keywords: energy security, national security, constitutional and legal regulation, energy security system, elements of energy security, energy interests, threats to energy security.

Introduction

The energy security of the Republic of Kazakhstan is an essential component of national security, which directly affects the economic development, political stability and social well-being of the state. Despite the growing number of publications on this topic, at the moment there is no comprehensive approach to understanding the energy security system of the Republic of Kazakhstan from the point of view of constitutional law. Conducting such a study will have important implications both for the practical realization of the country's energy security and for the theory of law, as it will deepen our knowledge in this area.

At the same time, it is obvious that energy security has gradually become a vital factor in the economic independence and national sovereignty of the Republic of Kazakhstan, one of the main guarantees and foundations of the sustainable development of the state. In this regard, the formation and implementation of state policy in the field of energy security are becoming extremely important and necessary tasks.

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Currently, energy security occupies a special place among the priority areas, requiring increased attention and effective government regulation. The improvement of state policy in the field of energy is a key factor contributing to ensuring an adequate level of energy supply to the country and the full-fledged socio-economic development of society and the state as a whole. In the context of increasing demand for energy resources, the study of the energy security of the state is becoming particularly relevant.

In the process of studying energy security, it is necessary to pay attention both to the analysis of the state of the energy industry as the foundation for the energy supply of the national economy, and to the level of protection of the economy of society and the state from external negative influences, real and potential threats. It is important to note that energy security directly affects the level of household energy supply. In addition, it has an indirect impact on all aspects of society and the environment through man-made factors.

Methods and materials

In the course of the research, the formal logical method and the method of technical and legal analysis were used, existing scientific positions were analyzed, the essence of a number of theoretical positions was formulated and disclosed, in particular, when the author constructed definitions of the concepts of energy security. The systematic method allows us to consider the energy security system as a complex system that includes the following interrelated elements: energy sources, energy transportation capabilities, energy distribution, energy consumption, and regulatory and legal regulation. The structural and functional method allowed us to investigate the main elements of energy security, including existing types of threats.

Results

In the scientific literature, when talking about related fields such as energy, economic, and national security, the terms “structure” and “system” are often used to analyze their component parts. These terms are often used synonymously or it is noted that “structure” is the main characteristic of a “system.”

In our study, we will use the term “system” because, in our opinion, it more accurately reflects the essence of the phenomenon. It indicates not only the constituent elements, but also their interrelationships and possible dynamic changes. By security structure, we mean the varieties of a certain type of security. For example, the types of national security include economic, information, environmental, energy, and other types of security.

Considering national security as a general concept encompassing energy security, Yu.N. Tuganov notes that it is a system composed of interrelated hierarchical elements (subsystems) that are integrated and guided by a common purpose. The constituent elements of this system are threats, interests and factors influencing them, as well as methods of ensuring national security.

The author offers the following understanding of the national security structure: 1. An object is a person and a citizen, society and the state, as well as their vital interests, which are called national. 2. A subject is a state and non-state institutions that form a system for ensuring national security. 3. Targeted activities aimed at protecting national interests from various threats.

The national security system is a complex mechanism that includes many needs, interests and values that are the basis for the existence of an individual, society and the state. It covers both internal and external threats and dangers, as well as various factors affecting the level of national security. Such factors include natural, man-made and anthropogenic phenomena that can both contribute to and create obstacles to the stability and well-being of the nation. An important role in the system is played by state and non-state institutions that combine their efforts to protect and promote national interests and values. Their interaction is carried out within the framework of legislation, which ensures the legality and transparency of their activities [1; 21].

It can be assumed that any system created by a person to achieve his goals is aimed at meeting the needs and interests of people. Therefore, taking into account the above definitions, the center of the energy security system is its object — man, society and the state, as well as their interests. The distinct characteristics of this facility are most clearly reflected in its energy-related interests, which will be examined in detail in a subsequent section.

When we talk about the security system, we are simultaneously aware of the existence of certain threats to this security. Without these threats, there would be no need to create such a system, which makes it possible to identify threats as the second main element. The third defining element is the purposeful activity of energy security entities, which can have an impact on the two previous elements.

Let's consider these elements in detail and find out the constitutional and legal features. The Law "On National Security of the Republic of Kazakhstan" defines national interests as a set of legally recognized political, economic, social and other needs of the Republic of Kazakhstan, the implementation of which depends on the ability of the state to ensure the protection of human and civil rights, the values of Kazakh society and the foundations of the constitutional system [2].

Therefore, it is essential to identify the place of energy issues in the framework of national interests and understand how they relate to common interests, national interests, and the energy interests of our country.

Interest in constitutional law arises from the desire of various individuals and groups, based on their own specific needs and benefits. These interests are directly addressed and supported by the provisions of the Constitution and laws of Kazakhstan, ensuring their satisfaction. These interests have a high level of importance and priority, serving as a fundamental basis for their realization. They cover a wide range of subjects and issues, characterized by a universal legal nature. Additionally, they are guaranteed by the law, providing reliable protection for their implementation.

It is essential to differentiate between private interests that belong to individuals and those that represent the interests of social groups, as well as public interests that represent the broader interests of society. Public interests often arise from a balance between different group interests.

It is also important to note the difference between public and state interests. There are notable parallels among these interests, given that the state is fundamentally composed of its people. However, state interests are, in essence, efforts by the government — through official agencies and representatives — to interpret, shape, and institutionalize public interests within the framework of laws and regulations.

Regarding the distinction and possible conflict between public and private interests, it is correct to consider these interests as interests of different levels. E.V. Chikunova argues that the basis for resolving the contradictions between the interests of various actors should be based on a fundamental principle: the state, through its law-making bodies, should aim to ensure that the observance of public interests benefits every bearer of a private interest. At the same time, it is essential to limit the expression of subjective interests that are not in line with the interests of society or the state, and to educate their bearers about these differences. This can be achieved by raising awareness among the holders of private interests [3; 308].

This allows us to understand that public and private interests should not be in conflict or opposed to each other. Instead, the realization and protection of public interests creates conditions for the free realization of private interests.

Competition can only occur between the interests of individuals and social groups, as they can differ greatly from each other and have unique characteristics due to the nature of each entity. If we refer back to the previously discussed definition of national interests, they represent public interests that are essential for ensuring a sufficient level of national security.

V.V. Mamonov points out that national interests have a strong state-legal importance and are usually embodied in legal regulations and protected through the use of state enforcement [4; 54-55]. These are the most important characteristics of this concept.

Energy interests are the concerns and needs of various entities related to meeting the demand for fuel and energy resources.

Thus, it is clear that energy interests are both private and public concerns of all parties in meeting the demands for fuel and energy resources. We can also formulate national energy interests differently as public energy interests. Usually, such interests are fixed in the form of state interests, which are formulated by official authorities.

Taking into account the provisions of Article 1 of the Constitution of the Republic [5], the highest values of Kazakhstan are the human being, his life, rights, and freedoms. Therefore, the guarantee of human and civil rights and freedoms is a fundamental national interest that cannot be achieved without the proper protection of energy interests.

The energy security system of Kazakhstan is based on the prioritization of national interests in the energy sector. However, it also considers the interests of each citizen, society, and the state as a whole. When analyzing threats to Kazakhstan's energy security, it is important to note that they are varied and constantly evolving, making it difficult to define them clearly. In foreign literature, these threats are often described in terms of risks or dangers.

In general, threats to energy security always pose a threat to the entire society, which cannot exist without energy services provided and necessary for the population, economy, and the country's defense capability [6; 68]. In the scientific literature, threats to energy security are often understood as actions, events, phe-

nomena, or a combination of these factors that pose a danger and are aimed at violating energy security as a whole or its individual components or directly at its participants [7; 148].

The key to comprehending energy security threats lies in their systematic classification based on a diverse and well-established set of criteria. Energy security threats can be classified as follows:

1. By origin: internal or external.
2. By focus on specific economic activities: industrial, transportation, food, or household.
3. By duration: long-term or short-term.
4. By source of danger: natural, human-made, or anthropogenic.
5. By form: political, informational, economic, military, psychological, or technological.
6. By targeting specific energy facilities: mining, transportation, processing, or production.
7. By potential or real action [7; 151].

Various classifications of threats to energy security can be found in the foreign scientific literature. Some scientists divide these threats into four categories:

1. Threats caused by human activity.
2. Problems caused by shortcomings in technology.
3. Risks associated with the characteristics of energy resources.
4. Environmental factors that pose a threat.

It should be noted that some threats can simultaneously belong to multiple categories.

Jim Watson identifies the following types of threats: 1) depletion of fossil fuels; 2) insufficient investments in energy infrastructure; 3) failure of technology and infrastructure; 4) deliberate disruptions in the energy sector [8].

I. Manzhul, based on a detailed analysis of various classifications of threats to energy security, suggests the following criteria: 1) by factors: objective and subjective; 2) by object of occurrence (resources: coal, oil, gas, hydropower, nuclear energy, alternative sources); 3) by subject of occurrence; 4) by areas of occurrence: political, eco economic, socio-economic; 5) by scale: global, regional, local; 6) by sources of origin: natural, man-made, anthropogenic; 7) by duration of action: one-time, short-term, medium-term, long-term; 8) by scale of damage or danger: minor, significant, catastrophes; 9) by nature of impact on the energy sector: direct impact, indirect impact; 10) if possible, forecast: expected, unpredictable; 11) by degree of overcoming: remedial, non — regenerative [9; 71].

In addition, Article 22 of the Law "On National Security of the Republic of Kazakhstan" [2] also contains various types of threats to energy security. This includes the state of protection of fuel and energy, oil, gas and nuclear energy complexes of the economy from actual and potential threats. The state is able to ensure energy independence and sustainable development in order to meet the needs of society and other states for energy resources.

We believe that threats and their types form the basis for dividing the energy security of the Republic of Kazakhstan into different components.

Energy security can be divided into two main categories:

1) *Raw material security*: availability of own energy sources such as oil, gas, coal and uranium, as well as renewable sources; diversification of energy supply by using various types of fuel and technologies; development of infrastructure for extracting, transporting and storing energy resources.

2) *Energy efficiency and energy conservation* (saving resources by reducing energy consumption through the use of more efficient technologies and equipment); environmental sustainability (reducing greenhouse gas emissions and pollution of air, water, and soil); energy infrastructure development (construction and modernization of power plants, networks, pipelines, and other facilities to ensure the stability of the energy system against external and internal threats.

Threats to energy security significantly influence the formation of the state's energy policy, which should be aimed at minimizing the effects of energy threat factors. Thus, threats significantly direct the activities of the state and determine priority areas of activity in the energy sector, which include the following sets of measures:

1) legal (development and improvement of legislation);
2) organizational and managerial (effective management system);
3) financial and economic (ensuring investments);
4) social (safe conditions and decent pay);
5) technical (compliance with regulations in the construction and operation of energy facilities); [9; 71];
6) scientific and technical (development and implementation of new technologies).

The third key element of the energy security system of the Republic of Kazakhstan is the purposeful activity of energy security entities, which is capable of influencing the object of energy security (including energy interests) and threats to energy security.

In a broad sense, we can consider all subjects of constitutional law, without exception, as subjects of energy security, since each of them is capable of influencing the above-mentioned aspects of energy security. In view of this, ensuring energy security is a complex process involving not only government agencies, but also civil society institutions, as well as citizens authorized by law to protect national interests. These entities actually form a system aimed at ensuring energy security.

However, as scientists note, it is important to distinguish between a security system, including energy, and a system for its provision. The first aspect reflects the balance of interests and threats, incorporating measures implemented by various government agencies to address these challenges. The second is an organizational structure consisting of government institutions, forces, means, and constitutional human rights and freedoms. At the same time, security activities should be carried out exclusively within the framework defined by the Constitution and laws of the Republic of Kazakhstan.

Discussion

The legislation of the Republic of Kazakhstan does not clearly define the term "energy security". Even the country's main law, the Constitution, does not disclose this concept. The Constitution establishes the general principles and foundations of the state structure, as well as the rights and freedoms of man and citizen, without going into detail in specific areas. However, various articles of the Basic Law mention such terms as "environmental security", "information security", "national security" and "public security" [5]. The issue of including the concept of "energy security" in the Constitution is debatable. Since the Basic Law is the main law of the state, including too detailed or specific provisions in it may lead to its overload. In addition, a clear definition of energy security may limit flexibility in decision-making. Government agencies must be ready to quickly respond to new challenges and threats, since the modern world is changing rapidly, and what seems relevant today may lose its significance in the future.

In various regulatory documents and scientific studies one can find various definitions and interpretations of the concept of "state energy security".

The concept of energy security is enshrined in the Law "On National Security of the Republic of Kazakhstan", where paragraph 1 of Article 22 states that it is "a condition that provides for the state of protection of the fuel and energy, oil and gas and nuclear energy complexes of the economy from real and potential threats, in which the state is able to ensure energy independence and their sustainable development to meet the needs of society and the state for energy resources" [2]. That is, the legislator in this case considers energy security as an element of economic security, which, in turn, is an integral part of the national security of the Republic of Kazakhstan.

In the "Concept of Development of the Uranium Industry and Nuclear Energy of the Republic of Kazakhstan for 2002–2030" of August 20, 2002, which is no longer in force, a definition was provided: "Energy security is a guaranteed, reliable energy and fuel supply necessary for the sustainable functioning of the material production and social sphere sectors on an economically reasonable basis under normal conditions, as well as their survival under emergency circumstances" [10]. This approach corresponds to the definition of energy security given by the World Energy Council: "...Energy security is the confidence that energy will be available in the quantity and quality required in the given economic conditions" [11].

If we talk about strategic documents, there is a Concept for the development of the fuel and energy complex of the Republic of Kazakhstan for 2023–2029. This document addresses energy security in various aspects. First, the strategy emphasizes that energy security is essential to ensure the sovereignty of Kazakhstan. Second, the energy infrastructure is seen as a flexible tool for ensuring reliable and safe energy supply. Third, projects to create new oil infrastructure, expand and construct all types of energy generation based on renewable sources, and develop emergency response plans for all businesses are seen as key measures to enhance the energy security of Kazakhstan.

In this concept, the concept of energy security is mentioned frequently, but in the context of risks, prospects and tasks associated with this area. However, a clear definition of "energy" security is missing in the document [12].

In scientific research, the category of "energy security" is interpreted in broad and narrow meanings, expanded or with an emphasis on key aspects of the sphere. Thus, D. Yergin quite succinctly defines the cat-

egory under study, namely as "the availability of sufficient reserves at affordable prices", but does not take into account the closed cycle of production and energy carriers [13].

An interesting definition of "energy security" is proposed by Sanam Haghighi, who concludes that the generally accepted practical definition is "the concept of adequate energy supply and reasonable price", that is, energy must be physically accessible and its price must be reasonable" [14; 14].

According to this approach, we can cite the interpretation of C. Winzer, who, based on his own convictions, considers energy security as a "process of continuity of energy supply in accordance with needs". At the same time, the author suggests considering such components of security as economic, environmental and social in the context of risks that should be limited or avoided by means of the measurement algorithm he proposed: "state influence, the scope of the threat, the speed of the threat impact, the size of the threat impact, the sustainability of the threat consequences, the spread of the consequences of the threat, the features of the threat impact, the certainty of the threat" [15].

Researchers A. Cherp and J. Jewel limit the meaning of the essential content of energy security to an emphasis only on avoiding threats to the security of "important energy systems", which include energy and technological resources based on their direct affiliation with the "energy flow" [16; 417].

B. Sovacool and M. Brown, analyzing energy security for a long time in their scientific publications, came to the conclusion that it changes under the influence of the following factors: the availability of energy, its accessibility, the efficiency of its use, and the environmental friendliness of its use [17].

E.E. Leukhina considers energy security as a state of protection of the energy interests of various subjects, which in turn is based on public relations regulated by the norms of law. However, it is fair to note that in our case it is advisable to say that these public relations are based on the appropriate state of protection of interests, since the economic aspect is decisive and basic, and already on the basis of the corresponding economic state certain public relations in the field of law arise and change [18; 18].

Most Kazakh scientists consider energy security issues at the macro level and consider it an integral part of national and economic security. Thus, Yelibayeva A. considers the problems of energy security from the point of view of the economic efficiency of the fuel and energy complex and its minimal negative impact on the environment. This is especially important for our Republic at the present [19; 48].

The above definitions confirm the previously stated theses and also prove that:

- energy security is an integral part of economic and national security;
- energy security implies certain real and potential threats in the energy sector and the ability to counteract them;
- is aimed at the stability of the existing system of ensuring the energy needs of various entities;
- is associated with the availability of energy or fuel and energy resources at an economically affordable price;
- the leading place is occupied by ensuring state interests in the energy sector (from time to time the concept of energy interests is used).

So, in our opinion, energy security, as an object of state policy, should be understood as a set of public relations that are regulated by legal norms. This makes it possible to achieve national energy interests, ensure the economic sovereignty of both individuals and legal entities, as well as the state as a whole. In addition, energy security is aimed at preserving the natural environment by eliminating existing threats.

As can be seen, in all regulatory definitions and most economic definitions, energy security is considered as a certain state. Other economic definitions also consider it as the ability of the state to counter threats. In other words, energy security is often considered as a state that is already characterized by protection from threats in the energy sector. This approach may somewhat narrow the concept of energy security. Only in legal definitions energy security is considered as a system of public relations that develops in the relevant sphere of society's activity.

At the moment, to ensure the energy security of a single country, it is necessary for its energy system to be in a state that allows it to supply the economy and social sphere with energy resources technically reliably, stably, economically efficiently and taking into account environmental standards. This should happen despite the existing and predicted negative internal and external factors.

Energy is one of the traditional regulated industries, given that: 1) energy is a strategic sector of the economy of any state. Sustainable, reliable, safe and affordable energy supply is necessary for the functioning of other sectors of the economy, the effective operation of the state and the normal existence of society; 2) access to modern energy services is a prerequisite for successful human participation in social and economic life, proper implementation of their rights and freedoms; 3) energy security of the state is one of the

main areas of national security of the state; 4) the functioning of the energy sector is inextricably linked with the risk to the environment; 5) energy is one of the areas of existence of natural monopolies [20; 45-46].

It should be noted that these areas generally coincide with the priorities for ensuring energy security defined by the International Energy Agency, the International Monetary Fund, the World Bank, and other international institutions engaged in research and implementation of specific projects in this area.

In recent years, new threats to the sustainable functioning of the country's energy sector have emerged in the energy sector. President Kassym-Jomart Tokayev emphasized "the problems of infrastructure deterioration, which affects the pace of industrialization of our country" [21]. Therefore, previously adopted mechanisms and tools for management activities in the field of energy security also need to be revised.

In light of these circumstances, the issue of improving legislation related to energy security has become particularly important for the Republic of Kazakhstan over the past five years. This is due to the fact that previously adopted legislative acts designed to address practical issues in this area proved unable to reflect the current challenges and new threats faced by the country.

Conclusions

The energy security system of the Republic of Kazakhstan is based on its object, which is a set of energy interests of citizens, state and non-state institutions, as well as society and the state as a whole. A special role in this facility is played by national interests in the field of energy, the protection of which is an essential condition for ensuring an adequate level of energy security and respect for the constitutional rights and freedoms of citizens.

This facility is constantly facing threats to energy security, which largely determine the energy policy of the state. It should be aimed at minimizing the impact of factors that pose a threat to energy security. Threats also serve as the basis for structuring the energy security of the Republic of Kazakhstan into various types.

Thus, the energy security system of the Republic of Kazakhstan is a set of dynamic elements that are constantly in the process of development and interact with each other. Despite the certain attention of legislators to the regulation of energy security as one of the most important components of national security, a necessary condition for the sustainable development of the state, economically efficient and environmentally sound provision of energy resources, the current regulatory legal acts do not specify the principles of ensuring energy security of the Republic of Kazakhstan.

It is also important for specialists in the field of constitutional law to explore topical issues such as the right to access energy services, the right to energy security, as well as to study their guarantees and implementation features. Also, in the process of developing the conceptual and categorical research apparatus, it is important to expand the content of the concept of "energy security". This will allow us to consider energy security in a broad and narrow context, as well as highlight energy security at the level of a person, a country and the international community.

In our opinion, in modern conditions, the energy function of the state is of particular importance, which, like its other external and internal functions, requires both deep theoretical understanding and legislative consolidation. This, first of all, should be reflected in the functional and competence characteristics of public authorities and officials responsible for the implementation of energy policy.

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Қазақстан Республикасының энергетикалық қауіпсіздік жүйесін конституциялық-құқықтық реттеудің ерекшеліктері: қазіргі жағдайы және болашағы

Мақалада энергетикалық қауіпсіздікті заңнамалық қамтамасыз ету және механизмдерін анықтауға байланысты мәселелер қарастырылған. Зерттеудің өзектілігі осы салада уақтылы әрекет етуді және қажетті шараларды заңнамалық тұрғыдан бекітуді талап ететін жаңа сын-қатерлер мен қауіптердің пайда болуымен байланысты. Энергетикалық қауіпсіздік ұлттық қауіпсіздіктің маңызды аспектісі, өйткені ол мемлекеттің тұрақтылығына, оның экономикалық дамуына және азаматтардың әлеуметтік әл-ауқатына тікелей әсер етеді. Қазақстан Республикасының заңнамасында «энергетикалық қауіпсіздік» ұғымы жан-жақтылығымен және кеңдігімен сипатталады, алайда нормативтік құқықтық актілерде оның нақты анықтамасы жоқ. Кейбір жағдайларда ол тек сипаттамалық түрде айтылады. Өз кезегінде, Қазақстан Республикасының Конституциясы, заңдары және басқа да нормативтік құқықтық актілері «энергетикалық қауіпсіздік» түсінігіне жеткілікті нақты анықтама бермейді. Заңнамада осы терминді нақты және дәл анықтау үшін құқықтық дәлелдеу алгоритмін әзірлеу қажет. Бұл энергетикалық қауіпсіздікті қамтамасыз ету үшін неғұрлым нақты және түсінікті құқықтық негіз құруға мүмкіндік береді. Нәтижесінде біз мемлекеттің, жеке компаниялардың және азаматтардың энергетикалық ресурстар мен инфрақұрылымды қорғау саласындағы қандай міндеттері бар екенін жақсы түсіне аламыз. Энергетикалық қауіпсіздік ұлттық қауіпсіздіктің құрамдас бөлігі болғандықтан, Қазақстан Республикасының заңнамасында бұл ұғымды нақты анықтау мемлекеттегі тұрақтылықты нығайтуға ықпал етеді. Бұл Үкіметке энергетикалық ресурстарды қорғау және елді сыртқы және ішкі қауіп-қатерлерге төзімді ету жөніндегі күш-жігерін тиімді үйлестіруге мүмкіндік береді.

Кілт сөздер: энергетикалық қауіпсіздік, ұлттық қауіпсіздік, конституциялық-құқықтық реттеу, энергетикалық қауіпсіздік жүйесі, энергетикалық қауіпсіздік элементтері, энергетикалық мүдделер, энергетикалық қауіпсіздік қатері.

А.К. Кукеев

Особенности конституционно-правового регулирования системы энергетической безопасности Республики Казахстан: современное состояние и перспективы

В статье рассматриваются вопросы, связанные с определением механизмов и законодательного обеспечения энергетической безопасности. Актуальность исследования обусловлена появлением новых вызовов и угроз в данной сфере, что требует своевременного реагирования и законодательного закрепления необходимых мер. Энергетическая безопасность представляет собой наиболее важный аспект национальной безопасности, поскольку она напрямую влияет на стабильность государства, его экономическое развитие и социальное благополучие граждан. В законодательстве Республики Казахстан понятие «энергетическая безопасность» характеризуется многогранностью и широтой, однако в нормативно-правовых актах отсутствует его чёткое определение. В некоторых случаях оно упоминается лишь описательно. В свою очередь, Конституция РК, законы и другие нормативно-правовые акты не дают достаточно чёткого определения понятию «энергетическая безопасность». В связи с этим, необходимо разработать алгоритм юридической аргументации, позволяющий ясно и точно определить этот термин в законодательстве. Это создаст более конкретную и понятную правовую основу для обеспечения энергетической безопасности. В результате мы сможем лучше понять, какие обязанности есть у государства, частных компаний и граждан в сфере защиты энергетических ресурсов и инфраструктуры. Поскольку энергетическая безопасность является неотъемлемой частью национальной безопасности, точное определение этого понятия в законодательстве Республики Казахстан будет способствовать укреплению стабильности в государстве. Это позволит правительству более эффективно координировать свои усилия по защите энергетических ресурсов и сделает страну более устойчивой к внешним и внутренним угрозам.

Ключевые слова: энергетическая безопасность, национальная безопасность, конституционно-правовое регулирование, система энергетической безопасности, элементы энергетической безопасности, энергетические интересы, угрозы энергетической безопасности.

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Legal regulation of migration processes: regional experience and legislation of the Republic of Kazakhstan

Migration processes are of specific significance within the Republic of Kazakhstan, and national policies attach great importance to their development, including with regard to legal regulation. The urgency of the problem is due to the fact that the most important and least solvable problem of migration legislation is directly related to its ability to coordinate a wide range of social problems. This is mainly related to the issues of entry of foreign citizens and stateless persons, as well as the legal or illegal stay of these persons in foreign countries. At the regional level, measures aimed at combating the problem of illegal migration represent a set of effective immigration legislation, its prevention and enforcement. Therefore, the article attempts to identify and analyze the legal and regulatory basis of migration policy of the European Union (hereinafter — EU), the Eurasian Economic Union (hereinafter — EAEC), the Commonwealth of Independent States (hereinafter — CIS). The regulation of migration processes in Kazakhstan was examined through an analysis of the Republic of Kazakhstan's migration policy and the existing foreign policy tools for managing international migration. Furthermore, the effective practices of regional organizations in handling migration flows were discussed, along with suggestions for enhancing the management of migration processes in the Republic of Kazakhstan. Based on the assessment of the preferences and drawbacks of the migration process in the Republic of Kazakhstan, it has been determined that there is a necessity to enhance the legal frameworks for executing national migration policies. Moreover, there's a have to be support collaboration between Kazakhstan and CIS and EAEC member states through bilateral and multilateral agreements to prevent illegal labour migration.

Keywords: migration process, migration policy, national policy, EU, EAEU, CIS.

Introduction

One of the most critical challenges facing contemporary society is the legal governance of migration processes. It is evident that aligning migration management with international standards while safeguarding the rights of migrants represents a pivotal focus of the Republic of Kazakhstan's policy initiatives. On the one hand, the reason for the expansion of the scale of migration processes, as a result of conflicts, wars, natural disasters, can be seen that the number of people who were most likely to forcibly leave their country is increasing. On the other hand, it is linked to economic factors, since each country has a different level of wages. This situation encourages people to cross the borders of neighboring countries and earn money [1].

In the address to the citizens of Kazakhstan titled "Strategy "Kazakhstan-2050": A New Political Course for the Established State", there is a notable focus on the importance of tackling migration issues within the nation and improving supervision of migratory flows coming from adjacent countries [2].

Kazakhstan has held some activities related to the migration field, but the resolution of issues related to migration processes remains one of the important issues on the agenda. The Republic of Kazakhstan, actively involved in modern international migration processes, is currently looking for effective tools to manage migration for the benefit of society and the state. The solution of labor migration issues is also given great attention by international communities, and it is also important to consider their experience in practice.

Methodology and methods

In the study of the article, Resolution of the Government of the Republic of Kazakhstan dated December 30, 2022 No. 961 "On approval of the concept of migration policy of the Republic of Kazakhstan for 2023–2027", as well as the Law of the Republic of Kazakhstan dated May 13, 2020 No. 327-VI "On

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amendments and additions to some legislative acts of the Republic of Kazakhstan on the regulation of migration processes", were utilized. Also within the EAEU, the "Treaty on the EAEU", adopted on 29 May 2014, and the adopted Directives of the Council of the European Union related to this study are applied.

Discussion

Review of regional experience on the legal regulation of migration processes, it can be seen that migration processes take different forms. The EAEU is based on integration interaction at all levels and is an important area of interstate cooperation, the migration part of which addresses many issues. In particular, the development of the regulatory framework regulating the unified mechanisms related to the migration process in the EAEU member states is envisaged.

Since January 1, 2015, a unified labor market has been established for the citizens of the member states of the Eurasian Economic Union, enabling the free movement of labor. The legal framework governing this domain is articulated in the "Treaty on the Eurasian Economic Union", which was adopted on May 29, 2014. Notably, Section XXVI, entitled "Labor Migration", contains provisions that facilitate the conditions under which labor migrants from member states may reside within the union. According to Article 96 of the "Treaty on the Eurasian Economic Union", "member states are obligated to collaborate in coordinating policies related to labor migration regulation within the Union. This includes support for the organized selection and recruitment of workers from member states for employment within the member states". Nevertheless, it is crucial to emphasize that the EAEU documents indicate that equal treatment for nationals of member countries is not established [3].

The European Union has established the most comprehensive framework for the legal regulation of international migration processes. Presently, a multitude of documents have been adopted and enacted within the EU, wherein the legal governance of migration policy occurs at two levels: the legislation of individual EU member states and the regulatory documents issued by the EU [4].

With to find a balanced solution on cooperation on illegal migration over the past this, EU member states emphasized the need in recent years. Based on the list of countries included in the Council of Europe Regulation № 539/2001, "list of third countries whose nationals must have visas when crossing external borders and the countries whose nationals are exempted from this requirement", defining the EU's priorities on legal regulation of external and regional migration processes [5], provides established conditions for the entry of foreign nationals into the EU. The document includes a comprehensive list of countries that require a visa to cross the external borders of a member state, as well as a list of countries that are exempt from visa requirements for stays of up to three months.

The primary aim of the EU immigration policy is to attract and retain highly skilled professionals while discouraging the influx of low-skilled labor. In this regard, the Council Directive 2009/50/EC, titled "On establishing conditions for entry and stay of third-country nationals with a view to obtaining highly qualified work". Specifically, this document will facilitate the process of family reunification for these immigrants and will consider provisions for the expedited acquisition of the status of "long-term resident" in the EU. These measures are designed to provide extensive opportunities for employment within the EU.

Likewise, within the EAEU, trends in migration are shaped by various factors: on one hand, laborers aspire for just rewards for their work, while on the other hand, countries receiving migrants aim to tackle the deficit of low-cost and proficient workers [6].

The right of third country nationals to move and reside in the EU is enshrined in the following act: directive 2003/86/EU Council "On the right to family reunification" [7], directive 2003/109/EU Council "On the status of citizens of third countries who are long-term residents" [8], Directive 2011 /98 /EU Council "On the procedure for applying for a single permit for citizens of third countries to live and work in the territory of a member state and on the set of Rights common to workers of third countries legally residing in a member state" [9].

The essential difference of legal regulation of labor migration within the EAEU is the de facto complete absence in the EU of norms of "Treaty on EAEC" and other multilateral regional international agreements of the states that are part of it, the labour migration of third-country nationals, and there is a substantial legal framework for such regulation in EU countries. In this context, there is a need to develop a migration policy strategy from third countries that can use the visa-free space in the EAEU. The need to involve these third countries in the migration management process is due to the need to distribute the burden of responsibility of the EU in this area.

In this section, the Eurasian Economic Commission should be invited to initiate the inclusion in the "Treaty on the EAEU" of provisions on legal regulation of labor migration of third-country nationals, taking into account the experience of the EU and the feasibility of staying in the territory of the states belonging to the EAEC. There is also a need to identify specific categories of migrant workers for which special employment arrangements are in place.

In addition, the EU policy places particular emphasis on broadening the contractual framework for readmission, aiming to stimulate partner countries' interest in concluding agreements beneficial to the EU. This approach is complemented by measures that promote development in migrants' countries of origin, including technical support, exchange of information, and consultations. [10].

The Agreement "On Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers", which was established under the framework of the CIS, remains in effect within the territory of the EAEU. The agreement demonstrates that the models of labour migration management applied in the EAEU — initiated by Russia, Belarus and Kazakhstan — contribute to the development of a comprehensive labour migration regime, taking into account economic disparities between member states. The rights and obligations of migrants are defined in bilateral intergovernmental agreements [11]. Nevertheless, the fight against illegal migration remains one of the priority areas for cooperation between the internal affairs agencies of the CIS member states in combating cross-border crime [12]. Speaking about illegal migration, we will focus on one of the features of illegal migration characteristic of the CIS: most migrants enter the receiving state legally, but then, in violation of the legislation, or rather, due to ignorance of it, they pass into the category of illegal migrants.

An essential area of collaboration within the Commonwealth of Independent States necessitates the enhancement of the accounting system for citizens of third countries and stateless individuals entering the territories of CIS member states. It is also urgent to analyze important data related to illegal migration within the country and to enhance the rapid exchange of this information [13]. To ensure efficient oversight of migration patterns, a system will be implemented involving an inter-state database to monitor migrant workers and a separate database to record breaches of migration laws and occurrences of illegal migration.

Results

The Republic of Kazakhstan guarantees observance of human rights on its territory in the process of regulating migration processes in accordance with its Constitution, international obligations in the field of human rights, and other normative legal acts. The problem of illegal migration is acquiring an increasingly clear characteristic that it poses a threat to stability and security for all world communities. It is important to recognize that illegal migration activities persist along the state border of the Republic of Kazakhstan. A key element contributing to this problem is the visa-exempt policy adopted by numerous countries, including Kazakhstan. Citizens of nations outside of Russia, such as those from Pakistan, Bangladesh, Kenya, Afghanistan, Tajikistan, Uzbekistan, and various other countries, enter Russia through Kazakhstan's border. In some instances, they illegally pass through established checkpoints [14; 59].

Following Kazakhstan's inclusion among the 30 developed nations, and acknowledging the imperative to expand the understanding of migration policy, the nation has implemented various key policy documents. In particular, it is pertinent to refer to "the concept of migration policy of the Republic of Kazakhstan for the years 2023–2027", which was adopted by resolution No. 961 by the Government of the Republic of Kazakhstan on November 30, 2022. Under this framework, a key objective is to guarantee the proper accounting and oversight of foreign workers participating in labor activities conducted individually and beyond allocated quotas, operating under a patent. One of the main areas in the management of migration processes is to strengthen the fight against illegal migration, implemented at national and international levels. The concept also states that the main areas of foreign policy in developed countries in the field of countering illegal migration are digitalization of all aspects of public administration, processing and analysis of migration flow data [15].

According to G.N. Appakova, E.N. Nesipbekov, and A. Zh. Panzabekova, "the analysis of the concept of migration policy of the Republic of Kazakhstan for 2022–2026 allows us to conclude that the presented indicators are insufficient to fully cover the tasks set for migration policy. There are few of them, and besides, some indicators do not have a justification for units of measurement and mostly include them as indicators. This is especially true for population figures and the number of bilateral agreements" [16].

Government agencies regulating this area noted that, despite the measures taken to reduce the growth in the volume of illegal labor immigrants accepted by the state, problematic issues remain regarding the legalization of labor activity of labor immigrants attracted by small businesses [17].

One of the latest legislative innovations is the law of the Republic of Kazakhstan dated May 13, 2020 No. 327-VI "On amendments and additions to some legislative acts of the Republic of Kazakhstan on the regulation of migration processes" [18]. However, this law does not regulate the issues of illegal recruitment of labor immigrants by small businesses.

The reason for illegal migration in the Republic of Kazakhstan is often the inability of migrants and employers to use labor legislation incorrectly, includes issues such as employment practices that disregard the regulations governing the drafting of employment contracts, the hiring of low-skilled foreign workers, and violations related to working conditions and their corresponding remuneration [19].

Highly qualified specialists are often invited by local employers (legal entities). At the same time, employers receive permits from local executive bodies for free and legal work of foreign employees before their arrival [20]. However, this category includes only citizens of countries that have a visa regime in the Republic of Kazakhstan.

In order to tackle international migration, one of the most effective strategies is to enhance the number of signatory readmission agreements with foreign nations. However, the establishment of agreements regarding the expulsion of individuals involved in illegal migration presents significant legislative and practical challenges. Thus, the establishment of international readmission agreements constitutes one of the primary avenues for the legal regulation of illegal migration processes. Currently, the Republic of Kazakhstan has entered into and ratified 12 agreements pertaining to readmission with the following countries: Switzerland, Uzbekistan, Belarus, Hungary, Lithuania, Russia, Latvia, Moldova, the Czech Republic, Germany, Norway, and the Benelux states. Additionally, nations in both the immediate and distant regions maintain readmission agreements with 13 other states, namely: Afghanistan, Bulgaria, Greece, Iran, Iraq, Canada, Cyprus, Korea, Kyrgyzstan, Pakistan, Poland, Tajikistan, Ukraine [14; 30].

The examination of the migration legislation of the Republic of Kazakhstan reveals a dynamic evolution in the state's approaches to migration processes, as well as its regulation. However, despite this situation, it is essential to address the problem areas of compliance with migration legislation through further enhancement of migration policy. This necessitates the establishment of dialogue platforms between states, where migration issues can be discussed at both national and international levels.

Conclusions

International migration is one of the most important challenges facing the modern world in a globalized world, as well as a process that has direct relevance to all aspects of the life of communities in the world. The formation of a full-fledged new migration situation in all states affects the development of international relations, and also has certain consequences for the multilateral system. Within the context of Eurasian integration, the legislation of the country has been expanded to incorporate new provisions, which notably include modifications to the regulations governing the entry and exit of foreign nationals into Kazakhstan. Furthermore, the protocols for their movement within this region, as established by the Eurasian Economic Union (EAEU), have been considerably streamlined. In addition, by studying the legal regulation mechanisms used in the CIS and EU, it is possible to form new directions that can be introduced into the migration system.

Currently, there is a need to improve the migration legislation. It is essential to establish conditions that enhance the appeal of a skilled foreign labor force in Kazakhstan, which is sought after in the labor market. This includes facilitating their entry, residence, and professional activities. Secondly, as part of countering the organizers of illegal migration channels, it is necessary to develop permanent means of operational communication for the exchange of information with law enforcement, as well as other bodies of foreign states. Third, there is a need to conduct an examination of the system of legislative acts aimed at regulating migration using foreign experience.

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Көші-қон үдерістерін құқықтық реттеу: өңірлік тәжірибе және Қазақстан Республикасының заңнамасы

Қазақстан Республикасында көші-қон үдерістері ерекше орын алады, оның дамуына ұлттық саясат деңгейінде, оның ішінде құқықтық реттеу мәселелерінде маңызды мән беріледі. Мәселенің өзектілігі көші-қон заңнамасының маңызды, әрі аз шешілген сұрақтары, оның әлеуметтік мәселелерінің кең ауқымын үйлестіру қабілетіне тікелей байланысты болатындығында. Бұл негізінен шетел азаматтары мен азаматтығы жоқ адамдардың келуі, сонымен қатар аталған адамдардың шет елдерде заңды не болмаса заңсыз түрде болуы мәселелерімен байланысты. Өңірлік деңгейде заңсыз көші-қон проблемасымен күресуге бағытталған шаралар иммиграциялық заңнаманың, оның алдын алу мен оның орындалуын қамтамасыз етудің тиімді жиынтығын білдіреді. Сондықтан да, мақалада Еуропалық одақ (бұдан әрі — ЕО), Еуразиялық экономикалық одақ (бұдан әрі — ЕАЭО), Тәуелсіз Мемлекеттердің Достастығының (бұдан әрі — ТМД) көші-қон саясаттарының нормативтік-құқықтық негіздерін анықтауға және талдауға әрекет жасалды. Сондай-ақ, Қазақстан Республикасының көші-қон саясаты мен халықаралық көші-қонды реттеудің қолданыстағы сыртқы саяси құралдарын талдау негізінде көші-қон үдерістерін реттеудің қазақстандық тәжірибесі қарастырылды. Бұдан басқа, өңірлік ұйымдардың көші-қон ағындарын басқарудағы нәтижелі тәжірибесі Қазақстан Республикасында көші-қон үдерістерін басқаруды жетілдіру бойынша ұсынымдар ұсынылды. Қазақстан Республикасында көші-қон үдерісін дамытудың оң және теріс жақтарын талдау негізінде көші-қон саласындағы ұлттық саясатты іске асырудың құқықтық тетіктерін жетілдіру қажеттілігі, сондай-ақ заңсыз еңбек көші-қоны фактілерін болғызбау мақсатында екіжақты және көпжақты келісімдер жасасу жолымен ҚР-дың ТМД және ЕАЭО-ға мүше мемлекеттермен ынтымақтастығын күшейту қажеттілігі туралы қорытынды жасалды.

Кілт сөздер: көші-қон үдерісі, көші-қон саясаты, ұлттық саясат, ЕО, ЕАЭО, ТМД.

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Правовое регулирование миграционных процессов: региональный опыт и законодательство Республики Казахстан

Особое место в Республике Казахстан занимают миграционные процессы, развитию которых придается важное значение на уровне национальной политики, в том числе в вопросах правового регулирования. Актуальность проблемы обусловлена тем, что важнейшая и наименее решаемая проблема миграционного законодательства напрямую связана с его способностью координировать широкую сферу его социальных проблем. В основном это связано с вопросами въезда иностранных граждан и лиц без гражданства, а также легального или незаконного пребывания указанных лиц в зарубежных странах. На региональном уровне меры, направленные на борьбу с проблемой нелегальной миграции, представляют собой совокупность эффективного иммиграционного законодательства, его профилактики и правоприменения. Поэтому в данной работе предпринята попытка выявить и проанализировать нормативно — правовые основы миграционной политики Европейского союза (далее — ЕС), Евразийского экономического союза (далее — ЕАЭС), Содружества Независимых Государств (далее — СНГ). Также, был рассмотрен казахстанский опыт регулирования миграционных процессов на основе анализа миграционной политики Республики Казахстан и действующих внешнеполитических инструментов регулирования международной миграции. Кроме того, был представлен эффективный опыт региональных организаций в управлении миграционными потоками, рекомендации по совершенствованию управления миграционными процессами в Республике Казахстан. На основе анализа преимуществ и недостатков развития миграционного процесса в Республике Казахстан, был сделан вывод о необходимости совершенствования правовых механизмов реализации национальной политики в области миграции, а также необходимости усиления сотрудничества РК с государствами-членами СНГ и ЕАЭС путем заключения двусторонних и многосторонних соглашений в целях предотвращения фактов незаконной трудовой миграции.

Ключевые слова: миграционный процесс, миграционная политика, национальная политика, ЕС, ЕАЭС, СНГ.

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Legal and economic issues of improving the medical waste management system

Currently, the unfavorable environmental situation with medical waste in the Republic of Kazakhstan is one of the acute problems. In addition, nature and the population of Kazakhstan and neighboring countries are in a worse situation. In this article, the legal analysis of the improvement of the medical waste management system in the Republic of Kazakhstan is carried out, the legal foundations of the provision are considered. The analysis of the current state of medical waste management in a number of regions of the Republic of Kazakhstan has been carried out, the prerequisites for the application of an integrated approach to the disposal and neutralization of this type of waste within the framework of regional environmental policy have been studied. Based on the analysis of law enforcement practice, gaps in the legal regulation of the medical waste management system have been identified. A methodological approach is proposed, which is a feature of the legal and financial justification of the territorial schemes of medical waste management used in the regions. The methodological tools of the study include statistical methods of processing data on the disposal and disinfection of medical waste. The Republic of Kazakhstan is distinguished by increased attention to the methods of handling medical waste, the desire to ensure environmental safety and the prevention of violations of legislation in the disposal of medical waste. On the other hand, low satisfaction of the authorities was revealed with the pace of solving the problems of disposal of healthcare institutions not included in the process of medical activity, including medical waste requiring disinfection and recycling. The result of the study is proposals on the need for interregional cooperation in the field of placement and construction of complexes for the processing, disposal and neutralization of medical waste of various hazard classes. The authors propose as a promising direction of scientific and technological development to create a complex of high-tech equipment for the disposal of various types of medical waste with the production of secondary raw materials, as well as the neutralization of medical waste of increased and increased danger.

Keywords: medical waste, environmental safety, recycling, high-tech equipment for the disposal of medical waste, medical waste management system, incineration.

Introduction

The safe and efficient management of medical waste is one of the key issues in ensuring healthcare and environmental sustainability today. The particular danger of waste generated by medical institutions is directly related to the presence of infectious diseases, chemical, and biological hazardous substances. Therefore, improper management of such waste can harm both the environment and human health.

Currently, the issue of regulating the management of medical waste is one of the most critical challenges, as it is considered a fundamental element of state policies at both international and national levels within the framework of environmental and public health protection. It must be acknowledged that existing management systems are insufficiently developed [1].

Every year, millions of tons of waste are generated by medical institutions, including hazardous types. The need for proper management of this waste has led to economic and legal responsibility issues for both the government and the private sector. While many countries have developed legal frameworks and regulatory mechanisms to effectively organize medical waste management systems, there are still aspects that require further improvement.

The issue of handling medical waste is considered a crucial component of public epidemiological and environmental safety. Medical waste requires special attention as it poses risks to both humans and the environment due to the presence of infectious disease agents, toxic substances, and radioactive materials.

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According to the World Health Organization (WHO), legal regulation is a key element in ensuring the safe and efficient management of medical waste. WHO believes that a comprehensive legal approach is necessary to improve medical waste management systems. This involves not only adopting regulatory acts but also ensuring their effective implementation, monitoring, and public awareness. Such legal measures contribute to the protection of human health, environmental safety, and the sustainable development of society. As per WHO recommendations, governments should allocate funds to establish and maintain safe medical waste management systems. Additionally, they should engage funding organizations, partners, and other resources to ensure adequate contributions to waste management.

Furthermore, governments should implement and monitor safe medical waste management systems, support capacity-building initiatives, and contribute to ensuring the health and safety of both medical personnel and the general public.

The effective management of medical waste should be a strategic goal for any country. This issue is one of the pressing topics in our country. In the studies conducted by Nukusheva A.A., Baysalova G.T., and Beisenbayeva M.T., cases of illegal storage and disposal of medical waste in private areas, as well as the unauthorized placement of medical waste in household waste landfills, have been reported [2].

According to Article 351 of the Environmental Code of the Republic of Kazakhstan, medical waste belongs to the category of waste that is prohibited from being disposed of in landfills.

Thus, strict compliance with legislative norms and requirements regarding the effective management and neutralization of medical waste is necessary. The illegal storage of medical waste and its disposal in household waste landfills in our country pose significant environmental and public health risks. Therefore, strengthening state control, enforcing legal requirements for responsible individuals, and increasing public awareness and responsibility regarding this issue are crucial to ensuring the proper management, safe disposal, and recycling of medical waste.

Additionally, for the effective management of medical waste, sufficient funding must be allocated for the collection, utilization, neutralization, transportation, storage, and disposal of waste generated in the operations of medical institutions. In regional medical institutions, the process of handling medical waste is carried out based on its hazard classification [3].

To improve the efficiency of the medical waste management system, it is necessary to propose comprehensive solutions through an analysis of its legal and economic aspects.

Studying national legislation in the field of medical waste management, identifying gaps in the existing legal framework, comparing it with international practices, and developing recommendations for improving legal regulation form the basis for addressing legal issues.

Key issues in studying economic efficiency include analyzing the economic costs of medical waste collection, transportation, storage, and recycling; exploring opportunities to enhance economic cooperation between the public and private sectors; and proposing ways to optimize costs through the introduction of innovative technologies and green economy principles.

In improving the management system in medical institutions, it is crucial to study best practices in medical waste management, implement training programs for staff, and raise awareness about proper waste handling.

In foreign countries, medical waste is strictly classified as hazardous waste. These countries place significant governmental attention on the collection, recycling, and disposal of medical waste. Such an approach has enabled the proper organization of processes, effective neutralization of waste, and its safe disposal [4].

According to the World Health Organization’s recommendations on medical waste management, urgent technical guidelines are required for officials to implement measures from waste storage to the disposal of incinerator residues. During the storage stage, waste bags should not be allowed to overfill, and waste collection personnel should ensure that bags of the same color are combined and sent to the appropriate disposal location. This approach helps prevent the negative impact of waste management on the environment, staff, and nearby communities.

According to Aripin, as cited in the works of Nursamsi, Thamrin, and Deni Evison, medical waste must be either incinerated or buried with lime and removed on the same day. The management, treatment, and disposal of hospital waste must ensure that it does not harm the environment or public health [5].

According to Russian researchers Kulikova O.V. and Sorokina Y.V., a study of foreign legal regulations in medical waste management has identified three main approaches to improving legislation in this field. The first approach involves issuing a specialized (independent) act specifically regulating medical

waste. India serves as a clear example of this method. The second approach regulates all types of waste under a single act, with each section dedicated to the legal regulation of a specific waste type. This approach has been implemented in the United Kingdom. The third approach regulates medical waste within the framework of legislation on public health protection and sanitary-epidemiological safety [6].

Currently, the Republic of Kazakhstan follows the third approach; however, its implementation remains underdeveloped compared to other countries. This approach is characterized by significant gaps in legal regulation and the delineation of responsibilities, requiring substantial improvements to the legislative framework. Such improvements should be carried out considering accumulated international experience and current national standards. Therefore, in the future, government authorities and representatives of the scientific community must pay increased attention to the legal regulation of medical waste management. Through joint efforts, it is essential to systematize this field and achieve the highest level of legal efficiency in its regulation.

According to Shamshurina N.G., Prisyazhnaya N.V., Pavlova Yu.V., and Shulyatyev S.V., medical waste requires special attention, as it significantly differs from other industrial and consumer waste. Medical waste may contain pathogens of dangerous diseases, toxic and radioactive substances, as well as non-degradable polymeric materials. This highlights the necessity of organizing specialized services for the processing and disposal of medical waste [7].

Sidorova M.A. notes that the existing legislative framework for handling medical waste includes several potential problems. These issues can only be resolved by enhancing legal regulation in areas related to medical production processes, medical services, and everyday human activities [8].

According to Ponomarev M.V. and Comartova F.V., the absence of licensing requirements for certain types of medical waste management services is a separate concern. Given the potential risks to human health, habitats, and the environment resulting from non-compliance with environmental and sanitary-epidemiological standards, it is necessary to introduce specific restrictions on granting permissions to business entities for engaging in such activities [9].

The analysis of foreign medical waste management systems, the development of recommendations for implementing effective methods adapted to local conditions, and the improvement of the legal and economic foundations of medical waste management are crucial for protecting public health, ensuring environmental safety, and reducing economic costs.

Enhancing the legal and economic foundations of the medical waste management system will contribute to preserving public health, ensuring ecological safety, and minimizing financial expenses.

If safety requirements for the disposal of potentially hazardous medical waste are not met, it can negatively impact the environment. Additionally, direct or indirect contact with contaminated waste, water, and soil may lead to the spread of infectious and non-infectious diseases among the population [10].

In this regard, one of the key applied tasks in solving the medical waste issue is the establishment of a medical waste management system and the improvement of its legal and financial-economic support. Research conducted under the leadership of Academician N.V. Rusakov has reliably demonstrated the necessity of enhancing the legislative framework regulating procedures for handling hazardous medical waste, as well as improving organizational-instructional [11] and methodological documents. Additionally, the study highlights the importance of using the most effective sterilization devices for medical waste. The objective of this research is to analyze the legal and economic aspects of medical waste management and to identify ways to improve the medical waste management system.

Methods and materials

In the process of writing this article, general scientific methods were used in legal science and related environmental sciences were applied as the methodological foundation of the study. These included comprehensive methods specific to environmental law, as well as comparative analysis, normative-logical methods, synthesis, and systematic legal analysis. An analysis was conducted on the existing laws, decrees, and regulatory acts governing medical waste disposal in Kazakhstan.

The study describes ways to improve the economic methods of managing environmental legal order, optimize the use of economic tools, and develop new mechanisms that contribute to more effective environmental legal regulation.

During the research, regulatory legal acts issued by the Government of the Republic of Kazakhstan and the Ministry of Health, regional programs and concepts, applied studies on this issue, electronic resources,

publications from scientific conferences, and other materials related to the development of the medical waste management system in Kazakhstan were utilized.

Results

The undeniable relevance of improving the risk management system in medical waste disposal highlights several economic and legal issues. To prevent harmful effects on human health and the environment, the general legal framework for waste management is ensured by Article 100 of the Code on Public Health and the Healthcare System (Code of the Republic of Kazakhstan No. 360-VI dated July 7, 2020) [12]. At the same time, the only existing document regulating the procedure for handling medical waste is the "Rules for Providing Information on Medical Waste" [13]. Specifically, the issues related to medical waste management are outlined in the "Sanitary Rules for Health Care Facilities", which establish sanitary-epidemiological requirements. However, these regulations remain inadequately structured and require further refinement [14].

The relevance and social diversity of the medical waste management problem are evident in the experience of developed countries and the dynamics of its research. This should also be taken into account in domestic practice, considering local characteristics and capabilities. For example, the United States provides a notable case, where discussions on medical waste issues peaked in the late 1980s and early 1990s. During that period, materials on problems in this field were widely published in specialized and periodical publications, actively drawing public attention and significantly stimulating government action.

This situation led to the development and adoption of legislative acts regulating medical waste management rules in each state. Until the late 1980s, such acts existed only in a few states. Alongside legislative activities, the U.S. Environmental Protection Agency (EPA) developed a document titled "Medical and Medical Industry Waste Control", which acquired the status of a legislative act applicable to all states.

Additionally, medical waste management has a distinct hygienic, epidemiological, environmental, and social character due to its pronounced polymorphism, as well as potential but very real risk factors such as infection, toxicity, and radioactivity. Therefore, organizing a medical waste management system— particularly in transportation and disposal — requires compliance not only with sanitary requirements but also with environmental legislation [15].

Polish legislation provides for the neutralization of medical waste while prohibiting the recycling of certain categories of such waste. These include:

Waste generated from medical diagnostics, treatment, and preventive procedures.

1. Human body parts and organs, as well as containers for blood and its preservative solutions.
2. Live pathogenic microorganisms, their toxins, or other forms capable of transmitting genetic material that are known or strongly suspected to cause diseases in humans and animals.
3. Hazardous chemical substances, including chemical reagents.
4. Cytostatic and cytotoxic pharmaceutical substances.
5. Residual dental amalgam waste.
6. Used biologically active therapeutic baths with infectious properties.
7. Food waste from infectious disease departments.

The epidemiological risks associated with medical waste can be mitigated through incineration. This method significantly reduces the volume and quantity of waste. However, incineration produces toxic gas emissions, including dibenzodioxins, dibenzofurans, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, carbon, cadmium and lead oxides, as well as lead, arsenic, hydrochloric acid, hydrogen cyanide, and nitrogen oxides. To minimize these emissions, expensive filtration and gas treatment systems must be used.

The use of closed incineration chambers equipped with sorbents, emission analysis devices, and appropriate filters helps reduce harmful gas emissions to minimal levels. However, these measures increase operational costs. Additionally, the management of residual ash, airborne particulate matter from filters, saturated sorbents, and technical waste from incineration must also be addressed. A further drawback of incineration is that the resulting ash, while free of pathogenic microorganisms, still contains hazardous substances.

Managing waste left after hospital incineration remains a major issue in waste processing. Specific regulatory guidelines for incineration are outlined in the European Parliament and Council Directive [16]. Medical waste management is a complex ecological and economic issue. While incineration plays an

essential role in waste neutralization, its efficiency and environmental safety require expensive technologies and strict adherence to waste management regulations.

Discussion

The lack of clear legislative regulations creates several legal challenges in the medical waste management sector. For instance, the issue of licensing for medical waste management remains unresolved in legal practice, making it difficult to hold organizations accountable for the collection, transportation, and disposal of medical waste.

In Kazakhstan, the licensing of medical waste management activities has not been fully regulated and involves several critical aspects.

The primary requirements for medical waste management are outlined in the Environmental Code of the Republic of Kazakhstan and the Code on Public Health and the Healthcare System. However, these documents do not specifically address licensing procedures. Currently, the licensing issue is indirectly regulated through environmental and sanitary rules, but a clear and independent licensing mechanism is not in place.

Since medical waste falls under the category of hazardous waste, organizations handling it should be subject to strict regulatory requirements. However, the current legal framework lacks clear licensing mechanisms for such requirements. This creates difficulties in registering and monitoring organizations involved in waste management. Specialized technical equipment and trained personnel are essential for handling medical waste safely. However, without licensing requirements, there is no guarantee that these standards will be met.

Currently, Kazakhstan has not fully implemented a licensing system for medical waste management. Addressing this issue requires improvements to the legislative framework. Doing so would not only enhance environmental and sanitary safety but also improve the efficiency of the sector.

For example, an incident in Lenger, Turkistan Region, highlights the urgency of this problem. In this region, amputated body parts, used syringes, and containers with blood residues were found discarded in plastic bottles. The company responsible for disposing of hazardous medical waste was fined. However, it was revealed that this type of business does not require a special license or designated landfills. The conclusion drawn from this case is that any company with transport, storage facilities, and incinerators or shredding equipment could engage in this type of business without strict oversight. This situation underscores the need for immediate regulatory measures to address the issues mentioned above and establish proper control mechanisms [17].

Thus, the question remains open as to whether the practices of unlicensed enterprises comply with regulatory requirements. Currently, a moratorium on scheduled inspections of medical and sanitary safety enterprises is currently active in Kazakhstan. However, according to First Deputy Prime Minister R. Sklyar, after the moratorium is lifted, plans are in place to strengthen oversight of enterprises providing medical waste disposal services [18].

One of the key issues in improving the situation and addressing the consequences of the organizational-methodological gap in Kazakhstan is solving the problem of licensing medical waste management services. Additionally, developing unified tender documentation for the procurement of services related to the collection, transportation, and disposal of medical waste is crucial. At this stage, the ongoing political and legal measures are not sufficient to ensure the effective management of medical waste. The proposed measures require additional investments, as well as technical and expert support.

Moreover, there is a lack of a reliable national assessment of the impact of medical waste and its potential risks to the environment and human health. Given the existing political and legal initiatives in the country, increased interaction with NGOs and the implementation of expert-technical support measures should be prioritized. Further research should focus on analyzing the effectiveness of these measures, evaluating legislative changes, and assessing their societal impact.

If the above-mentioned legal and economic issues are not addressed in a timely manner, citizens' rights to a favorable environment may not be realized. This issue must be resolved through measures aimed at eliminating the negative impact of an unfavorable environment on human health.

Proper supervision of medical waste management is a crucial element in environmental protection, epidemiology, and occupational safety. For effective management, the primary importance lies in correctly categorizing waste at the point and time of its generation [19]. This approach ensures the most efficient conditions for waste neutralization.

According to sorting procedures adopted in healthcare institutions, if household waste is mixed with infectious waste, all collected waste is subsequently classified as biologically hazardous [20]. Therefore, it is essential to implement proper standards for collection, labeling, and transportation. The rational management of infectious medical waste in healthcare facilities must ensure occupational safety, public health, and environmental protection.

Conclusions

The disposal of medical waste remains a significant issue worldwide, and addressing this challenge in Kazakhstan is no easy task. To effectively manage the process from the initial generation of medical waste to its disposal or recycling, a systematic approach must be developed and implemented based on modern scientific and practical advancements. Additionally, it is crucial to establish and enforce legal mechanisms to minimize the harmful effects of medical waste on human health and the environment.

Improving the medical waste management system is a critical issue in ensuring environmental safety and protecting public health. A balanced approach to addressing legal and economic aspects can help eliminate shortcomings in this sector, organize the system efficiently, and optimize resource utilization.

Based on the study of foreign practices and domestic conditions, this article highlights the need to improve the legal framework for medical waste management in accordance with international standards, strengthen government oversight, and introduce economic incentive mechanisms. Furthermore, the implementation of innovative technologies for safe waste processing and disposal, raising ecological awareness in society, and ensuring effective collaboration among all stakeholders are of great importance.

In Kazakhstan, the legal and regulatory framework for medical waste management still requires further improvement. The absence of a licensing system, insufficient oversight, and the lack of unified standards for medical waste management pose serious challenges. These shortcomings not only harm the environment but also threaten public health.

Studies of international experience indicate that systematic legal regulation and economic incentives are necessary for the efficient management of medical waste. The adoption of innovative technologies, increased funding, and employee training are essential steps toward improving this sector.

Enhancing legal regulations and interdepartmental cooperation in medical waste management can elevate waste disposal to a new level, ensuring epidemiological and environmental safety.

To improve the situation in Kazakhstan, it is necessary to adopt specific laws and regulatory documents on medical waste management, introduce a licensing system, and strengthen oversight. Moreover, optimizing economic costs through the principles of a green economy and the development of public-private partnerships is essential. Raising awareness about the dangers of medical waste, promoting a culture of compliance with sanitary and epidemiological standards, and developing the necessary infrastructure using modern collection, transportation, and sterilization methods should also be prioritized.

By enhancing medical waste management, we can protect public health, ensure environmental safety, and reduce economic costs. Achieving these goals requires coordinated efforts from the government, scientific community, and private sector.

These measures will help systematize the medical waste management system, improve ecological sustainability, and enhance the quality of life.

In conclusion, eliminating the environmental impact of medical waste requires a multifaceted approach, including technological innovations, legal reforms, stakeholder collaboration, and continuous monitoring. By implementing the recommendations outlined above, we can move toward a future where medical waste is managed in a way that protects both the environment and public well-being.

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Р.А. Сеилкасымова, Д. Нұрмұханқызы

Медициналық қалдықтарды басқару жүйесін жетілдірудің құқықтық және экономикалық мәселелері

Қазіргі уақытта Қазақстан Республикасындағы медициналық қалдықтардың қолайсыз экологиялық жағдайы өткір мәселелердің бірі. Сондай-ақ, Қазақстан мен көршілес елдердің табиғаты мен халқының жағдайы нашар. Мақалада Қазақстан Республикасындағы медициналық қалдықтарды

басқару жүйесін жетілдіруге құқықтық талдау жасалып, оны қамтамасыз етудің құқықтық негіздері қарастырылған. Еліміздің бірқатар өңірлеріндегі медициналық қалдықтармен жұмыс істеудің қазіргі жағдайына ерекше назар аударылған, өңірлік экологиялық саясат шеңберінде қалдықтардың осы түрін кәдеге жарату мен залалсыздандыру бойынша кешенді тәсілін қолданудың алғышарттары зерделенген. Құқық қолдану тәжірибесін талдау негізінде медициналық қалдықтарды басқару жүйесін құқықтық реттеудегі олқылықтар анықталды. Өңірлерде қолданылатын медициналық қалдықтармен жұмыс істеудің аумақтық схемаларын құқықтық және қаржылық негіздеудің ерекшелігі болып табылатын әдістемелік тәсіл ұсынылды. Зерттеудің әдістемелік тәсілдері медициналық қалдықтарды кәдеге жарату және зарарсыздандыру туралы деректерді өңдеудің статистикалық әдістерін қамтиды. Қазақстан Республикасы медициналық қалдықтармен жұмыс істеу әдістеріне аса көңіл бөлуімен, экологиялық қауіпсіздікті қамтамасыз етуге ұмтылуымен және медициналық қалдықтарды кәдеге жарату мәселелерінде заң бұзушылықтардың алдын алумен ерекшеленеді. Алайда, билік органдарының денсаулық сақтау мекемелерінің медициналық қызмет процесіне енгізілмеген кәдеге жарату мәселесін, оның ішінде зарарсыздандыру мен өңдеуді қажет ететін медициналық қалдықтарды шешу қарқынымен қанағаттанушылығының төмендігі анықталды. Зерттеу нәтижесі әртүрлі қауіптілік класындағы медициналық қалдықтарды өңдеу, кәдеге жарату және залалсыздандыру кешендерін орналастыру және салу саласындағы өңіраралық ынтымақтастық қажеттілігі туралы ұсыныстар. Авторлар ғылыми-технологиялық дамудың перспективалық бағыты ретінде қайталама шикізат ала отырып, медициналық қалдықтардың әртүрлі түрлерін кәдеге жарату, сондай-ақ қауіптілігі жоғары медициналық қалдықтарды залалсыздандыру үшін жоғары технологиялық жабдықтар кешенін құруды ұсынады.

Кілт сөздер: медициналық қалдықтар, экологиялық қауіпсіздік, кәдеге жарату, медициналық қалдықтарды залалсыздандыру үшін жоғары технологиялық жабдықтар, медициналық қалдықтарды басқару жүйесі, инсенерация.

Р.А. Сеилкасымова, Д. Нұрмұханқызы

Правовые и экономические вопросы совершенствования системы управления медицинскими отходами

В настоящее время неблагоприятная экологическая ситуация с медицинскими отходами в Республике Казахстан является одной из острых проблем. Кроме того, в худшем положении находятся природа и население Казахстана и соседних стран. В данной статье проведен правовой анализ совершенствования системы управления медицинскими отходами в Республике Казахстан, рассмотрены правовые основы обеспечения. Особое внимание уделено современному состоянию обращения с медицинскими отходами в ряде регионов Республики Казахстан, изучены предпосылки применения комплексного подхода к утилизации и обезвреживанию данного вида отходов в рамках региональной экологической политики. На основе анализа правоприменительной практики выявлены пробелы в правовом регулировании системы управления медицинскими отходами. Предложен методический подход, который является особенностью правового и финансового обоснования применяемых в регионах территориальных схем обращения с медицинскими отходами. Методологический инструментарий исследования включает статистические методы обработки данных об утилизации и обеззараживании медицинских отходов. Республика Казахстан отличается повышенным вниманием к методам обращения с медицинскими отходами, стремлением обеспечить экологическую безопасность и предупреждением нарушений законодательства в вопросах утилизации медицинских отходов. Однако, была выявлена низкая удовлетворенность органов власти темпами решения проблем утилизации учреждений здравоохранения, не включенных в процесс медицинской деятельности, в том числе медицинских отходов, требующих обеззараживания и переработки. Результатом исследования являются предложения о необходимости межрегионального сотрудничества в области размещения и строительства комплексов по переработке, утилизации и обезвреживанию медицинских отходов различного класса опасности. Авторы предлагают в качестве перспективного направления научно-технологического развития создать комплекс высокотехнологичного оборудования для утилизации различных видов медицинских отходов с получением вторичного сырья, а также обезвреживания медицинских отходов повышенной опасности.

Ключевые слова: медицинские отходы, экологическая безопасность, утилизация, высокотехнологичное оборудование для обезвреживания медицинских отходов, система управления медицинскими отходами, инсенерация.

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Analysis of legal building regulations in Kazakhstan and abroad

The article reviews a large volume of normative literature, and the considered concepts and terminology were applied to three international cases concerning building codes and rules for their application. The purpose of this study is to comprehensively analyze the legal aspects of the application of Eurocodes and international building standards in the construction industry of Kazakhstan, identify the degree of harmonization of national legislation with international standards, and assess their impact on ensuring the safety, quality and sustainability of construction projects, taking into account judicial practice and law enforcement. Improving the recommendations and implementing international building standards in the construction industry of Kazakhstan will improve the safety and quality of construction projects, ensure their compliance with the requirements of Eurocodes and other international standards, reduce the likelihood of accidents and violations of building regulations, minimize legal risks associated with non-compliance with design documentation. It will also help attract foreign investment by increasing confidence in the construction sector, accelerating the processes of integration into the global economic space and creating conditions for sustainable development of the construction industry in accordance with global trends and best practices. These aspects determine the relevance of this study. The methodological basis of the work includes the analysis of regulatory legal acts of the Republic of Kazakhstan and international standards in the construction sector, a comparative legal method for determining the differences and distinctions between Kazakhstani building codes and Eurocodes, statistical analysis of data on violations of building standards and their consequences, as well as analysis to determine the relationship between the quality of construction work and international building standards. The study uses a systematic approach for a comprehensive consideration of legal and technical aspects, including the collection and processing of data on the regions of Kazakhstan, identifying existing problems and developing practical recommendations. The result of the study is the identification of problems and specific proposals for improving additional legal guidelines for the phased quality of Eurocodes, state control over compliance with international standards and the preparation of programs for specialists in the construction industry, contributing to the sustainability and competitiveness of the construction sector of Kazakhstan.

Keywords: international building standards, legal regulation, construction industry, technical regulations, judicial precedents, law enforcement practice, state control, harmonization, Eurocodes, urban planning.

Introduction

The construction industry of Kazakhstan in the context of globalization and acceleration of technical progress is faced with the need to ensure its regulatory framework taking into account international standards. The relevance of the study is due to the level of harmonization of national building codes with international requirements, such as ERCodes, to ensure a high level of safety, quality and sustainability of construction projects. The integration of international standards not only increases the reliability of building structures, but also takes into account the investment attractiveness of the industry, opening up new opportunities for the participation of Kazakhstani construction companies in international projects. Despite the measures taken to adapt ERCodes in Kazakhstan, unresolved issues related to legal regulation, professional training and regional personnel imbalances at the level of international standards remain, requiring the need for a systemic analysis of the current state, correct building codes and recommendations for their development. Based on the objective of the study — a comprehensive analysis of the legal aspects of the application of Eurocodes and international standards in the construction industry of Kazakhstan, identifying the degree of harmonization of national legislation with international standards, as well as assessing their safety in the field of ensuring the safety, quality and sustainability of construction projects, taking into account the established practice and law enforcement, the following tasks were solved:

– analyze the national legislation of legal building codes in Kazakhstan;

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– determine the main requirements of Eurocodes and building standards necessary for the safety, quality and sustainable development of this industry;

– compare legal approaches to the implementation of international standards in Kazakhstan and other countries, creating successful practices;

– assess the degree of harmonization of national building codes with Eurocodes and indicate gaps in the regulatory framework;

– analyze the practice of violating building codes and standards to determine the main legal risks and their consequences;

– study the impact of harmonization on the creation of standards for the quality, safety and sustainability of construction projects, investment activities;

– develop recommendations and specific proposals for improving additional legal guidelines for the step-by-step quality of Eurocodes, state control over compliance with international standards and the preparation of programs for specialists in the construction industry, helping to ensure the sustainability and competitiveness of the construction sector in Kazakhstan.

The process of implementing the international construction standard faces a number of legal and organizational barriers related to the imperfection of the regulatory framework, the lack of uniform approaches to the certification of building materials and technologies, as well as insufficient coordination between all market participants. The importance of solving the problem of the effective functioning of the competence management system in the construction sector, described in the works of E. Marisova, K. Hodossy, L. Mura (2023), primarily lies in its impact on the efficiency and quality of these competencies [1].

Research in the field of mobile and adaptive living environments, such as the works of Armitage (2020) [2] and Smith (2018) [3], emphasizes the importance of spatial flexibility in the context of globalization and migration. Programs implemented in the Netherlands and Germany focus on the creation of multifunctional and modular housing complexes, but ignore the cultural characteristics of local communities. Research related to sustainable cities, such as the work of Johnson (2022), emphasize the need to use green technologies, energy-efficient solutions and harmony with nature [4]. Gabriela Manea (2023) analyzes issues related to the security of private property and public property through the prism of the norms of the Code of Urban Development and Territorial Development, highlighting the fact that its provisions affect the right to state property and the right to private property, through the legalization of buildings that were built without a building permit or in violation of it, as well as through the fact that construction will be allowed on green spaces, thereby violating a fundamental right, the right to life, having an impact on the environment in the long term [5]. Legal regulation of urban development activities in foreign countries was based mainly on legislative acts of various nature. General building regulations are defined by the Civil Code, the Urban Rights Act, the Building Acts, etc. Building permit processes serve as critical gatekeepers of urban development by regulating compliance with building codes, land use policies, and safety and environmental standards. However, their complexity can lead to inefficiencies and hinder economic growth. Although existing studies have made significant contributions to the understanding of the building permit process, they often focus on individual countries or specific aspects, leaving a gap in a comprehensive comparative analysis (Fauth J. et al.) [6]. Building permit processes are critical to urban development worldwide by setting rules and controlling the creation of the built environment. Despite global goals and drivers, building permit regulation remains local and is carried out by local jurisdictions (Kelemen R.D., 2010) [7]. Recognizing the implications of these different practices requires careful comparative analysis to identify characteristics and patterns, which ultimately contributes to the improvement of these processes (ACCORD, 2024) [8], (Ataide, 2024) [9], (Digi Checks, 2024) [10]. Comparison of these processes is important for the award of construction contracts in different regions with different regulatory requirements (Springer, 2018) [11]. This interest in the problem has highlighted various use cases, highlighting the need to reduce process complexity and detailed constraints (Prusti, 2022) [12], (Sulonen K., & Vastamäki J., 2022) [13], (Ullah K., Witt E., & Lill I., 2022) [14]. According to the study by Fauth et al., (2024), building permit systems are becoming increasingly complex. The top-level hierarchy of a building permit system consists of four concepts representing its subsystems, namely the legislative system, the organizational system, the technological system and the procedural system [15]. The study by Bygg Nett (Refvik et al., 2014), published by the Norwegian Building Directorate, examined practices in selected countries with the aim of formulating a strategy for the development of an online collaboration platform in the construction industry [16]. Another study analyzed the permitting process using the World Bank Doing Business data (Jovanović et al., 2016) [17], (Noardo et al., 2020) [18]. Fauth J., Soibelman L. (2022) laid the foundation for

standardizing processes in an international context [19]. Most European countries have made significant and ambitious steps forward in implementing digital building management tools or even launching innovative BIM-related projects (Marshall et al., 2023) [20]. Other studies have developed research approaches to compare these processes [21].

The scientific literature shows that most international comparative studies of construction permit processes often remain superficial, tending to focus on individual countries or specific aspects, thereby creating a gap in comprehensive comparative analysis (Daniel, 2019) [22]. The study showed that the process of developing international standards faces a number of legal and organizational barriers. An analysis of foreign studies showed that the successful application of an international standard requires not only economic adaptation, but also the creation of a flexible management system taking into account the regulatory conditions of countries.

Methods and materials

The methodological basis of the study is based on general scientific methods of cognition, including:

– analysis and synthesis — identification of key aspects of legal regulation of the application of Eurocodes and international standards in the construction industry of Kazakhstan and their comparative analysis with foreign standards;

– induction and deduction — the impact of harmonization of building codes on the safety and stability of structures for the further development of the regulatory framework;

– comparative legal method — analysis of differences and similarities in the application of international building standards (Eurocodes) in the Republic of Kazakhstan and other countries (Germany, France, Great Britain);

– regulatory and legal analysis — study of the legislation of the Republic of Kazakhstan, legal acts in the field of architectural, urban planning and construction activities (judicial and law enforcement activities) and the need for their legal regulation, as well as international and national standards (CN RK, SNiP, Eurocodes);

– statistical method — data on violations in the field of construction, identifying causes of building code violations, including on the basis of official statistics of state bodies of the Republic of Kazakhstan. The use of the axiomatic method allowed us to draw a conclusion about the ongoing processes and changes in the sphere of architectural, urban planning and construction activities (judicial and law enforcement activities) and the need for their legal regulation. The comparative tools used in the article allowed us to study foreign experience and compare it with domestic experience, formulate proposals for the extrapolation of best practices. The theoretical platform of the study is formed from scientific works of domestic and foreign authors on the issue under study. The empirical results of the study are formed on the basis of law enforcement practice of judicial and law enforcement agencies in the sphere of standards of the construction industry of Kazakhstan.

Results

Following the analysis of the legal framework for applying Eurocodes and international standards in Kazakhstan's construction sector, it was found that the country is taking steps to harmonize national building codes with international requirements, in particular, Kazakhstan has officially switched to Eurocodes since 2015 as part of the state program for the modernization of the con-struction industry [23], allowing the creation of a legal basis for the application of modern design methods and improving the safety of construction projects. An analysis of the current legislation, including the Law of the Republic of Kazakhstan on architectural, urban planning and construction activities, revealed that the legal acts establish requirements for the use of technical regulations that comply with international standards, but there are gaps in terms of specifying the mechanisms for their implementation and control. A comparative analysis of foreign countries and the EU countries showed that the legal systems of these countries regulate the procedure for the application of Eurocodes more comprehensively, including mandatory requirements for the certification of building materials, digital recording of data in design documentation and liability for non-compliance with the standards. In Kazakhstan, despite the legislative consolidation of a number of international standards, in practice there are difficulties with their implementation, which stems from insufficient training of specialists and a limited number of bodies monitoring compliance with building standards. The statistical analysis revealed a relationship between the implementation of international standards and a reduction in the number of violations in the construction sector. In particular, since the partial transition to Eurocodes, the number of identified violations of building codes in Kazakhstan has

decreased by 18 % over the period from 2016 to 2023. However, as the analysis of judicial precedents showed, the number of lawsuits on cases related to non-compliance with technical regulations and standards remains significant — about 240 cases in 2023 (this is only according to recorded data), indicating the need to tighten law enforcement practices and strengthen state supervision. It was revealed that the most frequent violations are related to the use of uncertified materials, deviations from design solutions and insufficient quality control at the construction stage. Regions of Kazakhstan demonstrate different levels of readiness for the transition to international standards: in large cities (Astana, Almaty) this process is proceeding faster due to greater availability of resources and qualified personnel Conversely, in the Kyzylorda and Zhambyl regions, the implementation of Eurocodes is progressing at a slower pace due to limited technical expertise and weak regulatory enforcement.

Thus, the results of the study confirm that Kazakhstan is moving towards integration in accordance with international construction standards, but a full transition to Eurocodes requires a comprehensive approach, including strengthening the regulatory framework, developing educational programs for construction industry specialists and tightening state control measures for compliance with con-struction standards.

Discussion

A comparative analysis of legal building regulations in Kazakhstan and abroad focuses on environmental requirements, digitalization and safety (Table 1) [24–30].

Table 1

Comparative analysis of legal building regulations in Kazakhstan and abroad

Criteria	Kazakhstan	EU (Germany, France)	USA (Federal level)
Legislative framework	Law of the Republic of Kazakhstan "On architectural, urban planning and construction activities" (2001), Construction Norms of the Republic of Kazakhstan	Eurocodes — mandatory building standards with national annexes	International Building Code (IBC), ANSI/ASTM, OSHA standards
Environmental standards	Environmental Code of the Republic of Kazakhstan (2021), mandatory EIA (environmental impact assessment)	EU Energy Performance of Buildings Directive, BREEAM and LEED are mandatory for public buildings	EPA standards, EnergyStar program, LEED — voluntary certification
Digitalization	Implementation of BIM from 2021, mandatory for government orders from 2024	Mandatory use of BIM for all public projects (France since 2017, Germany since 2020)	BIM is supported but regulated at the state level and is actively used in large projects
Safety requirements	CN RK: seismic resistance, fire safety, technical regulations of the EAEU	Strict fire safety standards, resistance to climate change (e.g., DIN in Germany)	International Building Code (IBC), NFPA Fire Codes
Control and supervision	State Architectural and Construction Control, E-Qurylys portal for online permits	National construction agencies, regular inspections (in France — CSTB)	State and local inspections, licensing through building departments
Innovation and Sustainable Development	Energy saving programs, first green building and renewable energy projects	Active development of "smart buildings", support for carbon-neutral projects	Investments in smart cities, tax incentives for sustainable technologies

As we can see, each country applies and develops national annexes, parameters specific to a given country. There are certain harmonized standards for building structures and constructions fixed at the legal level, the so-called Eurocodes, developed by the efforts of national standardization bodies of EU member states, adapted to local conditions. Therefore, in each country (if they are applied), national annexes are developed, the legal aspects of which are:

- ensuring sustainability (strength and safety of buildings) and balance (energy efficiency, accessibility, environmental protection);
- harmonization of building codes, which are fixed abroad through laws, directives and technical regulations;
- protection of life, health and property of citizens, compliance with international obligations within the framework of sustainable development (Fig. 1).

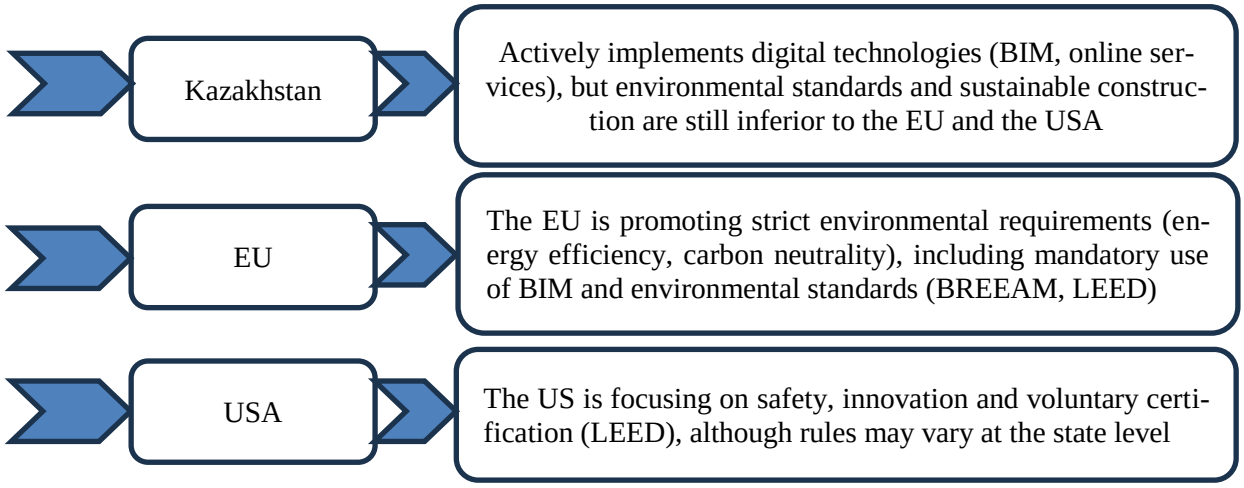

Figure 1. National annexes to legal standards of building codes

Harmonized building standards, regulated through Eurocodes in the EU, are enshrined at the le-gal level, the purpose of which is:

- to provide uniform rules for EU countries;
- to facilitate free trade in building materials and structures within the EU;
- to improve the safety and energy efficiency of buildings.

The regulation of the legal basis for harmonized building standards abroad is based on international and national regulations that establish uniform requirements for the design, construction and operation of buildings. From a legal point of view, such regulation is based on the following aspects (Table 2).

Table 2

Regulation of the legal basis of harmonized building codes abroad from a legal point of view

Country	Directives	Standards	Legal purpose
1	2	3	4
EU countries	The EU Construction Products Directive (CPR, No. 305/2011) — requires that construction products comply with the Eurocodes (EN 1990–1999) and ensure the safety and security of buildings.	Eurocodes are enshrined as harmonized standards in accordance with EU Regulation No. 1025/2012 — this is the legal basis on which construction products undergo mandatory conformity testing (CE marking).	protection of life and health of people, the environment and property, as well as the creation of a single market for construction goods and services.
USA	International Building Code (IBC) — legally approved at the state and local level, which adopt the IBC as a mandatory code. The IBC references federal laws such as the Americans with Disabilities Act (ADA), which regulates the accessibility of buildings for people with disabilities.	ASCE, ACI, ANSI standards are codified in the National Technology Transfer and Advancement Act (NTTAA), which requires federal agencies to use technical standards developed by private organizations.	ensure uniform standards for all states, minimize risks (fire, earthquake, etc.), and protect the rights of citizens to a safe and accessible environment.
United Kingdom	The Building Act 1984 sets out rules governing the construction, renovation and demolition of buildings. It forms the basis for the development of the Building Regulations 2010 — a mandatory set of requirements covering safety, energy efficiency, accessibility, etc.	British Standards (BS EN) — The UK Government through the British Standards Institution (BSI) adapted the Eurocodes as BS EN 1990–1999.	guarantee of safety, seismic resistance and energy efficiency of buildings, as well as creation of conditions for international cooperation.

Continuation of the table 2

1	2	3	4
Japan	Building Standard Law (BSL) takes into account ISO 2394 standards for ensuring the sustainability and reliability of buildings.	Seismic Building Codes legally required for all new and renovated buildings. 2016 amendments tightened seismic requirements.	ensuring safety, preventing destruction in conditions of seismic activity.

Kazakhstan is gradually moving towards international construction standards, in particular Euro-codes, to improve the quality of construction and create a favorable environment for investors, but this process requires a comprehensive approach to improving legislation, training personnel and modernizing the technological base (Fig. 2).

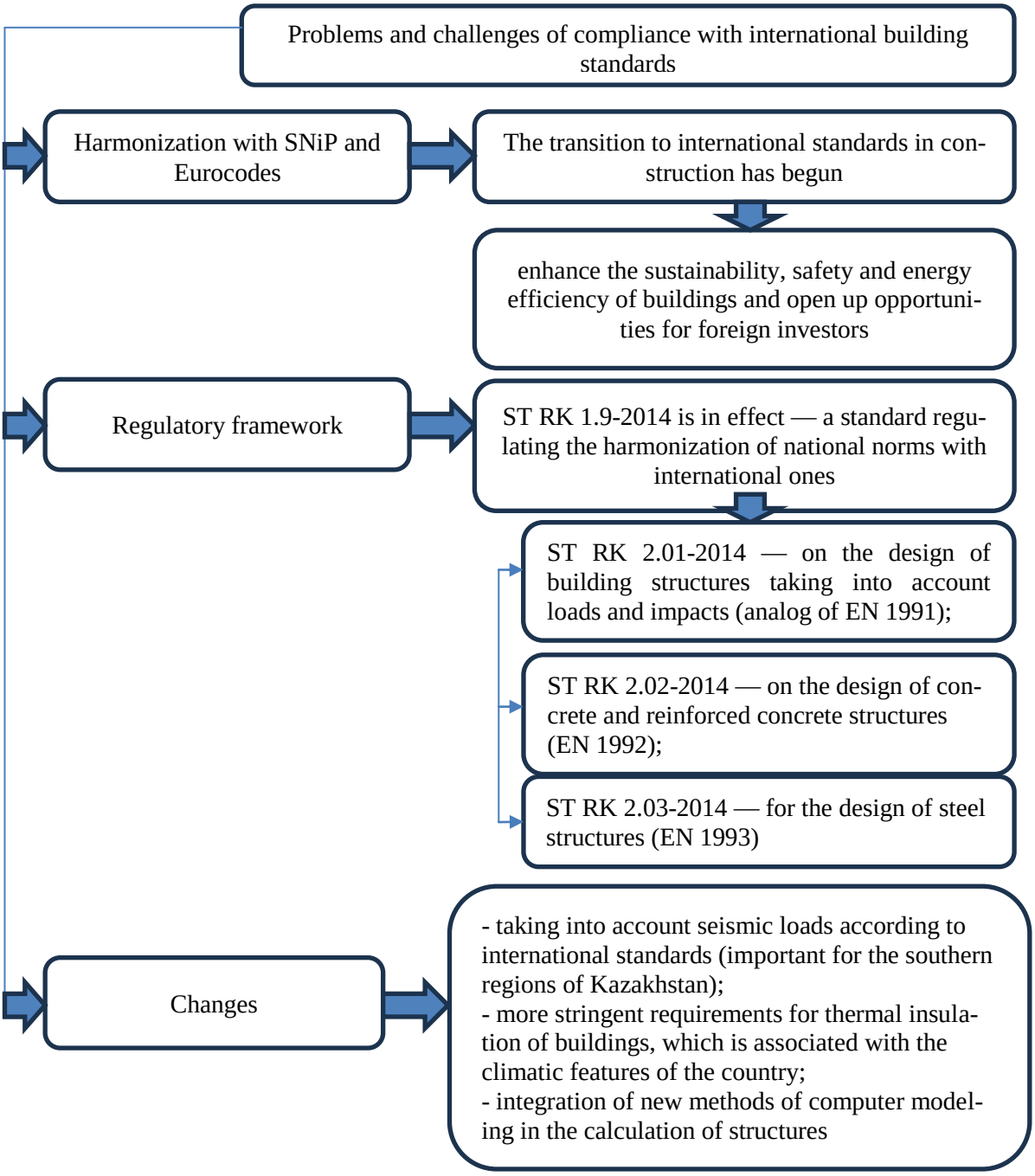

Figure 2. Problems and challenges of compliance with international building standards

The Law of the Republic of Kazakhstan "On architectural and urban development activities in the Republic of Kazakhstan" provides for the possibility of applying international standards if national standards are outdated or contradict modern requirements [24].

The Code of the Republic of Kazakhstan on Administrative Offenses (Article 314 of the Code of Administrative Offenses of the Republic of Kazakhstan) directly indicates liability for violation of building codes, including those harmonized with Eurocodes [25]. For example, in the southern regions of Kazakhstan, the largest number of serious violations of building codes and measures taken by government agencies to ensure compliance with standards and protect the rights of citizens were identified (Table 3) [29, 31].

Table 3

Violations of building codes in Kazakhstan and judicial precedents

Region	Number of violations	Judicial precedents and examples of objects with violations	Articles of Laws	The number of fines is million tenge	Results and penalties
Almaty region	664 administrative cases	Residential complex "Horda Town", Residential complex "Nuria-3", sports and shopping complexes	Art. 314 of the Code of Administrative Offenses of the Republic of Kazakhstan (violation of construction standards)	85	204 cases in court, 167 entities fined, 10 claims for demolition
Almaty city		Claim of KSU against QazaqStroy LLP and Yrysty 46/2 LLP	Art. 76 of the Law of the Republic of Kazakhstan On architectural, urban planning and construction activities	120	oblige to eliminate violations: water drainage, stair railings, reequipment of technical floors
Aktobe city	70 fines	16 illegal objects at gas stations	Art. 463 of the Code of Administrative Offenses of the Republic of Kazakhstan (carrying out activities without a license)	23	7 companies were deprived of licenses, 104 were denied licenses, 16 facilities were demolished
Shymkent city		368 Disadvantages of Apartment Buildings	Art. 314 of the Code of Administrative Offenses of the Republic of Kazakhstan (violation of construction standards)	176	More than half of the violations have been eliminated

Such statistics in some regions of Kazakhstan demonstrate the seriousness of violations of building codes and measures taken by government agencies to ensure compliance with standards and protect the rights of citizens.

Conclusions

The study of legal building codes in Kazakhstan and abroad showed that the integration of international standards into the national legal system is an important step to improve the safety and sustainability of construction projects. The analysis of the legislation of the Republic of Kazakhstan, including the Law on Architectural, Urban Planning and Construction Activities, as well as the comparison of the EU and other foreign countries confirmed the presence of positive trends in the harmonization of building codes. However, certain barriers were identified related to incomplete adaptation of Eurocodes, insufficient training of specialists and the lack of clear mechanisms for monitoring their compliance.

A statistical analysis of violations in the construction sector of Kazakhstan demonstrated that with the introduction of international standards, there is a decrease in the number of violations, but the level of judicial precedents on the facts of non-compliance with building codes remains significant, indicating the need to strengthen law enforcement practice. The introduction of Eurocodes and international standards helps to increase the transparency of construction processes, strengthen trust in developers and ensure compliance with sustainable development requirements. All this requires an integrated approach from the state, including regulatory support, advanced training of personnel and effective state control. The integrated use of research methods allowed us to comprehensively study the legal and practical aspects of the application of interna-

tional construction standards in Kazakhstan, as well as identify possible areas for their improvement. The results of the study can be used to further improvement of legislation, develop methodological recommendations and strategies for integrating international standards into Kazakhstan's construction industry, contributing to the creation of a safe and modern construction environment in the context of global digital transformation.

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Қазақстанда және шетелде құқықтық құрылыс нормаларын талдау

Мақалада нормативтік әдебиеттердің үлкен көлемі қарастырылған, қарастырылған ұғымдар мен терминология құрылыс нормалары мен оларды қолдану ережелеріне қатысты үш халықаралық жағдайда қолданылған. Зерттеудің мақсаты — Қазақстанның құрылыс саласында еурокодтар мен халықаралық құрылыс стандарттарын қолданудың құқықтық аспектілерін кешенді талдау, ұлттық заңнаманың халықаралық стандарттармен үйлестіру дәрежесін анықтау, сондай-ақ сот тәжірибесі мен құқық қолдануды ескере отырып, құрылыс объектілерінің қауіпсіздігін, сапасы мен тұрақтылығын қамтамасыз етуге олардың әсерін бағалау. Қазақстанның құрылыс индустриясында ұсынымдарды жетілдіру және халықаралық құрылыс стандарттарын енгізу құрылыс объектілерінің қауіпсіздігі мен сапасын арттыруға, олардың еурокодтар мен басқа да халықаралық стандарттар талаптарына сәйкестігін қамтамасыз етуге, апаттар мен құрылыс ережелерін бұзу ықтималдығын азайтуға, жобалық құжаттаманы сақтамаумен байланысты құқықтық тәуекелдерді барынша азайтуға мүмкіндік береді. Сондай-ақ құрылыс секторына деген сенімді арттыру, әлемдік экономикалық кеңістікке интеграциялық үдерістерді жеделдету және әлемдік трендтер мен озық тәжірибеге сәйкес құрылыс саласының тұрақты дамуы үшін жағдай жасау арқылы шетелдік инвестицияларды тартуға ықпал етеді. Жоғарыда аталған аспектілер осы зерттеудің өзектілігін анықтайды. Жұмыстың әдістемелік негізін құрылыс саласындағы Қазақстан Республикасының нормативтік құқықтық актілері мен халықаралық стандарттарды талдау, қазақстандық құрылыс нормалары мен еурокодтар арасындағы ерекшеліктер мен айырмашылықтарды анықтаудың салыстырмалы-құқықтық әдісі, құрылыс нормаларын бұзу және олардың салдары туралы мәліметтерді статистикалық талдау, сондай-ақ құрылыс жұмыстарының халықаралық стандарттары мен құрылыс жұмыстарының сапасы арасындағы байланысты анықтауға арналған талдау құрайды. Зерттеуде Қазақстанның аймақтары бойынша деректерді жинау мен өңдеуді, мәселелерді анықтауды және практикалық ұсыныстарды әзірлеуді қоса алғанда, құқықтық және техникалық аспектілерді кешенді зерттеу үшін жүйелік тәсіл пайдаланылған. Жүргізілген зерттеулердің нәтижесі: Қазақстанның құрылыс секторының тұрақтылығы мен бәсекеге қабілеттілігін арттыруға ықпал ететін еурокодтардың кезең-кезеңімен сапасына қосымша құқықтық нұсқауларды жетілдіру, халықаралық стандарттарға сәйкестігін

мемлекеттік бақылау және құрылыс саласы мамандарына арналған бағдарламаларды дайындау бойынша мәселелерді және нақты ұсыныстарды анықтау.

Кілт сөздер: халықаралық құрылыс стандарттары, құқықтық реттеу, құрылыс индустриясы, техникалық регламенттер, сот прецеденттері, құқық қолдану тәжірибесі, мемлекеттік бақылау, үйлестіру, еурокодтар, қала құрылысы.

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Анализ правовых строительных норм в Казахстане и за рубежом

В статье рассматривается большой объем нормативной литературы, а рассмотренные концепции и терминология были применены к трем международным случаям, касающимся строительных норм и правил их применения. Целью настоящего исследования является проведение всестороннего анализа правовых аспектов применения еврокодов и международных строительных стандартов строительной отрасли Казахстана, выявление степени гармонизации национального законодательства с международными нормами, а также оценка их влияния на обеспечение безопасности, качества и устойчивости строительных объектов с учетом судебной практики и правоприменения. Совершенствование рекомендаций и внедрение международных строительных стандартов в строительной отрасли Казахстана позволит повысить безопасность и качество строительных объектов, обеспечить их соответствие требованиям еврокодов и других международных норм, снизить вероятность аварий и нарушений строительных регламентов, минимизировать правовые риски, связанные с несоответствием проектной документации. Это, в свою очередь, будет способствовать привлечению иностранных инвестиций за счет повышения доверия к строительному сектору, ускоряя процессы интеграции в мировое экономическое пространство и создавая условия для устойчивого развития строительства в соответствии с глобальными тенденциями и передовыми практиками. Названные аспекты определяют актуальность настоящего исследования. Методологическая основа работы включает в себя анализ нормативно-правовых актов РК и международных стандартов в строительной сфере, сравнительно-правовой метод для определения отличий и различий между казахстанскими строительными нормами и еврокодами, статистический анализ данных о нарушениях стандартов и их последствий, а также анализ для определения взаимосвязи между качеством строительных работ и международными строительными стандартами. В рамках исследования использован системный подход для комплексного рассмотрения правовых и технических аспектов, включая сбор и обработку данных по регионам Казахстана, выявляющие существующие проблемы и вырабатывающие практические рекомендации. Результатом проведенного исследования является выявление проблем и конкретных предложений по совершенствованию дополнительных правовых ориентиров для поэтапного качества еврокодов, госконтроль за соблюдением международных стандартов и проведением подготовки программ для специалистов строительной отрасли, способствуя обеспечению устойчивости и конкурентоспособности строительного сектора Казахстана.

Ключевые слова: международные строительные стандарты, правовое регулирование, строительная отрасль, технические регламенты, судебные прецеденты, правоприменительная практика, государственный контроль, гармонизация, еврокоды, градостроительство.

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On the role of the public interest in administrative law and judicial proceedings

This article attempts to analyze the concept of public interest through the lens of scientific theories, international experience, and legislative practice. The study is a novelty in this field, as no similar review has been conducted within the framework of Kazakhstani administrative law and procedure. It has been identified that administrative discretion (the competence of an administrative body) serves as the primary mechanism for strengthening public interest. The effectiveness of this mechanism is supported by legislatively established administrative procedures and the ability to challenge public rights through litigation. The conducted analysis contributes to understanding the significance of legal protection of public interest and its benefits for the development of the legal system. The scientific value of the article also lies in examining the experience of administrative justice in Kazakhstan and other countries. By comparing the legal frameworks of developed states with that of Kazakhstan, it becomes evident that public interest is a legal construct that is difficult to regulate yet serves as a universal reference point for the development of legal systems. Therefore, the concept of public interest requires further clarification both for scientific comprehension and for broader interpretation and practical application. An additional value of the study is its systematic analysis of the concept of public interest in foreign legal doctrine, providing a foundation for further comparative legal research.

Keywords: public interest, administrative discretion, concept, society, governance, mechanism, administrative body, Government, justice, court.

Introduction

In some legal systems, the public interest is understood as a collection of public goods protected by administrative bodies. It can serve as a justification for state actions, such as in cases of limiting private rights (e.g., revocation of special rights, restriction of entrepreneurial activities, etc.).

The need for comprehensive research on the public interest in administrative law and process is determined by factors influencing the further sustainable development of administrative justice in Kazakhstan. The functioning of the state, involving public authority relations, is not only an expression of the legal progress of society but also a consequence of the strategic efficiency of the administrative and legal system. The intense legal development and centralized governance highlight the importance of ensuring and protecting the public interest as one of the key tasks.

Public interest is one of the essential components of public governance. Even during the Enlightenment era, the philosopher Charles-Louis Montesquieu, when exploring the public interest, noted that “public and private interests must be in harmony with each other, as public tranquility is the guarantee on the path to an ideal state” [1; 69]. It is worth noting that the concept of public interest is found not only in academic science but also in positive law. The category of “public interest” is universal and serves as an object of study in various disciplines (political science, sociology, cultural studies, philosophy) as well as in fundamental branches of law (constitutional, administrative, civil law, etc.). The place, role, and significance of public interest, as well as its protection in administrative law and process, remain highly relevant topics, which, unfortunately, have not been sufficiently studied by Kazakhstani legal scholars.

Considering the citizens’ ability to seek protection of their rights through claims in administrative courts, the importance of protecting the public interest and exploring its legal nature in the administrative context is growing. The development of legal relations between citizens and the administration (public au-

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thorities) cannot function properly unless procedural equality is ensured, and a balance of interests is achieved.

The public interest exists to ensure legality and order in society and the state [2; 3].

The public interest is the guiding principle of administrative discretion [3; 8]

Established scientific concepts and other significant formulations of the term "public interest" provide a foundation for the theoretical study of this institution, employing methods of comparison and analysis.

The aim of this study is to determine the role and significance of public interest in the context of the development of scientific doctrines and the sustainable evolution of administrative justice institutions.

In pursuing this goal, it is essential to analyze existing scientific concepts related to the study of public interest in the field of administrative law and procedure, as well as to demonstrate its growing importance and implementation in the context of the development of interconnected institutions of administrative law and procedure, including administrative discretion, administrative procedures, and administrative claims.

Given the interdisciplinary and sectoral nature of the public interest institution, an analysis of its expansive interpretation is justified.

Methods and materials

The article prioritizes general scientific, analytical, and comparative legal research methods. The general scientific method facilitates the identification of established concepts and the systematization of accumulated scientific knowledge in the field of public interest. It also allows for the analysis of previous sources, existing academic literature, and current legislation. The analytical method enables conclusions regarding the necessity of legal protection of public interest within the branches of administrative law and procedure. It focuses on identifying and extracting key theoretical arguments, legal definitions, and practical applications of existing concepts. By comparing public law based on country-specific experience, a stable understanding of the development of public interest is formed.

Results

The interpretation of the term "public interest" has been the subject of numerous studies in legal doctrine. Since ancient times, a well-established concept has emerged, stating that "the interests of the polis (state) are the interests of the citizens". The Roman jurist Ulpian, for example, equated the interests of the state with public interests [1; 89]. Subsequent research by philosophers such as John Locke and others focused on understanding the essence and mechanisms of protecting public interests [4]. In more democratic conditions of state development, scholars began to explore the principles of prioritizing the interests of the state over those of the individual. Specifically, A.V. Petukhova, examining N.M. Korkunov's sociological concept, notes that "the primary purpose of law is to ensure the coexistence of both personal and public interests" [5].

In the theory of administrative law, one of the first scholars to introduce the concept of "public interest" was S.V. Tikhomirov. He defined it as "a state-recognized and legally ensured interest of a social community, the satisfaction of which serves as a guarantee of its implementation and development" [6; 78]. In our view, this definition comprehensively reflects the essential characteristics of this category. We agree with the author that, for the implementation of the principles of the rule of law, societal interests transition into the legal domain, forming the essence of public interest.

Legal scholars characterize public interest as a synthesis of three forms: societal interests, state interests, and national interests [7; 9].

Kazakhstani legal scholar R.A. Podoprigora, while acknowledging the influence of foreign doctrines on Kazakhstan's administrative law, emphasized the strong necessity of separate protection for public interest. He stated, "Administrative law was originally created as a law for controlling state administration, a law for protecting citizens from the arbitrariness of administrative authorities" [8].

Contemporary research highlights the absence of a legislative definition of "public interest". The field of procedural law in Kazakhstan has also encountered the need for a legal definition of "public interest", as public interests are often involved in the large flow of legal disputes, particularly in relations with administrative bodies. We agree with international scholars that the legislative gap regarding "public interest" obstructs transparency in protecting public interests and the realization of citizens' right to a fair trial [9].

It is important to note the constitutional significance of public interest. According to A.A Gogin and others, "the foundation of public interest lies in the goals of the state's existence, which are enshrined in constitutional norms as a system of prioritized activities for empowered authorities in various spheres of public

life" [10]. Due to its specific properties and essence, public interest plays a leading, coordinating, and corrective role in societal development, determining future goals and prospects. It is the Constitution that should be regarded as the criterion for the development of public interest in society and the state in their continuous pursuit of the public ideal. Legal theorists also rightly include the interests of local government bodies and the community's interests in the concept of "public interest" [11; 34].

The content and priority of protecting public interests can be traced in the norms of the Constitution of the Republic of Kazakhstan, particularly in Article 39, Part 1, and Article 76, Part 1 [12], as well as in the Administrative Procedural and Process-Related Code, Article 5, Part 1 (hereinafter referred to as APPRC). In the APC, Article 31, Part 3, establishes the right of the prosecutor to bring a lawsuit in court for the protection of public interests [13]. Currently, the prosecutor's appeal to the court remains the most effective means of protecting public legal entities. A.E. Alibekov emphasizes the effectiveness of the legal protection mechanism for public interest with the involvement of the prosecutor, noting not only the supervisory function of the prosecution but also the representative function of the prosecutor, who acts on behalf of the state [14; 162].

Independent observations of the doctrine of public and administrative law have made it possible to identify key features that form the foundation for the implementation of public interest:

Public law mediates relationships governed by executive and regulatory authority through the use of administrative discretion.

Public interest is recognized as an essential attribute of the rule of law.

Public interest creates the legal basis for filing claims with an administrative body.

The qualitative characteristics of public interest as a legal category, in our opinion, include:

- Compliance with the needs and goals of society.
- The non-personalized nature of the interest holder. These may include citizens, citizen associations, local communities, or institutions for protection by specialized entities (the state, administrative bodies, courts).

Legality: public interest is enshrined in legislation and must conform to it.

The author's identified features and characteristics of the category of "public interest" merit further scientific interpretation and legislative formalization. At the current stage of the development of modern administrative justice, the concept of "public interest" should be recognized as an innovative term within the field of administrative law and procedure.

We believe that for proper interpretation and legal application, the legal structure of the term "public interest" should be incorporated into the current legislation of the Republic of Kazakhstan.

The proposed innovative approaches to the theoretical interpretation of public interest, along with international practices, demonstrate the practical necessity of developing it as an independent legal institution, adapted to contemporary challenges in the evolution of administrative justice.

Discussion

The established understanding of the public interest in legal science cannot be considered universal or aligned with contemporary trends in legal development. The interpretations of public interest, developed through the reception of Roman law and later refined by medieval commentators, can be viewed as a simplified approach to resolving the theoretical problem.

Public interests impact social relations by enshrining fundamental principles for the structure of society and the state. They determine the content of legal influence on all spheres of social relations and aspects of social reality; the means of their protection is the general system for safeguarding the Constitution and the constitutional order.

Public interest predominantly takes a constitutional form. It primarily consists of norms that function as principles, definitions, and goals. In terms of purpose, these norms are intended to ensure the systemic consolidation of conceptual ideas recognized as fundamental for society and the state.

At first glance, the concept of public interest appears to be a category with a single, unified content.

However, in practice, it has different interpretations and applications in various legal systems. Let's conduct a comparative analysis.

For example, in countries with a civil law system, public interest is enshrined in constitutions, laws, and subordinate regulations. In France, the concept of public interest is used as a criterion for assessing constitutional compliance and for verifying the legality of public administration activities. Administrative acts and decisions are checked against public interest standards.

In common law countries, public interest is a doctrinal concept developed through judicial precedents. In the United States, there is a viewpoint that administrative justice and governance should be separate. In Anglo-American legal traditions, public interest, as a mechanism, has a flexible form that is directly applied by courts in public proceedings (hearings). One such method is the "Duty of Care" principle. On the one hand, this allows for balancing private and public interests, while on the other, it enables the evaluation of a public authority's competence. According to foreign scholars, due care is a behavioral standard based on which a judge, upon finding a violation of public interest by an administrative body that failed to act appropriately, makes a final ruling [15].

In modern post-Soviet systems, including Kazakhstan, the concept of public interest has always been closely tied to state policies and administrative procedures. Issues of public administration were more concerned with the practical aspects of the functioning government; their resolution requires the adoption of methods that ensure a similarly practical approach. With this approach to administrative problems, it is necessary, first and foremost, to recognize the nature and importance of public governance.

The exercise of powers by administrative bodies is an equally pressing task for the administrative apparatus. From the perspective of administrative justice and public administration, the place of executing directive powers within the structure of the government is equally important and necessary in the fundamental aspects of developing a democratic state.

The practice of European states in protecting public interest relies on the principle of proportionality [16], while Kazakhstani legislation applies the principle of commensurability.

When defining the essence of the principle of commensurability in the administrative-legal aspect, it is important to note that, as a new element of judicial proceedings, it represents a requirement to maintain a necessary balance of interests in the protection of rights and freedoms. According to Article 10 of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (APPRC RK), ensuring the principle of commensurability requires maintaining a fair balance of interests among participants in administrative proceedings [13]. This requirement aims to prevent abuse of power, protect the rights of citizens and their associations, and ensure the effective performance of the state's public functions.

The court's implementation of the principle of commensurability is based on the following triad: suitability, necessity, and proportionality. "Administrative act or administrative action (inaction) is considered proportional if the public benefit gained as a result of restrictions on the rights, freedoms, and legitimate interests of a participant in administrative proceedings exceeds the harm caused by such restrictions" [17].

Another layer of public interests is represented by local self-government. Recognizing it as a special form of authority and a unique social institution means acknowledging that, alongside individual interests and state interests, there also exists the public interest of the local community. This interest is focused on ensuring favorable conditions for people's coexistence within a given territory. As one form of authority (its lower level), local government implements state policy on the ground, making binding decisions on local matters, ensuring public safety, maintaining order, and performing other governmental functions. Regrettably, the current situation in this area falls short of satisfactory standards. Local self-government has not yet fully met its purpose of being an integrating factor that engages and activates the deep mechanisms of societal self-regulation. There are issues stemming from the general state of the governmental and legal reality. To overcome these problems, an appropriate conceptual and legal foundation for local self-government is necessary, one of whose key elements is ensuring public interest in cooperation with local administrations. Let us focus on another feature of the implementation of public interest through the institution of administrative discretion.

Administrative discretion is a key feature in the implementation of state policy.

Administrative discretion refers to the freedom of choice or judgment granted to an executive official or administrative body to ensure the constant and full realization of legislative policy in any situation that may arise in connection with the execution of managerial decisions.

Administrative discretion is the authority of an administrative body or official to make one of the possible decisions based on the evaluation of their legality [10].

There are several practical reasons why the state grants competence to administrative bodies to implement and ensure the enforcement of its expressed policy:

1. Control and resolution of many social or economic issues and needs of society.

2. Development of standards at the legislative level and their delegation to institutions created for this purpose.

3. Provision of long-term solutions to emerging complex problems related to the regulation of areas of public and state life.

The resolution of disputes between an administrative body and a plaintiff is described as an administrative court decision, as it, in some minor respects, resembles the exercise of judicial power. Judicial bodies recognize the inherent complexity involved in addressing matters of public administration. If courts are forced to consider such administrative matters, they would be acting beyond their judicial functions, thereby violating the doctrine of the separation of powers. Nevertheless, courts claim the right to substitute their own independent decision based on a completely new judicial review of the validity of administrative decisions, which by their very nature are either "legislative or administrative".

Legal theorists have suggested that the functions of administrative legislation should be separated from judicial processes and entrusted to a distinct body to avoid mixing such powers.

Despite their distinctive characteristics, these functions are in practice inseparable and interdependent parts of the same administrative process, intricately linked by the practical necessity of maintaining administrative justice.

We suppose that the proposal to separate these functions would undoubtedly reduce the efficiency and speed of governance and generally disrupt the entire administrative process at its later stages. We believe that it is necessary to direct judicial action to prohibit the merging of administrative powers. If we want to have a competent government, then administrative powers and the mechanisms delegated should be carried out in accordance with the goals of the expressed legislative policy, free from the restraining influence of strict constitutionalism.

The judiciary, within the framework of administrative justice, should be focused on working in specialized areas of public administration. We believe it is essential to address the issues arising from the implementation of modern legislative policy in defense of the public interest, which have, in a sense, been "assigned" to specialized administrative courts.

Overall, the research findings were achieved using modern methodologies. In addition to the classical method of theoretical analysis, methods of systematizing scientific knowledge and analytical approaches were employed, enhancing the validity of the conclusions drawn. The identified patterns in the development of public interest do not contradict the doctrine of administrative law; on the contrary, they confirm its reliability and effectiveness.

Conclusions

In general, it should be concluded that public interest holds a key position in shaping social relations that arise within the framework of public administration and administrative procedures.

Based on the research conducted, the fundamental characteristics of public interest as a legal category have been systematized, demonstrating its value for the fields of administrative law and procedure. Drawing from the reception of foreign practices, common historical patterns in the development of public interest have been identified. It has been determined that the key patterns and factors underlying the mechanism of public interest — such as administrative discretion, the executive and regulatory activities of state bodies, procedural and claim-based proceedings — have allowed for a deeper understanding of the legal nature of public interest and the mechanisms of its functioning. Existing scientific developments in the fields of public and administrative law, as well as the ongoing academic discourse, confirm the necessity of further research. The absence of a unified scientific doctrine regarding the mechanism of public interest creates difficulties in the legal interpretation of its structural elements. The terminology arising from the need for legal protection of public interest requires further clarification.

In our opinion, public interest can be defined as a legally ensured and protected interest that serves as an external manifestation and official expression of the needs of both society and the state.

The study of the administrative law sector and the analysis of procedural legislation have shown that the concept of public interest is further shaped by the specific characteristics of legal regulation and the subjects involved in the respective legal relations. We believe that ensuring public interest is a crucial means of fulfilling the most important social and legal values, meeting the needs of both society and the state, and achieving the objectives of administrative justice.

The scientific and practical value of the obtained results lies in their potential use for improving legislative practice, optimizing the administrative-legal system, and implementing the principles of administrative proceedings. The theoretical analysis conducted not only expands scientific knowledge but also has applied significance, enabling the use of the findings to address pressing issues in administrative justice.

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Д.Р. Егежанова, И.С. Сактаганова, Э. Юхневичус

Әкімшілік құқық пен сот ісін жүргізудегі қоғамдық мүдденің рөлі туралы

Мақалада заңнама мен сот тәжірибесі арқылы қоғамдық мүдденің тұжырымдамасын талдауға әрекет жасалған. Зерттеу осы саладағы жаңалық болып табылады, өйткені бұған дейін қазақстандық әкімшілік құқық пен процесс саласында мұндай шолу жүргізілген жоқ. Әкімшілік қалаудың (әкімшілік органның құзыреті) қоғамдық мүддені нығайтудың басты тетігі болатыны анықталып отыр. Әкімшілік талап арқылы әкімшілік заңнамадағы рәсімдерді және жария құқықтарды даулауға мүмкіндік береді. Жүргізілген талдау қоғамдық мүддені құқықтық қамтамасыз етудің маңыздылығын және оның құқықтық жүйені дамытудағы пайдасын түсінуге ықпал етеді. Мақаланың ғылыми құндылығы Қазақстанда жақында қабылданған Әкімшілік рәсімдік-процестік заңнамасын талдаудан көрінеді. Дамыған мемлекеттердің тәжірибесін салыстыра отырып, қоғамдық мүдде — құқықтық реттеуге қиын болатын құқықтық құрылым ретінде құқықтық жүйелерді дамытудың әмбебап бағдар

қызметі екендігі анықталды. Сондықтан қоғамдық мүдде ұғымы ғылыми түсіну үшін де, кеңейтілген түсіндіру және одан әрі қолдану үшін де нақтылауды қажет етеді. Зерттеудің қосымша құндылығы салыстырмалы перспективада ғылыми зерттеу жүргізу үшін ақпарат беретін шетелдік доктринаны қарау, бұл қоғамдық мүдденің тұжырымдамасын салыстырмалы талдауға мүмкіндік береді.

Кілт сөздер: қоғамдық мүдде, әкімшілік қалау, тұжырымдама, қоғам, басқару, тетік, әкімшілік орган, Үкімет, әділет, сот.

Д.Р. Егежанова, И.С. Сактаганова, Э. Юхневичус

О роли публичного интереса в административном праве и судопроизводстве

В данной статье предпринята попытка проанализировать концепцию публичного интереса через призму анализа научных концепций, зарубежного опыта и законодательной практики. Исследование является новшеством в этой области, так как ранее подобный обзор в отрасли казахстанского административного права и процесса не проводился. Было выявлено, что административное усмотрение (компетенция административного органа) является главным механизмом укрепления публичного интереса. Способствуют работе такого механизма установленные законодательством административные процедуры и возможность оспаривания публичных прав с помощью иска. Проведенный анализ способствует пониманию и значимости правового обеспечения публичного интереса и его выгоды в развитии правовой системы. Научная ценность статьи заключается в анализе опыта административной юстиции Казахстана и зарубежных стран. Сравнивая опыт более развитых государств и Республики Казахстан, приходит понимание, что публичный интерес — правовая конструкция, которая сложно поддается правовому регулированию, служит универсальным ориентиром для развития правовых систем. Поэтому понятие публичного интереса требует уточнения, как для научного понимания, так и для расширенного толкования и дальнейшего применения. Дополнительная ценность исследования заключается в системном анализе концепции публичного интереса в зарубежной доктрине права, что дает информацию для проведения научного исследования в сравнительной перспективе.

Ключевые слова: публичный интерес, административное усмотрение, концепция, общество, управление, механизм, административный орган, Правительство, юстиция, суд.

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Interaction of the Commissioner for Human Rights with specialized ombudsmen in the Republic of Kazakhstan

The article discusses the problems of interaction between the Commissioner for Human Rights in the Republic of Kazakhstan and specialized ombudsmen. The study revealed the main shortcomings of the current legislation: the lack of a clear mechanism of coordination between ombudsman institutions; fragmentation of the system of registration of complaints; insufficient interaction with government agencies and fragmented reporting system. International practices were examined through a comparative study: countries such as Canada, Finland, the United Kingdom, Spain and the United Kingdom have a well-developed system of human rights protection and provide clear mechanisms for cooperation between ombudsmen. This includes legal regulation of the transfer of complaints, data exchange and joint inspections. After careful consideration, specific proposals have been made to amend the Law of the Republic of Kazakhstan "On the Ombudsman for Human Rights". It is hereby proposed to amend the Law "On the Rights of the Child", the Social Code, the Entrepreneurial Code of the Republic of Kazakhstan in order to improve the effectiveness of interaction between human rights institutions. In particular, the proposal is aimed at strengthening cooperation between ombudsmen, developing regulations for their joint inspections, introducing a mechanism for transferring appeals between them, as well as creating a single digital platform for automated review of complaints. The proposed changes are designed to increase transparency, improve accessibility and coordination of activities to protect the rights of citizens.

Keywords: Commissioner for Human Rights, specialized ombudsmen, human rights institutions, legal regulation, complaints, international experience, coordination, Kazakhstan.

Introduction

The institution of the Commissioner for Human Rights (hereinafter referred to as the Ombudsman) in the Republic of Kazakhstan plays an important role in protecting the rights and freedoms of citizens. Its activity is determined by the basic law of the Republic of Kazakhstan and other regulatory acts. In recent years, Kazakhstan has been developing a system of specialized ombudsmen, such as the Commissioner for the Rights of the Child and the Commissioner for the Protection of the Rights of Entrepreneurs.

With all the positive aspects regarding the activities of human rights institutions, there is a serious problem in the form of uncertainty around regulatory regulation of their interaction with the institution of the Ombudsman. Insufficient mechanisms for the transfer of complaints, the exchange of information and joint participation in the protection of rights can lead to a repetition of the functions of various bodies, shortcomings in guaranteeing the rights of citizens and inconsistency between institutions. The experience of other countries — Great Britain, Canada, Finland and Spain — indicates that the effective functioning of the ombudsman system requires a clear delineation of competencies and the development of coordination and interaction mechanisms.

The purpose of this study is to identify problems of interaction between the Commissioner for Human Rights in the Republic of Kazakhstan and specialized authorized ombudsmen and to propose legal methods for their solution.

In order to achieve this goal, we have identified the following tasks:

- Study the current laws of the Republic of Kazakhstan on the work of the Commissioner for Human Rights and specialized authorized ombudsmen.

- Study the experience of other countries in the work of ombudsmen and identify the most successful forms of their interaction.

- Identify the main problems in coordinating the activities of ombudsmen in Kazakhstan.

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- Propose legislative improvements, taking into account mechanisms for the transmission of complaints, the exchange of information and the conduct of joint investigations

Disagreements in the concepts of this area of research may arise due to differences in theoretical approaches or research methodology.

The issue of coordinating the work of ombudsmen remains poorly understood in legal science. Traditional ideas about the independence of human rights institutions are faced with the need to unite them to effectively protect the rights of citizens.

The issues of determining the powers of the general and specialized ombudsmen are controversial in the methodology for their determination. At the international level (as, for example, in the countries of the European Union), there are various approaches: from granting full autonomy to specialized ombudsmen to their subordination to the chief ombudsman in Kazakhstan. Challenges in defining authority remains unresolved, which leads to legal uncertainty.

A study of scientific publications shows that the Russian legal literature does not pay enough attention to the issues of interaction between the Ombudsman and specialized ombudsmen. In Russian and foreign studies (works by Kalinina E.G. [1; 28], Shabanova Z.M. [2;25], issues of interaction between ombudsmen at the institutional level were considered; nevertheless, the adaptation of these models to the legal space of Kazakhstan requires further study.

Research on ombudsman interactions is largely based on foreign scientific literature. In the works of Hertz (2018) and Goodwin (2020), methods for coordinating the activities of ombudsman institutions in the countries of the European Union and the UK are considered. They include analysis of the exchange of complaints, digitalization of procedures for the protection of rights and control by parliament [3; 45].

However, there is research on various aspects of the regulation of the Ombudsman institution. For example, the work of Bashimov M.S. “Ombudsman Institute in the Republic of Kazakhstan and foreign countries (comparative legal analysis)” [4; 48]. Based on the study of literature, the author of the article comes to the conclusion about the importance of creating a comprehensive system of cooperation between ombudsmen in Kazakhstan, which would include legal, organizational and digital mechanisms.

One of the main problems of the study is the lack of clearly defined norms in Kazakhstani legislation to coordinate the activities of the Ombudsman and specialized ombudsmen. This leads to inconsistency in their work and the creation of gaps in the protection of citizens’ rights. There is also duplication of functions and inefficient use of rights protection resources.

The development of rules for coordinating actions between ombudsmen will help get rid of these problems, speed up the processing of citizens’ appeals and make human rights activities more open and understandable.

Methods and materials

The basic provisions on the protection of human rights and freedoms and the role of the Ombudsman are defined in the Fundamentals of Legislation and the Constitution of the Republic of Kazakhstan Article 83-1 enshrines the constitutional status of the national Ombudsman [5]. The Constitutional Law of the Republic of Kazakhstan “On the Commissioner for Human Rights” No. 154-VII of November 5, 2022 [6], establishes the status and key functions of the Ombudsman in Kazakhstan and determines the procedure for considering citizens’ appeals. Nevertheless, the legislation of the country does not clearly establish norms for regulating the cooperation of the Ombudsman with other specialized organizations (for example, to protect the rights of children or entrepreneurs).

Examination of the legislation shows the need to revise and modernize individual laws governing the work of specialized ombudsmen. The regulations do not clearly define the mechanism for the transfer of complaints between the Ombudsman and specialized ombudsmen, which leads to the emergence of legal gaps in their activities.

An important guideline for the development of a system of interaction between ombudsmen in Kazakhstan is international norms governing the actions of national human rights institutions.

One of the most important international documents is the following:

The Paris Principles (1993) are a set of normative documents of UN General Assembly resolution 48/134, which aim to ensure the independence, competence and effectiveness of national institutions for the protection of human rights [7].

The Venetian Principles (2019) were endorsed by the European Commission for Democracy through Law (Venice Commission of the Council of Europe) [8]. They provide additional guarantees of the inde-

pendence of ombudsman structures, including their organizational autonomy, financing and procedural independence.

Recommendations submitted by the United Nations (UN), the Council of Europe and the OSCE include reports and analytical studies on the work of national institutions for the protection of human rights.

The following scientific approaches were applied in this article:

The study of comparative legal analysis made it possible to study the methods of interaction of state ombudsmen abroad and identify effective methods that can be applied in the Kazakh legal system.

We studied the laws and regulations of the ombudsmen in Kazakhstan in accordance with the constitution and legislation, as well as international standards in this area.

The analysis of the information in the reports was carried out by studying public sources — the annual reports of the Ombudsman and specialized authorities, statistical data and international reports.

The legal analysis method is used to assess compliance with current legislation and identify areas for clarification. The use of these methods made it possible to identify the main problems in organizing cooperation between ombudsmen in Kazakhstan and offer reasonable recommendations for their improvement.

Results

The institution of the Commissioner for Human Rights (hereinafter — the Ombudsman) is of great importance in the modern legal sphere of the Republic of Kazakhstan. This study analyzes and models various scenarios to identify the main problematic aspects of legislation and possible ways to improve them through forms of interaction. In researching the legislation, a gap was found in the current law on the position of the Human Rights Ombudsman. The current version of the law does not clearly define the interaction of the general Ombudsman with specialized structures. There are often situations when parents are faced with violations of their children's rights in educational institutions and are forced to appeal simultaneously to the "general" Ombudsman and other competent bodies. Violations may be reported to the Ombudsman and child specialists from unofficial sources, which leads to repeated consideration of the complaint, increasing bureaucratic procedures and making it more difficult to protect the rights of minors.

When a person faces a violation of their rights at work, including discrimination due to a disability, the complaint should first be directed to the relevant authority responsible for human rights protections. In many cases, a general ombudsman may handle such matters and, if necessary, forward them to a specialized body focused on the rights of persons with disabilities. However, the existing legislation does not provide a clear algorithm of action. A conversation with representatives of the Ombudsman would help to clarify the problems in practical terms: which body has the authority to consider a complaint in case of its "dual" nature?

We have considered in Table 1 the international experience of interaction of the Commissioner for Human Rights in the Republic of Kazakhstan with specialized ombudsmen.

Table 1

Comparative analysis

Criterion	Kazakhstan	Foreign experience (Spain, Canada, UK)
1	2	3
Legal framework	The Law "On the Ombudsman for Human Rights" does not contain separate norms on interaction with highly specialized ombudsmen.	There are no clear instructions on information exchange and joint consideration of appeals. In most countries there is a basic law on the Ombudsman along with by-laws or separate chapters regulating forms of cooperation. The norms on the transfer of complaints, joint inspections and the order of reports are specified.
Coordination mechanisms	There are no regulations for the coordination council of periodic meetings and interdepartmental working groups.	Ombudsman Councils are established, which meet regularly to discuss systemic problems. The procedure for adopting joint recommendations to legislators and authorities is regulated.
Statistics and database of appeals	There is no single integrated complaints database. Different forms of recording and reporting complicate the exchange of data between the Ombudsman and the specialized commissioners.	A single portal is often used, where citizens' appeals are received and automatically forwarded to the competent ombudsman's office. A standardized reporting system simplifies analysis and the development of recommendations.

Continuation of the table 2

1	2	3
Citizen awareness	Low awareness of the powers of specialized Ombudsmen: citizens more often turn to the Ombudsman "out of habit" even in case of highly specialized complaints.	The functions of each ombudsman are widely explained on official websites and in the media. Hotlines and counseling centers operate.
Joint reports and parliamentary oversight	The annual report of the Ombudsman does not always include final information on the activities of specialized ombudsmen.	Regular practice of joint or parallel reports, where each ombudsman covers a different area, but there is a common section on problems and recommendations. Transparent system of presenting results to the parliament.

The most serious problem for the development of an effective system of interaction between ombudsmen in Kazakhstan is the lack of a legislative mechanism for coordination. There are no provisions in the national laws on the order of:

- transfer of information between the Ombudsman and specialized ombudsmen, allegations of violations of rules and regulations outside the competence of either institution. The legislation of the Republic of Kazakhstan contains a number of gaps regarding the interaction of the Ombudsman with specialized ombudsmen.

Article 9, paragraph 1, contains a provision that the Commissioner shall cooperate with the Commissioner for Children's Rights in the Republic of Kazakhstan and other national human rights institutions, without specifying specific rules for coordination with other authorized persons [6].

The main problematic aspects are:

- There is no clear description of the procedures for filing complaints, conducting joint inspections and exchanging information.

- When considering complaints of violations in schools and the rights of children and persons with disabilities, difficulties arise in coordinating actions between different jurisdictions.

Act No. 345-II of 8 August 2002 on the rights of the child in the Republic of Kazakhstan. Article 7-1 of this law defines the duties of the Ombudsman for the Rights of the Child without specifying his interaction with the Ombudsman [9]. There is no system for automatically redirecting complaints between ombudsmen.

There is no clear distribution of responsibility for coordinating investigations into violations of children's rights between different institutions.

Social Code of the Republic of Kazakhstan No. 193-VII dated April 20, 2023. Article 10-1 of the Social Code, as established by Law No. 115-VIII on July 5, 2024, delineates the authority of the Ombudsman concerning the safeguarding of rights for socially vulnerable groups, which encompasses individuals with disabilities [10]. Nevertheless, this article fails to delineate the mechanisms governing the interaction between the Ombudsman and other authorized individuals or governmental entities within this domain.

Consequently, the existing legal framework is deficient in that it does not provide clearly defined protocols for conducting joint inspections, nor does it establish an effective feedback mechanism between the Ombudsman and the Commissioner for the Rights of Persons with Disabilities. This could impede the efficient coordination of their efforts in safeguarding the rights of individuals with disabilities.

To enhance the efficacy of safeguarding the rights of individuals with disabilities, it is prudent to formulate and execute regulations that govern the collaboration among these institutions. This should encompass established procedures for joint inspections as well as a comprehensive complaints mechanism.

The Entrepreneurial Code of the Republic of Kazakhstan No. 375-V, enacted on October 29, 2015, defines the legal basis for the status and functions of the Commissioner for the Protection of Entrepreneurs' Rights, popularly referred to as the Business Ombudsman. Chapter 28 of this Code is designated as "The Commissioner for the Protection of Entrepreneurs' Rights of the Republic of Kazakhstan. Investment Ombudsman" [11].

The first paragraph of this chapter defines the legal status of the Commissioner for the Protection of Entrepreneurs' Rights in Kazakhstan. In particular, Article 284 establishes that the appointment of the Commissioner is formalized by an order of the President of the Republic of Kazakhstan, and the Commissioner is accountable to the President. The National Chamber of Entrepreneurs guarantees oversight of his activities, and it is required that he refrains from engaging in political activities in the performance of his duties. The main duties of the Business Ombudsman include representing, protecting and defending the rights and legitimate interests of entrepreneurs, as well as considering their appeals.

It is important to note that the current version of the Entrepreneurial Code does not contain provisions regulating the relationship between the Business Ombudsman and the National Ombudsman responsible for human rights. The lack of clearly defined protocols governing the interaction between these institutions may lead to insufficient coordination of actions to protect business rights, especially when such violations overlap with more serious human rights issues.

The study of the experience of other countries shows that in many democratic legal systems (for example, Great Britain, Canada and Finland) there is a legislated mechanism of interaction between different ombudsmen.

In the UK, for example, the Parliamentary and Health Service Ombudsman Act (1967) regulates cooperation between ombudsmen in this area. It contains provisions for sending complaints between general and specialized ombudsmen. These mechanisms exclude re-examination of cases and establish procedures when a complaint is received against the activities of several human rights institutions [12].

Canadian law governs the interaction of various bodies with the Public Complaints and Review Commission Act (1988) [13]. According to Article 7 of this law, if a complaint arises about the activities of several ombudsmen at the same time, they are required to conduct a joint investigation and exchange the results of inspections. This method of coordination helps to avoid duplication of processes and ensures consistency of activities when dealing with complaints.

In Finland, Ombudsman activities are based on the Parliamentary Ombudsman Act (Finnish Parliamentary Ombudsman Act, 2002). Under Article 14, ombudsmen are required to prepare and submit a joint report to Parliament each year [14]. This document summarizes information on human rights violations identified by various relevant ombudsmen, and also contains general recommendations for improving legislation. This practice contributes to the transparency of the work of human rights institutions and helps contribute to effective interaction with state bodies.

The legislation of the Republic of Kazakhstan lacks such detailed norms and mechanisms for interaction between the Ombudsman and relevant commissioners. This leads to problems in the form of repetition of functions, slow resolution of complaints and insufficient coordination between human rights organizations. After analyzing foreign experience, it is proposed to make specific changes to the legislation of Kazakhstan to create a systematic legal framework for effective interaction between the Ombudsman's bodies and increase the level of protection of the rights and freedoms of citizens of the Republic of Kazakhstan.

This includes setting standards for joint inspections and coordinating requests to public authorities. It also provides for the development of a common policy for the protection of human rights.

Kazakhstani legislation lacks a similar mechanism, which leads to duplication of functions and makes it difficult to determine the competence of specific ombudsmen, which in turn creates uncertainty in law enforcement practice and slows down the response to citizens' appeals.

Another important problem is the fragmentation of the system for recording and processing citizens' appeals. Currently, complaints received by the Ombudsman and specialized authorized persons are registered separately in each department without creating a centralized database.

This fractured interaction within the organization has several negative consequences:

The lack of in-depth study of trends leads to the inability to identify common patterns of human rights violations in different areas, such as the intersection of business interests and workers' social guarantees.

Duplication of grievances arises due to the lack of a centralized system, leading to repeated handling of the same grievances by different organizations without proper coordination.

Other countries (e.g. Canada and Estonia) already use specialized digital platforms to receive complaints from citizens. These platforms automatically forward complaints to the relevant human rights bodies and services. The introduction of such a system in Kazakhstan could significantly speed up the processing of complaints and create an effective tool for analyzing human rights violations.

Specialized ombudspersons in Kazakhstan do not have a formal right to request information from the Ombudsman and do not participate in the development of legislative initiatives related to their area of work. Therefore, their role is often reduced to an advisory function, and their influence on the formation of state policy for the protection of human rights remains limited.

In foreign countries (France, Great Britain, Sweden) a clear system of parliamentary control over the activities of all ombudsmen has been established. They take part in working groups under the Parliament and can propose changes in legislation to protect the rights of citizens. An illustrative example can be found in Finland.

The absence of such a system in Kazakhstan makes it difficult to take into account the opinions of experienced specialists in the development of legislative acts.

Currently, the annual reports of specialized ombudsmen are created independently and are not always included in the general report of the ombudsman, which complicates the analysis of human rights violations and makes it difficult to develop unified recommendations for state bodies.

In international practice, a mechanism of generalized reporting on the work of ombudsmen is often used — when all their reports are collected in one document and then presented in parliament for discussion with the general public. For example, in countries such as Australia and Finland, the annual report combines information from all ombudsmen and contains general proposals to improve legislation.

Improving the legal regulation of interaction between the Ombudsman and specialized commissioners in Kazakhstan is a key step towards improving the effectiveness of the protection of human rights and freedoms. The following activities are proposed to address the identified legislative gaps and ensure coherence.

Initially, it is suggested to modify the Constitutional Law of the Republic of Kazakhstan titled "On the Commissioner for Human Rights" No. 154-VII, enacted on November 5, 2022 [6]. It is essential to enhance Article 9 of this legislation with explicit provisions that distinctly govern the collaboration between the Ombudsman and specialized commissioners. It is imperative to establish provisions for the transfer of complaints in alignment with the designated authority and to formalize the procedures for collaborative investigations and inspections. It is imperative that a comprehensive annual report detailing the activities of all ombudsmen be prepared and submitted on an annual basis to the Parliament of the Republic of Kazakhstan. This measure will facilitate the organization of the reporting process and reduce redundancy in the operations of human rights organizations.

Moreover, it is prudent to include a provision pertaining to collaboration with the National Ombudsman within the Law "On the Rights of the Child in the Republic of Kazakhstan" No. 345-II, dated August 8, 2002 [9], particularly in Article 7-2 which addresses the "Commissioner for the Rights of the Child". This provision grants the Commissioner for Children's Rights the authority to file appeals with the National Ombudsman, facilitating a comprehensive assessment from a broad human rights perspective. The proposed addition aims to clarify legal uncertainties and improve the effectiveness of responses to violations related to children's rights.

Third, it is very important that Article 10-1 "Competence of the Ombudsman" of the Social Code of the Republic of Kazakhstan No. 193-VII of April 20, 2023 [11] is amended to include provisions that mandate the participation of the Commissioner for the Rights of Socially Vulnerable Populations in joint inspections with the Commissioner for Human Rights. This is particularly important to consider when looking at the appeals of disabled people as it has to do with the protection of their rights and freedoms. This modification will provide specific assistance and a holistic way of dealing with the complaints about the rights of persons with disabilities.

Fourth, the Entrepreneurial Code of the Republic of Kazakhstan No. 375-V of October 29, 2015 [12] also defines the responsibilities and functions of the Commissioner for the Protection of Entrepreneurs' Rights in Chapter 28. It is advisable to include a provision that allows the Commissioner for the Protection of Entrepreneurs' Rights to refer the appeals of business entities to the National Ombudsman in cases of systemic problems that need further legal analysis. This measure is to increase the effectiveness of dealing with the problems faced by the business community and will actually minimize administrative hurdles.

The implementation of these changes will enhance the cooperative relationship between the different ombudsmen to a more optimal level in order to safeguard the rights of the relevant groups of citizens in the Republic of Kazakhstan.

Fifth, in order to increase the effectiveness of the complaint handling process and to enhance the availability of human rights institutions for citizens, it is suggested that one unified digital platform should be created and implemented for the reception and analysis of complaints. This platform would send automatic referrals to the proper entities. The establishment of this platform will help citizens lodge their grievances to ombudsmen and government bodies easily, avoid duplication of inspections and make the process more transparent. This will lead to a more effective interaction between various state and human rights organs in the analysis of the appeals made by citizens.

An important aspect of an effective system of protection of rights is control by parliament. Therefore, it is proposed to amend the law "On the Commissioner for Human Rights" in order to ensure the annual submission of a joint report of all ombudsmen for consideration in the House of Parliament of the Republic of Kazakhstan as a mandatory requirement. Such parliamentary control contributes to increasing transparency

and the public of the work of the ombudsmen and the prompt identification and elimination of problems in the field of human rights.

The implementation of the proposed changes will not only close legal gaps and reduce the risk of duplication of functions, but also significantly improve the effectiveness of the entire national human rights protection system in Kazakhstan.

The novelty of the results of this study lies in an integrated approach to studying the problem of legal regulation of the interaction of the Ombudsman with specialized ombudsmen in the Republic of Kazakhstan. For the first time in the domestic legal sphere, through a comparative analysis of the legislation of Kazakhstan and advanced international experience (Great Britain, Canada, Finland), legal gaps and clashes in the work of ombudsman institutions were identified and specified.

Discussion

The study of foreign and domestic scientific literature shows a variety of approaches to the creation of specialized ombudsman institutions. Foreign authors Hertz and Goodwin highlight the need to distinguish human rights organizations in order to respond to a wide range of contemporary social issues more effectively. According to Hertz (2018) [15; 125], specialized ombudsmen can more quickly and professionally consider citizens' complaints on narrow and complex issues, such as the rights of children, entrepreneurs or people with disabilities. Goodwin (2020) argues that the effective performance of the functions of specialized ombudsmen is possible only with coordinated work with national ombudsmen [16; 15]. This will help avoid redundancy and provide a comprehensive approach to protecting human rights.

During the analysis of literary sources, it was found that the issues related to the legal status and functioning of the ombudsman institution are covered in detail in the works of E.N. Mukhitdinov [17; 34], but no in-depth studies on the interaction of ombudsmen with specialized structures have been conducted. Comparative legal analysis of the ombudsman institution in Kazakhstan and Russia is also presented in the dissertation study of the Commissioner for Human Rights in these countries by A.B. Uzakbaeva [18; 25], but this work does not address in detail the issues of inter-institutional interaction.

Among the domestic authors, one should single out the works of M.S. Bashimov, who emphasizes the importance of integrating specialized ombudsmen into a unified system for protecting human rights in Kazakhstan [4; 47].

Scientific works of V.S. Issabekova for 2021 and 2022 are important for understanding the modern function of the institution of the Ombudsman in the Republic of Kazakhstan [19; 15]. In his study "Institute of the Commissioner for Human Rights: History, Modernity, Prospects" V.S. Issabekova justifies the need to consolidate the legislative powers of ombudsmen and develop specialized institutions for the protection of human rights. The article by V.S. Issabekova and Zalesny "Formation of a new model of election to the post of Commissioner for Human Rights in the Republic of Kazakhstan: problems and prospects" demonstrates the need for modern approaches to the election of the Ombudsman to take into account interaction with similar ombudsmen to increase the efficiency of their overall work [20; 27].

International experience shows that in countries with a developed system of human rights protection (e.g., the UK, Canada and Spain) there are well-established mechanisms of interaction between ombudsmen. For example, in Canada there is a legal obligation for ombudsmen to work together: to refer appeals to each other and conduct joint investigations.

In Canada, ombudsmen operate at both the federal and provincial and territorial levels under their own laws for each province and territory. For example, in Manitoba, the Ombudsman Act is applied, which establishes the powers and duties of the Ombudsman under Article 9 of part 2 of this law that are not subject to state legislation on service to ensure independence and objectivity in dealing with citizens' complaints [21].

Canada also has specialized human rights organizations — the Canadian Human Rights Commission and the Canadian Human Rights Tribunal. They monitor the observance of human rights both in public bodies and in the private sector. These institutions work in close alliance with provincial and territorial human rights commissioners to provide a two-stage system for the protection of human rights.

In Spain, there is a special legal institution, the Council of Ombudsmen, which coordinates their activities to avoid duplication of functions and ensure effective response to complex complaints from citizens. This mechanism is enshrined in Law 36/1985 of November 6, 1985 on the relationship between the state ombudsman and similar figures in various autonomous communities [22]. In accordance with Article 2 of this law, the ombudsmen of autonomous regions have the right to send complaints outside their competence to the state ombudsman in order to ensure effective cooperation and coordination activities.

1) The lack of an effective legal mechanism for coordination in Kazakhstan is a serious problem that deforms the system of human rights protection. To address this problem, it is necessary to amend the Law on the Ombudsman by establishing clear norms of interaction between different ombudsman structures, as well as to develop by-laws regulating the process of transferring complaints, information exchange and joint participation in the protection of citizens' rights. For example, it could be proposed to supplement the law with a new chapter "Interaction of the Commissioner for Human Rights with specialized ombudsmen".

The activities of the Commissioner for Human Rights and specialized ombudsmen (on the rights of the child, on the protection of the rights of entrepreneurs and persons with disabilities and other ombudsmen) will be carried out in accordance with certain principles:

- Mutual support and knowledge sharing;
- Coordination of efforts to protect human rights;
- Avoidance of repetition of functions and optimization of complaint procedures (no bureaucracy).

Special representatives will be independently engaged in their work and will be obliged to notify the Ombudsman of structural violations in the area of their work.

2) For the effective work of the bodies it is necessary to introduce a system for processing complaints with the possibility of their automatic forwarding to the competent authorities, ensuring prompt exchange of information and keeping statistics of appeals.

International experience shows examples of centralized electronic platforms in many European countries (as in Finland and Estonia), which allow complainants to track the process of consideration of their complaints in real time. The introduction of such a system in Kazakhstan will increase the transparency of the activities of the Commissioners for Human Rights and ensure a quick review of complaints without the risk of duplication.

To address this problem, it is advisable to create a unified information system for registration of complaints and integrate it into all ombudsman structures. It is important that such a system not only registers citizens' complaints, but also automatically forwards them to the competent authorities without the need for the complainant to understand how powers are distributed among the various ombudsmen.

3) In international practice there is a practice of parliamentary control over the activities of ombudsmen. This mechanism allows not only to consider complaints of citizens received by the ombudsmen, but also to make recommendations for changes in legislation.

For example, in the UK, specialized ombudsmen working in the health sector operate the Health Service Commissioners Act 1993, the activities of ombudsmen in the field of local self-government are regulated by the Local Government Act 1974, they have the right to seek clarification from government bodies on specific human rights issues and participate in the discussion of bills within their competence [23].

In Kazakhstan, however, there is no such mechanism of parliamentary control over the activities of ombudsmen, which reduces their ability to influence the country's human rights policy.

It is important to amend the legislation of Kazakhstan so that specialized ombudsmen can interact with state bodies through the Commissioner for Human Rights and provide expert opinions on draft laws affecting the sphere of their activities.

4) The practice of joint reports on human rights activities is widespread in different countries of the world. For example, in Finland and Australia, the annual reports of the Ombudsmen are summarized in a single document and presented in Parliament to increase the transparency and systematic nature of such activities. Kazakhstan should introduce a similar model by enshrining in legislation the obligation to create a joint report based on the data of all ombudsmen.

Conclusions

Improving legislation on the interaction of the Ombudsman and specialized commissioners in Kazakhstan is an important step to increase the effectiveness of the system for protecting human rights and freedoms. To eliminate the identified legislative gaps and ensure consistency, it is proposed to take a number of measures.

Firstly, it is proposed to amend the Constitutional Law of the Republic of Kazakhstan "On the Commissioner for Human Rights" No. 154-VII of November 5, 2022. It is important to supplement Article 9 of this law with specific provisions that clearly regulate the cooperation of the Ombudsman with specialized commissioners. It is necessary to provide for the transfer of complaints in accordance with the competence and approve the procedures for joint investigations and inspections. A single annual report on the activities of all ombudsmen should be developed and submitted to the Parliament of the Republic of Kazakhstan each year.

This will help structure the reporting process and eliminate repetition of functions in the work of human rights organizations.

Furthermore, it is advisable to incorporate a clause regarding collaboration with the National Ombudsman into the Law "On the Rights of the Child in the Republic of Kazakhstan" No. 345-II, dated August 8, 2002, specifically in Article 7-2 concerning the "Commissioner for the Rights of the Child". This provision enables the Commissioner for Children's Rights to submit appeals to the National Ombudsman for an extensive evaluation from a wide-ranging human rights standpoint. The proposed addition would eliminate legal ambiguity and enhance the efficiency of responses to instances of violations pertaining to children's rights.

Third, Article 10-1 "Competence of the Ombudsman" of the Social Code of the Republic of Kazakhstan No. 193-VII of April 20, 2023, must be amended to include the provisions that require the participation of the Commissioner for the Rights of Socially Vulnerable Populations in collaborative inspections with the Commissioner for Human Rights. This is especially important for the protection of the rights and freedoms of the disabled people when considering their appeals. This modification will help provide proper help and a clear plan to solve the problems of violations of the rights of people with disabilities.

Fourth, the current legislation that regulates business activities is the Entrepreneurial Code of the Republic of Kazakhstan, which was adopted on October 29, 2015, and incorporates provisions for the Commissioner for the Protection of Entrepreneurs' Rights in Chapter 28. It is recommended to incorporate a clause which allows the Commissioner for the Protection of Entrepreneurs' Rights to channel business appeals to the National Ombudsman where systemic failures call for a more detailed legal analysis. This measure will lead to a more effective solution of the problems facing the business community and will contribute to the reduction of administrative barriers.

The implementation of these changes will increase the collaborative working of the ombudsmen to make a stronger protection of the rights of the aforementioned groups of citizens in the Republic of Kazakhstan.

Fifth, to improve the complaint handling and to increase the accessibility of human rights institutions for citizens, it is suggested that a single digital platform should be created and implemented for the reception and consideration of complaints, including the automatic routing of complaints to the relevant structures. The creation of this platform will assist ombudsmen and other government agencies in the receipt of complaints from citizens and will also help in avoiding duplication of inspections as well as increasing the transparency of the process. It will also help to improve the communication between different state and human rights institutions when considering the appeals of citizens.

The proposed changes will contribute to better cooperation between the human rights structures of Kazakhstan, ensure prompt consideration of complaints and increase the effectiveness of the protection of human rights and freedoms in accordance with international standards.

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В.С. Исабекова, Г.У. Балгимбекова

Адам құқықтары жөніндегі уәкілдің Қазақстан Республикасындағы мамандандырылған омдубсмендермен өзара қарым-қатынасы

Мақалада Қазақстан Республикасындағы Адам құқықтары жөніндегі уәкілдің мамандандырылған омбудсмендермен өзара іс-қимыл жасау проблемалары талқыланған. Зерттеу кезінде қолданыстағы заңнаманың негізгі кемшіліктері анықталды: омбудсмен институттары арасында үйлестірудің нақты тетігінің болмауы; шағымдарды тіркеу жүйесінің бірізді болмауы; мемлекеттік мекемелермен өзара іс-қимылдың жеткіліксіздігі және есептілік жүйесінің шашыраңқылығы. Мына елдерге халықаралық тәжірибені салыстыру жүргізілді: Канада, Ұлыбритания, Испания және Финляндия сияқты елдер адам құқықтарын қорғаудың дамыған жүйесіне ие және омбудсмендер арасындағы ынтымақтастықтың айқын тетіктерін көздейді. Бұған шағымдарды беруді заңдық реттеу, деректер алмасу және біріктірілген тексерулер кіреді. Құқық қорғау институттарының өзара іс-қимылының тиімділігін арттыру мақсатында «Бала құқықтары туралы» заңға, Әлеуметтік кодексе, Қазақстан Республикасының Кәсіпкерлік кодексіне өзгерістер енгізу ұсынылған. Атап айтқанда, ұсыныс омбудсмендер арасындағы ынтымақтастықты нығайтуға, оларды бірлескен тексеру регламентін әзірлеуге, олардың арасындағы өтініштерді беру тетігін енгізуге, сондай-ақ шағымдарды автоматты түрде қарау үшін бірыңғай цифрлық платформа құруға бағытталған. Ұсынылып отырған өзгерістер ашықтықты арттыруға, азаматтардың құқықтарын қорғау жөніндегі қызметтің қолжетімділігі мен үйлестірілуін жақсартуға бағытталған.

Кілт сөздер: Адам құқықтары жөніндегі уәкіл, мамандандырылған омбудсмендер, құқық қорғау институттары, құқықтық реттеу, шағымдар, халықаралық тәжірибе, үйлестіру, Қазақстан.

В.С. Исабекова, Г.У. Балгимбекова

Взаимодействие Уполномоченного по правам человека со специализированными омбудсменами в Республике Казахстан

В статье обсуждаются проблемы взаимодействия Уполномоченного по правам человека в Республике Казахстан со специализированными омбудсменами. При исследовании были выявлены основные недостатки действующего законодательства: отсутствие четкого механизма координации между омбудсменскими институтами, раздробленность системы регистрации жалоб, недостаточное взаимодействие с государственными учреждениями и фрагментированность системы отчетности. Было проведено сравнение международного опыта: такие страны как Канада, Великобритания, Испания и Финляндия обладают развитой системой защиты прав человека и предусматривают ясные механизмы сотрудничества между омбудсменами. Это включает юридическое регулирование передачи жалоб, обмен данных и соединенные проверки. В статье предложено внести изменения в Закон «О правах ребенка», Социальный кодекс, Предпринимательский кодекс Республики Казахстан с целью повышения эффективности взаимодействия правозащитных институтов. В частности, предложение направлено на укрепление сотрудничества между омбудсменами, разработку регламента их совместных проверок, внедрение механизма передачи обращений между ними, а также создание единой цифровой платформы для автоматизированного рассмотрения жалоб. Предлагаемые изменения призваны повысить прозрачность, улучшить доступность и координацию деятельности по защите прав граждан.

Ключевые слова: Уполномоченный по правам человека, специализированные омбудсмены, правозащитные институты, правовое регулирование, жалобы, международный опыт, координация, Казахстан.

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Global governance of artificial intelligence and its reflection at the national level (some basic legal and technological aspects)

The purpose of the article is to conduct a scientific and expert analysis of the current legal and technological aspects of global governance of artificial intelligence and its reflection at the national level using the case of Kazakhstan. The research question is to analyze global trends in the field of artificial intelligence, and to identify opportunities for Kazakhstan to participate in the processes of global governance of artificial intelligence and international cooperation in this area, as well as in the formation of policies, rules and specific measures for the development of artificial intelligence in our country. The article used qualitative research methods, as well as a literature review, synthesis, systematic review, including an analysis of international documents and current practice in the field of artificial intelligence management. The results of the study consist in the analysis and systematization of knowledge of the Global Digital Compact, in the definition of governance entities in the global digital space. The issues of reflection at the national level of global processes of artificial intelligence governance in Kazakhstan are analyzed. The issues of the artificial intelligence ecosystem, conceptual approaches to the development of national artificial intelligence are considered. The authors' main conclusions are that in its policy on the development of artificial intelligence, Kazakhstan needs to consider both global trends and the emerging international legal framework for regulating the sphere of artificial intelligence in order to advance national interests in this area.

Keywords: global governance of artificial intelligence; law and artificial intelligence; technological aspects of artificial intelligence; artificial intelligence in Kazakhstan.

Introduction

Artificial intelligence (AI) technologies are currently concentrated in the hands of a few IT giants and a small number of countries (mainly the USA and China). Most countries have serious restrictions in accessing AI tools. Events related to both the rivalry of major powers and large companies in the field of high technology and AI, and the desire of the international community to regulate AI governance issues at the political and legal level are currently taking place at a high speed at the global and international levels. Thus, following the results of the Future Summit, on September 22-23, 2024, the Pact for the Future was adopted [1]. All these processes and events are reflected to a certain extent at the regional and country levels, influencing developments in our Republic. In this regard, the purpose of the study is to review global AI governance processes and to analyze the general issues of their reflection at the national level in Kazakhstan. The objectives of the work were to study the issue of governance entities in the global digital space; highlighting the issues of the contradictory nature of the principle of exchanging Big Data and AI with confidentiality; as well as an analysis of current legal and technological aspects of reflecting global AI management processes at the national level in our country. The issues we are considering have not previously been the subject of special research in the legal science of Kazakhstan.

Methods and Materials

Qualitative research was aimed at analyzing and understanding the underlying causes of global rivalry between leading world states and large technology companies in the field of new technologies, as well as analyzing the processes of international cooperation and the emerging international legal framework in this area. This method contributed to the presentation of detailed information about the subject of the study, allowed the collection of information in a free form, based on the understanding, explanation and interpretation of empirical data. The methods of literature review, synthesis, systematic review, including analysis of international documents and current practice allowed us to analyze global trends in the field of AI and identify

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opportunities for Kazakhstan to participate in the processes of global governance of AI and international cooperation in this area. These methods together allow us to realize the purpose of the article and achieve results that can be used in the formation of policies, rules and specific measures for the development of AI in our country. The scientific basis of the article was the publication of F. Kukeyeva on theoretical and methodological approaches to the study of AI [2], other materials used: Pact for the Future (2024), Global Digital Compact (2024), The year we decide the internet's future (2025), speeches of the President of the Republic of Kazakhstan on the topic of AI (2024-2025), M. Anisimov Global Digital Compact and reflection of global technological processes in Kazakhstan (2024), Concept of development of artificial intelligence (in Kazakhstan) for 2024–2029, Draft Bill on artificial intelligence (initiated by members of Parliament), 2025 and other materials.

Results

- The Global Digital Compact has clearly resolved the issue of the rights of actor to participate in decision-making, in the development of Internet governance rules, the development of the digital space and the governance of AI by enshrining a multilateral approach in this area. Whether such an approach will be applied in Kazakhstan will be determined by politicians and legislators.

- 2025 will be a turning point for the future of Internet governance due to the adoption of the Global Digital Compact by global trends: states are facing increasing pressure to regulate the digital ecosystem, and state-controlled Internet models are changing the digital landscape, which directly affects the development of AI.

- The enshrinement in the Global Digital Compact of principles that are in some sense contradictory to each other: data protection and international cooperation in data exchange, in our view, not only the tension between state interests and the corporate sector, but also the broader competition between the concept of public goods for humanity and the right to profit in private enterprise. Apparently, the developers of the Treaty tried to consider the interests of both the first and second groups of entities, in addition, they normatively enshrined new concepts reflecting common values, for example, as "Digital public goods".

- The guidelines in Kazakhstan's AI policy consist of creating a solid foundation for the promotion of AI, the emphasis is on the formation of an institutional framework, infrastructure and the development of human capital, and Kazakhstan strives to become an active participant in the global AI ecosystem.

- Regarding the AI ecosystem in Kazakhstan, the issue of the powers of entities to participate in decision-making, participation in the development of Internet governance rules, the development of digital space and AI governance, in our opinion, has not yet received a conceptual solution. It seems that the draft Law on AI could enshrine the solution to the "multilateral approach" both in Internet governance and in AI governance.

- There are at least three different approaches to creating a national or sovereign AI. The first is represented by sovereign infrastructure, which requires very large investments; the second is our own language model, that is, the algorithms we develop are uniquely designed and differ significantly from existing approaches; and the third approach is any standard model that is freely available on the market, but trained on our own data set. In our opinion, these approaches should be studied in more detail and adopted as a basis for forming AI policy in Kazakhstan, and future rules and specific measures in this area should be developed considering the conceptual decision of politicians to choose one of the specified approaches to the development of national AI.

- Issues of Kazakhstan's information sovereignty in terms of direct access to the Internet should be resolved, reducing dependence on the Russian Internet infrastructure by laying fiber-optic lines (cables) for cross-border data transmission, which directly affects the development of AI in the country.

Most of the above research results are completely new, since they have not been tested in publicly available publications on the topic under consideration and have not previously been presented to the legal and IT communities and the scientific community. Some results may be relatively new, as they could indirectly be the subject of scientific or expert discussion in other works. These research results fully correspond to the stated goals and objectives of the article, as evidenced by the logic of presentation, the analysis and the structure of the publication. The article is based on a research methodology of an interdisciplinary nature and specially developed by prof. F. Kukeyeva, for conducting research work on the project "Global processes and international cooperation in the field of using artificial intelligence technologies: opportunities for Kazakhstan" (2023–2025).

Discussion

1. Global Digital Compact. One of the important events worth paying attention to is the Future Summit, organized under the auspices of the UN, held in New York on September 22 and 23, 2024. As a result, a document was adopted — the Pact for the Future [1]. As the first annex to the main document of the Future Summit, a document called the Global Digital Compact [3] was adopted. The Pact for the Future was adopted as a resolution of the UN General Assembly, is an act of an international organization and is not an international treaty. Perhaps this was done to ensure immediate "inclusive participation of all states," wanting to exclude lengthy procedures and difficulties of ratification by states in the event that this document had the status of an international treaty. At the same time, resolutions of international organizations, in particular the UN, are known to have significant moral and political weight in the international normative system, and in this case represent a certain system of mutual political obligations that the participants protect and will try to follow. The Global Digital Compact is quite broad, and a certain part of it is dedicated to AI.

2. The question of governance actors in the global digital space. However, in the context of this article, in our opinion, it would be important to pay attention not so much to issues directly related to AI, but to the principles that are enshrined in the document. Thus, here the "main intrigue" of this document and the main "primary obstacle" of heated discussions that were conducted for almost three years within the framework of the draft of this "Compact" received its solution and normative consolidation. The text of the document changed several times and experts and regulators carefully examined it from various perspectives over an extended period trying to achieve such a formulation that would be acceptable for everyone. However, now a fairly large number of states have not expressed their intention to join it for various reasons. The "main intrigue" before the adoption of the "Global Digital Compact" was the question of powers — who has the right to participate in decision-making, in the development of rules for Internet governance, the development of digital space and AI governance?

In the first version of the "Compact," which appeared three years ago, the norm regulating this issue was set out with an emphasis on state-oriented principles. At that time, the corporate and IT community explained this by the fact that the document was developed at the UN site, and that the organization's status both as an international and intergovernmental entity was reflected in the nature of the document. In their opinion, the principles of the UN and its agencies (such as the International Telecommunication Union and other Internet-related agencies) are structured in such a way that the main stakeholders, the main decision-making entities, are the governments of national states. All other stakeholders related to technological processes most often have only observer status, at best an advisory vote in many procedures and processes in the development of regulatory rules and similar documents.

The key principle-norm that appeared in the final version of the document is the norm on equal participation of all stakeholders, which fundamentally changes the approach to AI governance. In the literature, it can be described as a "multilateral approach," and the words associated with the term "multilateralism" are used in the "Pact" for a reason. For example: "7. Today, we pledge to make a new beginning for multilateralism. The actions envisaged by this Pact are intended to ensure that the United Nations and other key multilateral institutions can build a better future for people and the planet, enabling us to deliver on our existing commitments while responding to new and emerging challenges and opportunities" [1]. The "Global Digital Compact" then provides a certain decoding of the "multilateral approach" in the form of the following provisions: "6. We, as governments, will work in collaboration and partnership with the private sector, civil society, international organizations, the technical and scientific communities and all other stakeholders, within their respective roles and responsibilities, to realize the digital future we aspire to" [3]. In political and legal terms, this may mean that the "Compact" recognizes not only the right of states (governments) to participate in decision-making processes, to be the main actors of rule-making, development and approval of rules, but also the right of all other types of communities and other interested parties and stakeholders to take an active part in this. Thus, we can state that in the conflict of interests of public entities (governments) and the corporate community, including the IT community, regarding key issues such as Internet governance, the development of the digital space, and AI governance, the corporate sector ultimately succeeded in advancing its interests. Thus, the Global Digital Compact has clearly resolved the issue of the entities' rights to participate in decision-making, in the development of Internet governance rules, development of the digital space and AI governance by enshrining a multilateral approach in this area.

2.1 Internet Governance 2025: Between Openness and Control. In 2024, international discussions on Internet governance began and will be continued and resolved in 2025. The agenda includes the transition from

a multi-stakeholder model where states (governments), the corporate sector (business), civil society and the IT community share responsibilities to a model dominated by states (governments). Discussions include topics such as an open Internet, connectivity, AI, digital infrastructure, human rights and the Sustainable Development Goals. Central to these debates is the critical question of whether the multi-stakeholder model that has protected the open Internet can survive. 2025 will be a turning point for the future of the Internet, due to two global trends and the adoption of the Global Digital Compact. First, states are facing increasing pressure to regulate the digital ecosystem. Second, state-controlled Internet models (e.g., China) are changing the digital landscape. China's "new IP" (Internet Protocol) proposals to international standards bodies such as the International Organization for Standardization (ISO) and the International Telecommunication Union (ITU) would, if implemented, allow authorities to control every device connected to the network, citing "national security" and "digital sovereignty" to justify restrictions on openness and interoperability. All of these issues will also be addressed at the upcoming World Summit on the Information Society (WSIS) in 2025, which is expected to assess the implementation and progress of the 2005 WSIS outcomes, including the Internet Governance Forum (IGF). The IGF's mandate was defined in the outcome document of the Tunis Summit. Internet governance thus stands at a crossroads between openness and control [4].

2.2 The international IT community declares its interests. The arguments of the international scientific and technical (mainly IT) community on this issue were as follows. Thus, the technical community in the first versions of the Treaty was not singled out as a separate group, but in the final versions of the "Compact" it was singled out as a separate group of interested parties and assigned them an independent status. For them, this seems to be a very big achievement, because in fact this is granting engineers (developers) of new technologies that have the right to participate in decision-making. In the current conditions in the world in the IT industry, at the present time the state no longer holds a position as a major player. All the most advanced and most significant models that are now widely used and are at the forefront of developments in this field of knowledge have been developed by private corporations. This is the well-known OpenAI, Google and a large number of other companies that are actively working on this, that is, the levers of technology control are already in private hands, accordingly, it would be unwise not to include in the process of discussion and decision-making the business community, which is actually engaged in this (in their opinion). The academic (scientific and technical) community also does a certain amount of the main work here, their arguments on the issue under consideration are as follows. The peculiarities of AI, as is known, are that in addition to some tools, some algorithms that process data and issue some generated information or work on recognition — the process of their training is of great importance. Training is carried out on some array of data, previously collected, marked up, and so on. The principles of collecting this big data, the principles of marking up and the principles of training are also developed in many respects by the academic community in laboratories, scientific institutes, etc. Accordingly, their participation also cannot be reduced solely to the observation process or only to the advisory status [5]. In our view, the academic community is an equal and essential participant in the technological process and should possess decision-making rights. It is likely that future research will increasingly address the interests of civil society and the scientific community in the realm of AI. In this regard, it is worth noting that the well-known Kazakhstani human rights advocate highlighted the lack of representation of citizens' interests in AI governance and development during the Internet Governance Forum held in Almaty, Kazakhstan, on October 16, 2024.

3. Are data protection principles contrary to international cooperation? The next important points concerning AI specifically include two principles enshrined in the Global Digital Compact. The first: "i) Safe, secure and trustworthy emerging technologies, including artificial intelligence, provide new opportunities to accelerate development. Our cooperation will promote a responsible, accountable, transparent and people-centered approach to the life cycle of digital and emerging technologies…" (paragraph 8) [3]. Such development of AI in compliance with the principles of personal data protection and compliance with the obligation to be extremely careful in matters of cross-border data transfer is one of the key issues in the modern world. A large number of different initiatives are now aimed at data protection, which is developing extremely unevenly in the world: some regions are doing this at a somewhat faster pace, others are approaching this a little late, but in general, everyone is moving in this direction. Thus, all those principles that, for example, are declared in the regulatory acts of the European Union (such as GDPR) are some models for national legislations and contain requirements for storing personal data of citizens on the territory home country. Data protection standards and obligations will have a key influence on plans for the development of AI. On the other technical side, the process of AI development includes collecting data, marking it up and, in simple terms, using it to train models. The phrase that data is the "new oil" has long ceased to be just a statement

and the meaning of what was said is already receiving large-scale implementation. The value of AI, the economic profit and practical benefit that can be obtained from it depend entirely on the purity, volume and quality of the labeling of the data on which these models will be trained. The second principle: "(h) Digital systems that enable communication and exchange are critical catalysts for development…" (paragraph 8 of the Principles). This principle has been further developed as follows: "41. We recognize that common data standards and interoperable data exchange can improve the availability and sharing of data and help bridge data divides" (Data Exchange and Standards) [3].

The first principle declares the exchange of data. It proposes to give researchers, developers of AI models large amount of data that is collected by social networks, because it is the most complete and most frequently updated insights into human behavior. According to representatives of the IT community, it is difficult to imagine how exactly these two principles will be combined, because they somewhat contradict each other: one is about sharing big data, the other is about the need to be careful about privacy and digital sovereignty. Nevertheless, it is assumed that participants will be very responsible in exchanging data and do so exactly to the extent that does not violate, first of all, the norms of national legislation of the countries to which this data belongs, and, secondly, does not violate international principles declared in global documents (for example, like GDPR). In our opinion, this is not only a confrontation between the interests of public entities (state, government) and private actors (corporate sector), but also a competition of concepts, ideas of public goods of humanity and the right to profit in private enterprise. The authors of the "Compact" tried to consider the interests of both the first and second groups of entities, as well as to normatively enshrine new concepts that reflect common values, for example, as "Digital public goods" (paragraph 14). At the same time, its definition contains some response to the concerns of the corporate sector about how data exchange is possible without violating the rights and without causing harm to other persons.

Other technical terms and phrases that, through their use in the text of the "Treaty" (in legal writing), may enter the research vocabulary of the social sciences (including political science, law and economics), in our opinion, include: "digital public infrastructure"; "digital divide"; "digital literacy, skills and potential"; "accumulation of digital knowledge"; "digital economy"; "digital entrepreneurship"; "supply chains of global digital products"; "digital space"; "digital and emerging technologies"; "Internet fragmentation"; "online environment"; "online space"; "information integrity"; "information ecosystems"; "data management systems"; "interoperability of approaches to data management"; "data and metadata standards"; "open and accessible data systems"; "cross-border data flows"; "artificial intelligence management systems"; "international regulation of artificial intelligence"; "artificial intelligence standards", etc. [3]

4. Reflection of global AI governance processes at the national level (using Kazakhstan as an example). On January 15, 2025, the President of the Republic of Kazakhstan took part in a meeting with experts on AI development. Speaking to the participants of the event, the head of state noted that AI is one of the key driving forces of modern progress and is capable of radically changing the economy. He emphasized that Kazakhstan is taking significant steps to create a solid foundation for the promotion of AI, with an emphasis on the formation of an institutional framework, infrastructure and the development of human capital. Also, according to K.Zh. Tokayev, Kazakhstan strives to become an active participant in the global AI ecosystem, and called on the participants of the event to cooperate in various fields [6]. According to the Concept for the Development of Artificial Intelligence for 2024–2029, the state's approaches to the development of AI will consist of focusing on the following areas: high-quality data, modern infrastructure, human capital, research and development work, legal regulation and the implementation of acceleration programs [7]. Currently, the Majlis of the Parliament of the Republic of Kazakhstan is considering a draft law on AI [8] and an accompanying bill [9]. The Bill on AI is supposed to regulate public relations in the field of AI that arise in the territory of Kazakhstan between government agencies, individuals and legal entities, as well as to determine the legal and organizational basis for ensuring transparency, security and state support for the development of AI.

4.1 AI ecosystem. Officials from relevant authorities advocate for a multilateral approach to Internet governance. However, the corporate and IT sector interpret this to mean that while the government remains a significant and decisive player in these matters, it will no longer be the sole actor in shaping digital policies. For them, this is a key issue. They see this as a positive confirmation when the heads of the relevant government agencies speak about the need to create an AI ecosystem. It is implied that the ecosystem involves the interaction of heterogeneous participants in this area. By analogy with the natural ecosystem, which involves the interaction of plants, insects and everything else that form a kind of complementary chain, according to the corporate and IT sector, the AI ecosystem involves the presence of not only government actors, but also

all those who are somehow connected with the development of training using AI. The ecosystem also assumes their functional interaction according to some regulatory instruments that will be developed in the fututre. Such instruments can be developed either by the government itself or through dialogue with interested parties and the public. In our opinion, the draft Law on AI should normatively reflect and conceptually resolve the issue of a "multilateral approach" both in Internet governance and in the field of AI.

4.2 Three approaches to national AI. The idea of creating a national AI may have different understandings, in particular among government agencies and the corporate sector, and raise many questions, primarily due to the presence of different approaches to this issue. In this regard, it is necessary to highlight at least three approaches from the position of IT engineers to the creation of the so-called national or sovereign AI. The first approach is a sovereign infrastructure, which implies the presence of, for example, a large number of data centers in which the AI is trained. The second approach is its own language model, in fact, a diffuse model. That is, these are the algorithms that are being developed and which differ from any others, therefore, in fact, they can remain national, sovereign or independent. And the third approach is any other, for example, a standard model from those that are now available on the market in the public domain in Open Source, but trained on its own data corpus. These are its own data, which, for example, concern some specific industries of Kazakhstan, created in its own way, marked up, related to issues important for the country. And in this case, it turns out to be such a customization of the general model. Created on the basis of any model (Chat GPT, DeepSeek, Qwen 2.5-Max, etc.), but already much more focused on solving problems directly related to Kazakhstan and those generative tasks that are set by government agencies and citizens of Kazakhstan. In short, these are three quite different approaches and when we talk about national AI, it is always important to distinguish which of these is implied exactly. This is also important because the labor costs and investments for different approaches are completely incomparable.

The level of investment in infrastructure in countries around the world is estimated at tens of billions of US dollars, for example, these are news reports on the construction of data centers. Thus, Microsoft plans to invest about 80 billion US dollars in 2025 in the creation of data centers for the development of AI and cloud applications around the world. Most of the costs of deploying data centers will go to the purchase of high-performance accelerators, primarily NVIDIA, as well as infrastructure equipment [10]. These are also news reports on investments in AI infrastructure from Open AI [11], Elon Musk's investments in chips, data centers [12], etc. Deep Seek's breakthrough has become a catalyst for the AI arms race among Chinese Internet giants. Companies such as Alibaba, Tencent, Kuaishou, Baidu and Byte Dance are now doubling their investments in AI, realizing the potential of AI to transform their businesses and maintain global competitiveness [13]. That is, these are very large expenses that not all countries can afford.

At the same time, for example, developing a model is an order of magnitude cheaper, and training a model on an existing data set is an order of magnitude cheaper, and accordingly, based on this, this should inform a key strategic direction for AI development within the country. Here it is necessary to make a real assessment of your capabilities and understand how much can be implemented, how possible it is to operate with such a type and volume of investments, expertise and time labor costs that are required to implement the three specified approaches to AI development. These approaches are the basis for a certain regulatory environment, which will be further developed at the regional and country levels, since international regulation has the so-called cascade principle. In our opinion, these approaches should be studied more deeply and adopted as a basis for forming policy in the field of AI in Kazakhstan, and future rules and specific measures in this area should be developed considering the conceptual decision of the government to choose one of the specified approaches to the development of national AI.

4.3 Internet and AI. Based on the Internet, AI can generate and collect large amounts of data from social networks, sensors, and online platforms. For AI models, the Internet serves as a training ground. Cloud computing for AI applications is available via the Internet. Due to the lack of direct access to the sea, Kazakhstan's data flows pass through the territory of the Russian Federation, which puts the Internet infrastructure in a vulnerable position. The sea data routes we use belong to the Russian company Rostelecom. Kazakhstan is a transit country that receives about 90–95 % of Internet traffic from Russia and then transmits this Internet traffic to Central Asian countries. There are at least 4 connection points on the borders of Russia and Kazakhstan. In this regard, questions of information sovereignty arise, directly affecting the development of AI in the country. Kazakhstan needs projects that reduce dependence on the Russian Internet infrastructure. In the Address of the President of the Republic of Kazakhstan to the people of 2024, it was planned to complete the laying of a fiber-optic communication line across the Caspian Sea by 2025. According to the President of the Republic of Kazakhstan, this is important for the country in terms of creating a digital infrastructure as-

sociated with international corridors and cross-border data flows. However, the implementation of this project has been discussed since 2008, in 2009, the resolution on the project was supported by 30 countries of the world at the plenary session of the UN General Assembly. The role of the Internet for the development of AI is difficult to overestimate, given that not all services localize their servers in Kazakhstan. Owing to the Internet, people in Kazakhstan can use foreign services (for example, American, European and Chinese chatbots). There are provisions in the legislation of the Republic of Kazakhstan that may not quite correspond to the development of AI, for example, provisions on data localization. According to the requirements of this provision, if an AI service wants to legally operate in Kazakhstan, it must rent servers locally and process all data that comes from Kazakhstani users only in the territory of Kazakhstan. Otherwise, it should expect blocking of access to this service. Thus, Article 12 of the Law on Personal Data and their Protection requires localization of personal data in Kazakhstan. If any service processes user data (for example, Chat GPT), then localization issues are also applicable to this kind of service.

Among other issues directly affecting the development of AI in Kazakhstan, several key challenges should be noted: a shortage of specific chips due to restrictions imposed by the U.S. export license on NVIDIA (according to senior data analyst at ISSAI at Nazarbayev University); a lack of computing power necessary for AI development (as stated by head of the data processing department at 7GENERATION); and the reluctance of many companies to begin implementing AI technologies without clear legal regulations (as highlighted by a member of the Parliament of the Republic of Kazakhstan) [14].

Conclusions

Global processes in the field of AI governance, international competition between states and companies in the development of AI technologies are the main factors that have a decisive influence on the emerging policies of states in the field of AI, including Kazakhstan. The conceptual provisions of the Global Digital Compact, establishing the framework for global policy and international regulatory framework, should be reflected in Kazakhstan's national policy in the field of AI and the legislative acts planned for adoption, in particular, in the Bill on AI and the Digital Code of the Republic of Kazakhstan. Continuous analysis of global processes in the development of AI in the world until 2030 and beyond should contribute to an adequate assessment of our capabilities and risks in promoting national interests and, in general, shape our understanding of the place and role of the country in the global AI ecosystem and the global digital space.

The Global Digital Compact enshrines the principle of international cooperation in data exchange, which is a manifestation of the concept of public goods for humanity. The Global Digital Compact also introduces new technical terms and concepts. Research is needed on their inclusion in the terminology of social sciences. For example, such a new concept as "Digital public goods" has received normative consolidation. Kazakhstani politicians and legislators must resolve the issue of the "multilateral approach" in AI governance. At the same time, given that the Global Digital Compact has clearly resolved the issue of the rights of actors to participate in decision-making, the development of Internet governance rules, the development of digital space, and AI governance. The draft Bill of Kazakhstan on AI should receive its conceptual solution and consolidation of the decision on the "multilateral approach" both in Internet governance and in AI governance. The existing three different approaches to the creation of national AI should be studied in more detail so that Kazakhstani politicians can choose. One of the approaches should be taken as a basis for the formation of AI policy in Kazakhstan. Future rules and specific measures in this area should be developed considering the conceptual decision of politicians to choose one of the specified approaches to the development of national AI. Kazakhstan needs to decide on the laying of a fiber-optic line for cross-border data transmission, directly affecting the development of AI in the country and the information sovereignty of the country.

The practical value of the study is that the article serves as an expert opinion for politicians, decision-makers, and legislators in solving the problems of AI governance in Kazakhstan. In particular, in choosing one of the approaches to the development of national AI, in choosing or rejecting the "multilateral approach" in the field of AI and Internet governance, in securing conceptual norms in the Bill of Kazakhstan on AI, and others. The scientific value of the article is in the analysis of some of the main provisions of the Global Digital Compact, in the review of global trends in AI governance, the emerging international legal framework for regulating AI and the principles of cooperation between states in this area.

The results of the article can be applied in the scientific research, teaching, analytical and legislative processes of Kazakhstan. They can be useful for government agencies, the corporate sector and other stakeholders. The article can serve as bibliographic material for future research on this topic for scientists, practitioners and students.

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М.Ш. Құрманғали, Р.А. Коржумбаев

Жасанды интеллекті жаһандық басқару және оның ұлттық деңгейдегі көрінісі (кейбір негізгі құқықтық-технологиялық қырлары)

Зерттеу мақаласының мақсаты — жасанды интеллекті жаһандық басқарудың қазіргі құқықтық және технологиялық қырларын және оның Қазақстан жағдайында ұлттық деңгейдегі көрінісін ғылыми және сараптамалық талдау. Зерттеу мәселесі жасанды интеллект саласындағы жаһандық тенденцияларды талдау және Қазақстанның жасанды интеллекті жаһандық басқару процестеріне және осы саладағы халықаралық ынтымақтастыққа қатысу мүмкіндіктерін анықтау, сондай-ақ біздің елімізде жасанды интеллекті дамыту саясатын, ережелері мен нақты шараларын қалыптастыру. Мақалада сапалы зерттеу әдістері, сондай-ақ әдебиеттерге шолу, синтез, жүйелі шолу, оның ішінде халықаралық құжаттарды және жасанды интеллекті басқару саласындағы ағымдағы тәжірибелерді талдау әдістері қолданылды. Зерттеу нәтижелері жаһандық цифрлық кеңістіктегі басқару субъектілерін анықтауда жаһандық цифрлық шарт туралы білімдерді талдау мен жүйелеуден тұрады. Қазақстандағы жасанды интеллекті басқарудың жаһандық процестерін ұлттық деңгейдегі көрінісі мәселелері талданды. Жасанды интеллект экожүйесінің мәселелері және ұлттық жасанды интеллекті дамытудың

тұжырымдамалық тәсілдері зерделенген. Авторлардың негізгі тұжырымдары мынадай: Қазақстан жасанды интеллекті дамыту саясатында осы саладағы ұлттық мүдделерді ілгерілету үшін жасанды интеллект саласын реттеудің әлемдік трендтерді де, қалыптасып келе жатқан халықаралық құқықтық базаны да ескеруі қажет.

Кілт сөздер: жасанды интеллекті жаһандық басқару, заң және жасанды интеллект, жасанды интеллектің технологиялық қырлары, Қазақстандағы жасанды интеллект.

М.Ш. Курмангали, Р.А. Коржумбаев

Глобальное управление искусственным интеллектом и его отражение на национальном уровне (некоторые основные право-технологические аспекты)

Цель исследования статьи заключается в научном и экспертном анализе актуальных право-технологических аспектов глобального управления искусственным интеллектом и его отражения на национальном уровне на примере Казахстана. Исследовательский вопрос состоит как в анализе глобальных тенденций в сфере искусственного интеллекта, так и в выявлении возможностей участия Казахстана в процессах глобального управления искусственным интеллектом и международного взаимодействия в этой сфере, а также при формировании политики, правил и конкретных мер по развитию искусственного интеллекта в нашей стране. В статье использовались качественные методы исследования, а также методы обзора литературы, анализа и синтеза, систематический подход, включая анализ международных документов и текущей практики в сфере управления искусственным интеллектом. Результаты исследования состоят в анализе и систематизации вопросов, связанных с глобальным цифровым договором, с определением субъектов управления в глобальном цифровом пространстве, а также в выводах, касающихся отражения на национальном уровне глобальных процессов управления искусственным интеллектом, включая вопросы экосистемы искусственного интеллекта, концептуальных подходов к развитию национального искусственного интеллекта в Казахстане. Основные выводы авторов состоят в том, что в политике по развитию искусственного интеллекта, Казахстану необходимо учитывать, как глобальные тенденции, так и формирующиеся международно-правовые рамки регулирования сферы искусственного интеллекта для продвижения национальных интересов в этой сфере.

Ключевые слова: глобальное управление искусственным интеллектом; право и искусственный интеллект; технологические аспекты искусственного интеллекта; искусственный интеллект в Казахстане.

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The National Preventive Mechanism is a legal institution for the protection of human rights in the Republic of Kazakhstan

The article discusses the legal regulation issues in the National Preventive Mechanism in the Republic of Kazakhstan. The activities of the National Preventive Mechanism are considered a legal institution of great importance for torture prevention, as well as cruel treatment and punishment, conditioned by international standards implemented in national legislation. The research purpose is to analyze the legal institute's "National Preventive Mechanism", identifying legal regulation problems in its activities and developing ways to overcome them. The research is carried out through general scientific and special legal methods, using analysis and theoretical provisions and legal norms generalization and the implementation practice. Based on the comparative legal process, the main trends in developing the National Preventive Mechanism Institute are currently being identified. The analysis of the specifics of the National Preventive Mechanism in Kazakhstan and its consolidation in legal acts and international standards is carried out. Main result of the research is the provision on the need to improve legal measures aimed at harmonizing national legislation in the prevention of torture with international standards in this area. The conclusions suggest the development and improvement of legal norms that specify the procedure for conducting preventive visits by members of the National Preventive Mechanism, as well as the procedure for financing and ensuring the independence of the human rights institution activities.

Keywords: Kazakhstan, prevention, human rights, torture, punishment, legislation, legal norms, legal status, international standards

Introduction

The relevance of the research topic underlies in the fact that effective human rights protection requires a legal institution system that complements each other. In the human rights activities field, cooperation between government institutions and civil society institutions is important. Such institutions include the National Preventive Mechanism, activities of which are aimed at preventing torture and other inhuman, cruel, or degrading treatment or punishment. The human rights institution activities have a significant socio-political importance. At the same time, the legal regulation of the institution's activities and its participants is very important as well. The organization procedure, the participant's rights and obligations, legal responsibility, and other aspects of the activity are fixed in national legislation. All legal norms that regulate the activities of the National Preventive Mechanism and its participants constitute an interdisciplinary legal institution. The legal institution's peculiarity is that it is found in various legal acts, which creates problems in the implementation of rights and obligations for various parties who enter into legal relations concerning human rights.

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The legal norms that form part of this legal institution are contained in penal enforcement and administrative legislation, social security laws and other legislative acts. In our opinion, the National Preventive Mechanism, as a human rights institution, is insufficiently institutionalized within the legal framework.

The research purpose is aimed to study the legal norms governing the activities of the National Preventive Mechanism as a legal and human rights institution.

The main research objectives are the analysis and generalization of the following provisions:

- Study of legal norms for the definition of the intersectoral legal institute "National Preventive Mechanism".

- Conducting a comparative institution legal analysis with similar institutions in other countries.

- Procedure consideration for conducting preventive visits by participants of the National Preventive Mechanism and proposals development for improving this process.

- Research on the role and importance of the National Preventive Mechanism as a human rights institution.

- Research development for improving the financing mechanism activities of participants and ensuring the independence of its activities.

Currently, it is important to highlight the conflicts between legal theory and law enforcement practice. Based on the legal approach to classifying subjects of legal relations, four distinct categories are identified: individuals, legal entities, administrative-territorial units, and the state. However, as legal norms are developed and implemented, gaps often arise — specifically, the absence of legal norms that define the legal status of certain subjects. From the author's perspective, the National Preventive Mechanism is included among these institutions. Current legislation does not define the legal status of participants in the National Preventive Mechanism. On one hand, the participants act in a personal capacity, engaging in human rights activities. On the other hand, their actions constitute the National Preventive Mechanism, which serves as a human rights institution but is neither an individual nor a legal entity. It has no separate property, seal, or bank account. Furthermore, participants of the National Preventive Mechanism do not have an employment relationship and do not enter into civil contracts when carrying out their activities. Consequently, a clear definition of the participants' status within this human rights institution is essential.

The uncertainty surrounding the legal status of the participants and the mechanism should be regarded as gaps in national legislation, positioning this issue as a theoretical problem. Research on the varying legal statuses of different subjects in law does not permit a clear classification of the relationships that arise between the participants of the National Preventive Mechanism and other subjects within the framework of traditional legal relations. Therefore, it is essential to examine and consider the different approaches among various legal schools, as they classify subjects in legal relations in diverse ways.

The author's perspective in reviewing the literature and other sources highlights the insufficient theoretical development surrounding the definitions and classifications of legal subjects and legal relations. Currently, social institutions are emerging that society recognizes as subjects of legal relations, yet they remain inadequately institutionalized within the legal framework. This situation creates conflicts in the regulation of specific legal relations. The lack of theoretical research aimed at determining the legal status of these new subjects of legal relations hinders a clear understanding of the legal status of the National Preventive Mechanism. Consequently, this generates legal practices that cannot be adequately explained using the existing tools of modern legal theory.

Methodology and research methods

To achieve objectivity, completeness, and comprehensiveness in the research results, a combination of general scientific and specialized cognitive methods was employed. This approach is driven by a systematic framework that addresses the challenges of improving Kazakhstan's legislation in the human rights sphere.

The methodological basis of the research is a scientifically grounded approach to examining the issues related to the legal regulation of the human rights activities of the institution known as the "National Preventive Mechanism", as well as the definition of the set of legal norms governing these public relations as a legal institution.

The research employs both general scientific and specialized scientific methods. The examination of legal norms related to the intersectoral legal institution "National Preventive Mechanism" is conducted through analysis and generalization of these norms. The comparative legal method is utilized to compare similar legal norms from different countries. Based on this analysis and generalization, a study is being conducted on the procedures for carrying out preventive visits by the participants of the National Preventive Mechanism. Ad-

ditionally, legal hermeneutics is applied to develop new approaches to legal terminology that define the legal status of the National Preventive Mechanism as a whole and its participants in particular. Through observation, analysis, and generalization, the research identifies shortcomings in the legal regulation of human rights in Kazakhstan, particularly regarding public and state control over the observance of human and civil rights in the country.

Results

As a result, the following provisions were identified, which were obtained through the author's observation. The author's observation was carried out during his activities as a participant in the National Preventive Mechanism for the Karaganda region in the period 2023-2024. During his observation, shortcomings in the legal regulation of the institute activities were identified. These are the following provisions:

1) The legal norms set governing the activities of the National Preventive Mechanism is dispersed across various legal acts. Many provisions that are found in different legal acts are duplicated. This is inconvenient for using the text of legal acts in practice.

2) A comparative institution provisions legal analysis with similar institutions in other countries shows the need for additional regulation of the procedure for preventive visits, as well as guarantees for the participants activities in this mechanism.

3) The necessity for legal regulation financing activities in the National Preventive Mechanism has been identified: travel and transportation expenses reimbursement.

The scientific research results are as follows:

1) Based on the research conducted, the National Preventive Mechanism should be considered as a social institution that carries out human rights activities in the human rights field and torture prevention. At the same time, this institution is insufficiently legally institutionalized. At the same time, it seems necessary to consider the emerging legal relations as an interdisciplinary legal institution, which is united by a common legal regulation subject. The modern system of legal norms that forms this legal institution was determined by the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the establishment of a national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment" dated July 2, 2013. Amendments and additions were made to the Code of Criminal Procedure; the Penal Enforcement Code; the Code of the Republic of Kazakhstan on Administrative Offenses; The Code "On the Health of the People and the Healthcare System"; The Law "On compulsory treatment of patients with alcoholism, drug Addiction and substance Abuse"; The Law "On the procedure and conditions of detention of persons in special institutions providing temporary isolation from society"; The Law "On the Rights of the Child"; The Law "On the Prevention of Juvenile Delinquency and the Prevention of Child Neglect and homelessness" [1]. In all these acts, the National Preventive Mechanism is defined as a system for the torture prevention, which operates through the participants activities. The mechanism participants are: The Human Rights Commissioner, as well as participants who are selected by the Coordinating Council from the public monitoring commissions members and public associations that carry out activities to protect human rights, lawyers, social workers, doctors [1]. At the same time, the organizational and legal form in which the National Preventive Mechanism operates is not defined. It seems necessary to determine the relationship of the participants with the Commissioner for Human Rights (the National Center for Human Rights) through an employment contract or a civil law contract. Additionally, consideration should be given to life and health insurance when participants exercise their powers within the National Preventive Mechanism. This is necessary to ensure the labor and civil rights of the participants in this mechanism.

2) During the comparative legal analysis in this institution with similar human rights institutions in other countries, the following was revealed. A similar mechanism exists in the countries of Asia and the Pacific, Central Asia, Africa, America, and Europe. The National Center for Human Rights has studied the work experience of one hundred and nine accredited in the Global Alliance of National Human Rights Institutions of foreign countries. At the same time, it is necessary to conclude that the National Preventive Mechanism, from perspective of organization, is part of a larger state institution of the Commissioner for Human Rights in the Republic of Kazakhstan. The working body is the National Center for Human Rights. Currently, the Commissioner Institute is accredited in the Global Alliance of National Human Rights Institutions of Foreign Countries with the status of "B" [2; 10]. This status means that Kazakhstan's national human rights institutions, headed by the Commissioner for Human Rights, do not fully comply with the Paris Principles. These principles are based on criteria such as: broad human rights powers based on universal international stand-

ards; independence from government agencies, which is guaranteed by law; the availability of different approaches in the human rights field; sufficient resources and powers for investigation [3]. Thus, it is necessary to conclude that it is necessary to improve the national human rights institutions system in order to bring them in line with the Paris Principles. At the same time, these principles should be considered as programmatic goals for improving Kazakhstan's human rights mechanism.

3) The procedure for conducting preventive visits by participants of the National Preventive Mechanism is regulated by the Rules of Preventive Visits by groups formed from participants in the national preventive mechanism as amended by the Decree of the Government of the Republic of Kazakhstan dated 02/16/2023. These Rules determine the procedure for preventive visits by National Preventive Mechanism participants [4]. At the same time, in order to visit a closed institutions number, participants are also required to comply with the rules for visiting these facilities. For example, the Rules for visiting institutions of the Penal correction System of August 20, 2014, disclosed the procedure for access control, the procedure for visiting penal correction system institutions, including for participants of the National Preventive Mechanism in connection with the exercise of their powers. Currently, these rules have become invalid by order of the Minister of Internal Affairs dated April 12, 2017 in connection with the new Rules approval for visiting penitentiary system institutions dated April 12, 2017 No. 63 [5]. These rules are labeled "For official use" and are not available in open databases. Accordingly, the lack of access to the rules that participants must follow when visiting these institutions does not allow them to be observed in accordance with the legal norms enshrined in them. It seems necessary to remove the label "For official use" for these rules, as it was before, or to develop additional rules that are open to all persons who legally visit institutions of the penal correction system.

4) The National Preventive Mechanism role and importance as a human rights institution in the national human rights institutions system is quite significant. In 2023, 474 sites of concern were monitored. These are institutions of the following ministries: education — 113; social protection of the population — 66; health — 45; defense — 2; Internal Affairs — 246; National Security Committee — 2. A total of 461 preventive visits were carried out: 163 periodic visits; 259 interim visits; 33 special visits; 6 thematic visits. As a result of the monitoring, more than three thousand recommendations were submitted to public authorities and management, with more than 40% implemented between 2023 and early 2024. [6]. Thus, this institution is of great importance in the field of human rights protection in the Republic of Kazakhstan. At the same time, there is a tendency to expand the mandated institutions. For example, in 2016, the powers expansion in the National Preventive Mechanism was initiated, by including a number of children's institutions in the mandate [7]. Conceptually, this institution powers will be further expanded by including them in mandatory institutions where there may be a potential threat to human rights from the modern society point of view. These may be general education schools, military units, kindergartens, and other facilities where civil control over human rights is, in the opinion of society, insufficiently effective.

5) The mechanism for financing the National Preventive Mechanism activities is provided for by the Rules for Reimbursement of national preventive mechanism participants expenses for Preventive Visits as amended by the Decree of the Government of the Republic of Kazakhstan dated 02/16/2023. These rules regulate the procedure for expenses reimbursement, while, in our opinion, they require improvement [8]. As a result of the observation and bylaws analysis, we propose to amend paragraph 5 of the Rules "Participants of the national preventive mechanism are reimbursed by the budget program administrator." The first paragraph of subparagraph 1) should be worded as follows: "for each day of stay at the place of preventive visit, the participant of the preventive mechanism is paid a daily allowance in the amount of two monthly calculation indices, including the day of departure to the place of stay and the day of arrival at the place of main work." This will allow you to pay a daily allowance not only during your stay at the place of preventive visit, but also on the day of departure and the day in return if this is confirmed by train or bus tickets or other means of transport. It also seems necessary to include payment for transportation costs if participants in the National Preventive Mechanism use personal transport or taxis to remote locations where institutions of concern are located. It seems possible to propose that the Coordinating Council consider the justification for the remoteness of the mandatory facility and, if it decides positively, finance taxi travel with the provision of supporting documents. A possible option may be to conclude a contract for the provision of transport services between the National Center for Human Rights and a specific transport organization.

Discussion

The analysis of publications allows us to conclude that the issue of improving the National Preventive Mechanism has not received sufficient attention at the scientific level. Most available materials consist of

journalistic articles and information found on various websites related to human rights activities. Among the few scientific works, several studies dedicated to the analysis of national human rights institutions stand out: Bashimov M.S., in his doctoral dissertation "The Ombudsman Institution in the Republic of Kazakhstan and Foreign Countries (Comparative Legal Analysis)", conducts an in-depth institutional analysis of the Ombudsman in Kazakhstan, comparing it with similar institutions in other countries [9]. Pavlov E., Slavkina N. and other in the collective monograph "The Ombudsman in Foreign Countries", explore the legal status features of constitutional and parliamentary ombudsmen in foreign countries [10]. Kuzminykh N.V., in his work "The Institute of the Commissioner for Human Rights (Ombudsman) in the Countries of the Commonwealth of Independent States (CIS)", analyzes the specifics of ombudsmen functioning in post-Soviet states, paying attention to historical and cultural peculiarities [11]. Shabanova Z.M., in her dissertation "Specialized Commissioners for Human Rights in Russia and Foreign Countries", examines the legal aspects of ombudsmen's work, as well as their interactions with government agencies and the public [12]. The publication "The Eurasian Ombudsman Alliance: Models and Competencies" is noteworthy as it examines the legal status and organizational positions of national human rights institutions in 10 countries of the Eurasian Ombudsman Alliance. Another important publication is "National Human Rights Institutions of Foreign Countries and the Republic of Kazakhstan", which analyzes information regarding the competence, structure, regulatory framework, financing, and other aspects related to the functioning of national human rights institutions in foreign countries and Kazakhstan [2; 11]. Additionally, the publication "Establishment and Appointment of National Preventive Mechanisms," prepared by the Association for the Prevention of Torture in 2006, is of interest [13]. These studies address various issues related to the institution of the Commissioner for Human Rights, including the activities of the National Preventive Mechanism and other similar human rights institutions. The article by Saparali A.B., titled "The National Preventive Mechanism for Torture Prevention in Kazakhstan: A Comparative Legal Analysis," examines the history of the institution's formation and concludes that this human rights institution is optimal and unique [14]. In the research by Sabayeva S.V. and Gulyaev D.E., titled "The Search for an Optimal National Preventive Mechanism Model for the Russian Federation (Results of a Comparative Legal Study of Foreign Legislation)," the authors conclude that it is possible to develop a concept and subsequently adopt a law "On State and Public Control Over Human Rights in Places of Forced Detention." This law would regulate the status, composition, and powers of the bodies forming the national preventive mechanism [15; 210–218]. Discussions regarding the development of the National Preventive Mechanism have been carried out on various information platforms. For example, seminars aimed at the practical implementation of the national preventive mechanism for preventing torture and other cruel, inhuman, or degrading treatment or punishment have been held [16]. The results of these discussions and scientific research led to the development of a draft law "On the National Preventive Mechanism in the Republic of Kazakhstan," which was presented in April 2024 by experts from the Coalition of Non-Governmental Organizations of Kazakhstan Against Torture, including former and current members of the Coordinating Council. The submitted draft law defines the legal status and organization of the mechanism's activities [17]. Currently, this bill is proactive in nature; it has not yet been submitted to the Mazhilis and is being discussed across various information platforms by civil society institutions. Since this draft has not been published, it is not possible to analyze it.

The issues and consequences of the preventive mechanism operating activities in the "Ombudsman plus" format in the fourth of national human rights approaches development are considered in the publications of V.S. Issabekova [18; 16–22], A.B. Ashirbekova, O. Anayurt [19; 6–13]. V.S. Issabekova, J. Zalesny [20; 25–30]. In these publications, a comparative legal analysis of the foreign institution ombudsman and the national institution of the Commissioner for a small number of people in the Republic of Kazakhstan was conducted and proposals were made for progressive Kazakh legislation in this area.

During these publications research, it can be concluded that further research is needed for the problems inside functioning at the National Preventive Mechanism. At the same time, the issues and problems considered in this study are new and relevant. Assessing the research results as new, it should be noted their practical significance and scientific validity.

The result is the need to develop a scientific concept that reveals, from a theoretical view, the state and public control legal nature. This control type is implemented during visits to participants of the national preventive mechanism, which combines State powers and the formation of public nature of human rights institution. During preventive visits, participants exercise their rights and obligations on the basis of Kazakh legislation, while also being responsible on the basis of legal norms. They are elected by the Coordinating Coun-

cil for a two-year term and exercise their powers in their personal capacity. This control type has a mixed (state-public) character, which can be characterized as quasi-governmental control (monitoring).

The research results are reliable because they are based on the analysis and international standards generalization, the foreign countries experience, Kazakh legislation, scientific publications and other information from official sources. The results reliability is also due to the fact that, unlike other studies, the correctness and results necessity is confirmed by the author's observation during the practical powers implementation of a participant in the national preventive mechanism.

Conclusions

Based on the conducted research, it is possible to systematize all approaches to the consideration of problems in the legal regulation field at the National Preventive Mechanism Institute, dividing them into scientific and practical ones. Scientific and theoretical approaches to the research are carried out in the research context on the entire human rights activities system. They are aimed at studying and reviewing human rights institutions to ensure compliance of national legislation with international standards. Approaches to the institution research, as a rule, are applied in nature and are aimed at developing the most effective techniques and ways to achieve their goals. Accordingly, it seems important to combine both approaches when developing organizational human rights activities forms and regulating the procedure for carrying out these activities.

Thus, in order to improve the institution of the "National Preventive Mechanism," it is advisable to propose the following.

- It seems necessary to consider the National Preventive Mechanism as an interdisciplinary legal institution. This institution includes legal norms from various industries, united by the subject at legal regulation. The legal regulation subject should encompass human rights activities for the torture prevention, cruel and inhuman treatment and punishment.

- It seems necessary to define the National Preventive Mechanism legal status in regulatory legal acts. Based on legal status, conclude an employment contract or a civil contract with the participants of this mechanism. The legal contract form must be determined by the legal relations that nature arise: labor, civil law, or other legal relations.

- It seems necessary to be guided by the Paris Principles when improving national human rights institutions. To consider these principles as programmatic goals for improving Kazakhstan's legislation in the human and civil rights protection field.

- In order to streamline public relations and ensure rights and obligations knowledge participants in the National Preventive Mechanism, the label "for official use" from the Rules for Visiting Institutions of the Penitentiary System dated April 12, 2017 No. 63., should be removed.

- The National Preventive Mechanism is an important human rights institution that covers a large number of mandated institutions. It seems necessary to note the development and its powers expansion.

- In order to ensure travel expenses payment, it seems necessary to amend paragraph 5 of the Rules for participants Expenses Reimbursement in the national preventive mechanism for preventive Visits. The first paragraph, subparagraph 1) should be worded as follows: "for each day staying at the preventive visit place, the participant is paid a daily allowance in the amount of two monthly calculation indices, including the day departure to the place and the arrival day for work."

The study has practical value, as the results are aimed at improving the activities in the National Preventive Mechanism participants, ensuring its effectiveness and independence.

The scientific research value are theoretical aspects in the legal status of subjects in legal relations that are not legally defined. From modern legal theory view, all law subjects are divided into individuals, legal entities, administrative-territorial units and the state. Accordingly, the new organizational introduction and legal forms into legislation — that go beyond the modern legal theory framework — requires further study.

The research results can be used in scientific research devoted to the defining problems of legal subjects, their characteristics and the procedure for exercising rights and obligations. The research results can be used in law-making activities in the field of improving derivative legal acts regulating the human rights institutions activities.

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Ұлттық алдын алу тетігі — Қазақстан Республикасындағы адам құқықтарын қорғау жөніндегі құқықтық институт

Мақалада Қазақстан Республикасындағы Ұлттық алдын алу тетігі қызметін құқықтық реттеудің түйткілді мәселелері қарастырылған. Ұлттық алдын алу тетігінің қызметі ұлттық заңнамада іске асырылатын халықаралық стандарттармен айқындалатын азаптаулардың, сондай-ақ қатыгездік пен адамгершілікке жатпайтын қарым-қатынас пен жазаның алдын алу үшін үлкен маңызы бар құқықтық институт ретінде зерделенген. Зерттеудің мақсаты — Ұлттық алдын алу тетігі құқықтық институтына талдау жүргізу, құқықтық реттеу мәселелерін айқындау және оларды шешу жолдарын әзірлеу. Зерттеу теориялық ережелер мен құқықтық нормаларды және оларды жүзеге асыру тәжірибесін талдау мен қорытуды пайдалана отырып, жалпы ғылыми және арнайы құқықтық әдістер арқылы жүзеге асырылады. Салыстырмалы-құқықтық әдіс негізінде қазіргі уақытта Ұлттық алдын алу тетігі институтының дамуының негізгі тенденциялары анықталды. Құқықтық нормалар мен халықаралық стандарттарда бекітілген Қазақстандағы ұлттық алдын алу тетігі қызметінің ерекшеліктеріне талдау жүргізілді. Зерттеудің негізгі нәтижелері азаптаулардың алдын алу саласындағы ұлттық заңнаманы осы саладағы халықаралық стандарттармен үйлестіруге бағытталған құқықтық шараларды жетілдіру қажеттілігі туралы ұстаным. Қорытынды ретінде ұлттық алдын алу тетігіне қатысушыларының профилактикалық сапарларын өткізу тәртібін, сондай-ақ осы құқық қорғау институтының қызметін қаржыландыру және тәуелсіздігін қамтамасыз ету тәртібін егжей-тегжейлі сипаттайтын құқықтық нормаларды әзірлеу ұсынылған.

Кілт сөздер: Қазақстан, алдын алу, адам құқығы, азаптау, жазалау, заңнама, құқықтық нормалар, құқықтық мәртебе, халықаралық стандарттар.

А.В. Турлаев, А.Б. Сопыханова

Национальный превентивный механизм — правовой институт защиты прав человека в Республике Казахстан

В статье рассматриваются проблемные вопросы правовой регламентации деятельности Национального превентивного механизма в Республике Казахстан. Деятельность Национального превентивного механизма рассматривается как правовой институт, имеющий большое значение для предупреждения пыток, а также жестокого и бесчеловечного обращения и наказания, обусловленного международными стандартами, имплементированными в национальное законодательство. Цель исследования — осуществить анализ правового института Национальный превентивный механизм, выявить проблемы правовой регламентации и выработать пути их преодоления. Исследование осуществлено посредством общенаучных и специально-правовых методов, используется анализ и обобщение теоретических положений и правовых норм и практика их реализации. На основе сравнительно-правового метода выявляются основные тенденции развития института Национальный превентивный механизм в настоящее время. Проведен анализ особенностей деятельности Национального превентивного механизма в Казахстане, закрепленных в правовых нормах и международных стандартах. Основным результатом исследования является положение о необходимости совершенствования правовых мер, направленных на гармонизацию национального законодательства в сфере деятельности по предупреждению пыток с международными стандартами в этой сфере. В качестве выводов предлагается разработка правовых норм, детализирующих порядок осуществления превентивных посещений участников Национального превентивного механизма, а также порядка финансирования и обеспечения независимости деятельности этого правозащитного института.

Ключевые слова: Казахстан, превенция, права человека, пытки, наказание, законодательство, правовые нормы, правовой статус, международные стандарты.

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Problems of defining the essence of corruption as a socio-legal phenomenon

The article is devoted to the study of the essence of corruption as a socio-legal phenomenon, revealing its multi-level and multifaceted nature. The aim of the study is to identify theoretical and practical difficulties in defining corruption as a complex socio-legal phenomenon, as well as to develop a comprehensive approach to its interpretation and counteraction, which is particularly relevant in the modern context. The research employed general scientific methods such as theoretical analysis, synthesis, and generalization, which made it possible to structure fragmented approaches and identify the essential features of corruption. National and international legislation were also analyzed, which helped to reveal legal gaps and explore possible ways to eliminate them. The results indicate that corruption is a complex, institutionalized phenomenon encompassing the household, administrative, and political levels of society. The study found the absence of a unified definition in legal science and legislation, which complicates effective law enforcement. Problems in regulatory frameworks were identified, and measures were proposed to improve legal formulations, including expanding the range of subjects and increasing attention to conflicts of interest. Recommendations were also made for the development of an anti-corruption culture as an important condition for effective corruption prevention, confirming its theoretical and practical significance and the need for further research in this area.

Keywords: legal phenomenon, corruption, bribery, graft, definition of corruption, essence of corruption, anti-corruption culture, unlawful act, combating corruption, legal mechanism.

Introduction

In the present-day realities, out of the global challenges faced by all nations of the globe, corruption has stood out to be one of the most pressing ones. It destabilizes national economies, erodes human rights, violates the rule of justice and increases social tensions in society. Corruption still stands as one of the biggest hurdles to socio-economic reforms. It can be considered as one of the factors that cause the present crisis of economic, political, social, and moral-ethical aspects of social life. Academician E.O. Alaukhanov, viewing corruption as a global evil harming national interests, emphasizes: “without solving the corruption issue, it is impossible to effectively address state governance tasks, and the fight against corruption remains extremely relevant” [1; 7].

The diversity and evolution of corruption, which remains one of the key threats to modern states, have necessitated the creation of an effective and balanced mechanism to counteract it. Challenges in combating corruption arise due to its multilevel structure, which requires specific measures tailored to each level. Often, efforts focus only on addressing corruption at a single level, leading to public distrust. Therefore, it is crucial to implement anti-corruption measures comprehensively and at all levels.

There are three main levels of corruption: 1) The lower level, also known as petty or street-level corruption, manifests within civil society and is typically expressed through small-scale bribery in sectors such as education, healthcare, and other social institutions. 2) Mid-level corruption occurs among officials and involves the abuse of official positions for personal gain. 3) High-level or political corruption refers to attempts to influence specific aspects of state policy to obtain personal or corporate benefits. An effective fight against corruption requires a synchronized approach that comprehensively addresses all these levels.

Thus, it becomes evident that combating corruption requires joint efforts from the entire society. To achieve this, it is important to develop an anti-corruption culture, which constitutes a significant component of spiritual culture. Given the current socio-economic, legal, and political landscape, examining the nature of corruption and its effect on the development of an anti-corruption culture is both essential and timely. It is important to highlight that a deeper understanding of corruption is especially relevant in the context of legal system modernization, which is progressing in parallel with broader reform initiatives [2].

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There is no common definition of "corruption" and the existing interpretations differ significantly in the scientific field. Corruption is widely studied across various academic fields, including economic theory, sociology, political science, state and legal theory, criminology, administrative law, and international law. In the post-Soviet region, specialized legal schools are emerging, focusing on the analysis of corruption-related issues and the development of effective strategies to combat them. At the same time, modern scholarship presents a broad spectrum of interpretations for key concepts such as "corruption", "corrupt offense", and "anti-corruption culture".

The purpose of this article is to identify and analyze the theoretical and practical challenges in defining and interpreting corruption, examine its multifaceted nature, and formulate a comprehensive approach to understanding corruption that integrates its social and legal characteristics. This approach aims to contribute to the development of effective prevention and counteraction measures.

To achieve this goal, the following objectives were set:

- Analyze the etymological and historical development of the concept of corruption;
- Identify its socio-economic evolution and institutional forms;
- Systematize scientific approaches to its definition in legal science;

Assess the completeness and accuracy of legal definitions of corruption in national legislation to identify normative and theoretical gaps.

The study of corruption as a complex legal phenomenon continues to attract significant attention from researchers. Within the legal approach, which considers corruption as a type of unlawful activity, the works of A.N. Agybaev and E.O. Alaukhanov deserve special attention. Among foreign scholars, the research of J. Nye, A.I. Dolgova, and S.N. Shishkarev stands out, linking the emergence of corruption to imbalances in the social structure of society. And there is also a substantial body of research dedicated to international methodologies for the consideration of corruption, as well as approaches to its acceptance as a norm that allows the same understanding of the given phenomenon. In fact, countless such works exist, as corruption is a multi-dimensional problem, but the fragmentation of knowledge in this field leads to further challenges in crafting an effective narrative that addresses the issue of the corruption in the creative sector.

Methods and materials

The research methodology is developed in accordance with the particularities of the research phenomenon by using general scientific methods of theoretical analysis, synthesis, and generalization, which will enable a better understanding of the research problem.

Through the methods carried out within this study, it was able to properly analyze the phenomenon of corruption to produce a complete picture of its main trends, determinants and effects, whilst also shaping the data obtained. The theoretical analysis was used to highlight the nature of corruption, its forms and the conditions of its spread. By synthesizing the results and integrating the scattered data into one concept, the study enabled us to recognize the interrelations among different aspects of corrupt behavior. The authors concluded that the generality of the findings allowed them to draw universal conclusions that could be found in other social and legal contexts.

Finally, the study drew from specific methodologies, including legal analysis of anti-corruption legislation, which enhanced its exploration of the subject. This complex approach made it possible to analyze the nature of corruption as a social phenomenon, to study its influence on social institutions, and to work out scientifically grounded measures for its minimization.

Results

The study showed that corruption is a complex social multifactorial phenomenon studied in the context of sciences of various profiles. The multifaceted nature of corruption also explains why there is no accepted definition of corruption in the academic community. Anti-corruption is best approached from the point of view of an integrative interaction of legal, economic and sociological methods of analysis and regulation.

Based on the research conducted on the issues related to determine the essence of corruption as a socio-legal phenomenon, the following findings have been identified:

1) In terms of etymological and historical analysis, corruption is a socio-legal concept that describes a complex of phenomena with historical depth. The etymological analysis of the term shows that the Latin word "corrumpere" originally meant "bribery" and "disruption of legal order", indicating its legal and moral significance even in Roman law.

The historical context confirms the universal negative perception of corruption, as reflected in religious doctrines such as the Bible, the Quran, and the Torah. These sources contain moral and ethical condemnation of corrupt practices, highlighting their reprehensibility across different historical periods and cultural traditions. Thus, corruption is perceived as a threat to social stability and the rule of law, regardless of the era or civilization.

2) The research findings indicate that, in the course of socio-economic development, corruption has evolved from isolated instances of misconduct into a systemic phenomenon influencing economic and political processes. At the turn of the 19th and 20th centuries, corrupt practices took on an institutionalized character, integrating into mechanisms of competitive struggle within the private sector.

In contemporary conditions, corruption has transformed into a global issue affecting all spheres of public life and requiring comprehensive countermeasures. Effective regulation of this phenomenon is possible through the improvement of legal norms, institutional oversight, and international cooperation aimed at minimizing corruption risks and strengthening principles of good governance.

3) The analysis of scientific approaches to defining corruption in legal studies has revealed its multifaceted nature and the absence of a single universal definition. The research demonstrated the existence of several dominant interpretations of corruption, reflecting both its legal nature and socio-economic essence.

Within the criminal-legal approach, corruption is regarded as a criminal offense associated with obtaining unlawful benefits by officials, as emphasized in the works of domestic researchers (A.N. Agybaev). The institutional approach focuses on studying corrupt practices within the public service and state administration systems (A.V. Kurakin, A.I. Dolgova). The theoretical-legal analysis (S.N. Shishkarev) considers corruption as a complex category that includes legal and illicit interrelations between individuals, society, and the state.

Research reveals that corruption is a complex legal and social phenomenon, thus it requires comprehensive interdisciplinary analysis − from the perspective of law, institutions, economic as well as social issues − to be able to develop and implement effective anti-corruption measures.

4) An examination of the legal definitions of corruption in national and international legislation identifies not only normative but also theoretical gaps: there are definitions of concepts that are unsustainable due to a lack of foundational support. However, the definition of corruption by the Law of the Republic of Kazakhstan “On Combating Corruption” (2015) does not include all possible types of corruption and has many controversial features. These consist of the lack of focus on conflicts of interest, inadequate emphasis on preventive actions, and the absence of precise differentiations between the subjects of corrupt connections.

The novelty of the research results is comprehensive in nature, as it gives a definition of corruption as a socio-legal phenomenon, by combining historical-etymological, theoretical and normative-legal analysis. By systematically and collectively structuring fragmented scientific interpretations of the phenomenon presented, we provide a novel, integrated understanding of what truly causes corruption. The study covers normative gaps both in terms of legislative definitions and offers specific proposals on improving the legislation of the Republic of Kazakhstan. It identifies the object of legislation of the Republic of Kazakhstan in the part covering the range of subjects and situations, and emphasizes the importance of addressing conflicts of interest in legislation. The results obtained serve as theoretical groundwork in the creation of effective preventive and counter-corruption measures, as well as in establishing a stable anti-corruption culture within society.

The research substantiated and applied the concept of “multi-level model of corruption” which expressed its incarnations in three levels — the petty (street-level), the administrative and the political corruption. This, however, would enable the examination of corruption practices and elaboration of measures relevant to the particularities of each tier. In particular, forth study applied the concept of a holistic anti-corruption strategy, which prioritizes intervention at all levels of corruption, all at once. This concept found practical application in the form of specific proposals for improving the legislation of the Republic of Kazakhstan, ensuring a more effective and systematic response to corruption across different spheres of society.

Discussion

The study of the essence of corruption includes an analysis of the origin of this term, the identification of key elements characterizing this phenomenon in the context of social relations, as well as an examination of its consolidation in current legislation.

Before delving into the essence of corruption, let us first examine the word itself. The term “corruption” has deep historical roots. Historically, corruption first manifested itself in the form of small household actions, where gifts or offerings were given to authorities in gratitude for services rendered or to maintain good relations. As early as the Laws of the Twelve Tables, one of the most significant legal monuments of Ancient

Rome, the word “corrumpere” was used to mean “bribery to change court testimony” and “judicial corruption”. The word “corruption” itself derives from Latin roots: “core”, meaning integrity or unity, and “rumpere”, meaning to break, destroy, or ruin, which literally reflects the concept of bribery and the destruction of principles of honesty and justice [3].

Corruption is condemned by all major world religions. The Bible and the Quran contain explicit references to this phenomenon: “For I know how many are your offenses and how great your sins: There are those who oppress the innocent and take bribes and deprive the poor of justice in the courts” (Amos 5:12); “And do not consume one another’s wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you to [wrongfully] consume a portion of the wealth of the people” (Quran 2:188). In Judaism, the issue of corruption is also addressed in the Torah and Sifrei: “Do not accept a bribe (shohad), even to acquit the innocent or to convict the guilty” [4].

The turn of the 19th and 20th centuries marked a fundamentally new stage in the theoretical understanding of corruption in developed countries, associated with radical changes in the economy, social structure, and political system. This period was characterized by a significant strengthening of the state apparatus, the expansion of officials’ powers, and the increasing role of bureaucratic institutions, which created favorable conditions for the spread of corrupt practices. At the same time, the private sector was actively developing, and corruption became not only an occasional tool for resolving specific issues but also a strategic business practice. Representatives of the private sector began to systematically engage in the “bribery of the state”, which manifested in the regular bribing of officials, lobbying private interests through illegal or semi-legal schemes, and striving to subordinate public institutions to their own commercial interests.

As a result of this process, corruption manifestations began to take on not just an individual but an institutional character, penetrating the mechanisms of state governance and becoming an integral part of established economic and political relations. This contributed to the formation of stable corruption networks involving both representatives of state authorities and private business structures, pursuing personal or corporate interests at the expense of public and governmental objectives.

By the late 20th and early 21st centuries, corruption had fully acquired the status of a global problem, recognized as a threat to national and international security, economic development, and social stability. As a result, the fight against corruption was no longer perceived solely as a legal or administrative task of individual states but took on a broad national and international significance. Governments began actively developing and implementing comprehensive anti-corruption programs and strategies aimed not only at detecting and punishing corrupt officials but also at preventing corruption risks, fostering an anti-corruption culture, and creating a transparent and accountable system of public administration [5, 8].

It should be emphasized that the given definitions of corruption do not entirely encompass the essence of this illegal phenomenon. However, they do underscore its fundamental aspect — bribery and the corruptibility of officials in positions of authority. This forms the foundation of any corrupt act, regardless of its degree of social danger.

As we can see, scholars interpret the essence of corruption in different ways. Among the numerous perspectives, four key approaches can be distinguished, each examining corruption from the standpoint of different scientific disciplines.

The legal approach views corruption as the use of official powers by a public official for personal enrichment. This manifests in the adoption of illegal decisions or the deliberate avoidance of duties, which benefits a third party, in exchange for which the official receives unlawful remuneration.

The sociological approach interprets corruption as a social phenomenon driven by human actions that contradict public interests. This behavior is rooted in social relationships formed at a particular stage of societal development, with all their patterns, contradictions, and conflicts. Thus, corruption is viewed as a product of the social environment, reflecting its specific characteristics. Corrupt connections present in various spheres are seen as a distinct form of social relations, characterizing the particular stage of societal organization.

According to the economic approach, corruption is viewed as the result of the rational behavior of participants in relationships aimed at maximizing their own benefits. These relationships involve three parties: the principal, who manages resources and holds authoritative powers; the agent, who is entrusted with management of a portion of the resources for purpose of achieving specific goals; and the client, who receives public goods, commodities, or services created within these relationships. The economic approach defines corruption as the agent’s deviation from the duties prescribed by the contract, in which the resources entrusted to them by the principal are used to achieve personal gain or to satisfy the interests of the client. This

model of behavior becomes possible if the expected profit from violating norms exceeds the potential costs. Thus, corruption is interpreted as the rationally motivated use of official powers and resources for personal enrichment through unlawful actions.

The socio-economic approach interprets corruption as a phenomenon characteristic of societies in the process of development, where its emergence is driven by poverty, weak state institutions, and incomplete modernization processes. Proponents of this approach argue that corruption has a dual nature and can lead to both negative and positive consequences.

The positive impact of corruption is observed in the fact that, in "third-world" countries where state institutions are underdeveloped and unable to fully perform their functions, corrupt officials, driven by private interests, often find solutions to citizens' problems more quickly. This contributes to the creation of new mechanisms and tools that, despite their unlawful nature, accelerate social development and the modernization of society.

In legal science, the term "corruption" has numerous definitions proposed by both domestic and foreign researchers. For example, Kazakhstani researcher A.N. Agybaev defines corruption as a criminal act aimed at obtaining illegal benefits by an official for themselves or third parties [6].

A well-known Russian researcher in the field of combating corruption, A.V. Kurakin, defines corruption as "A phenomenon within the public service system encompassing various unlawful acts, such as an official receiving property benefits either personally or through intermediaries, abusing official authority for personal gain, and the bribery of public officials by individuals or legal entities" [7, 9]. Another Russian researcher, A.I. Dolgova, describes corruption as a social phenomenon based on bribery and the venality of government and other officials who exploit their official powers, authority, and resources for personal or corporate interests [8, 708].

Theoretical scholars propose examining corruption in a broad aspect, paying special attention to its legal nature. In this regard, the dissertation research of S.N. Shishkarev is noteworthy, as it conceptualizes corruption as a theoretical and legal category that reflects the legal interrelation between corrupt practices and the interests of individuals, society, and the state. [9, 24].

The foreign researcher J. Nye defines corruption as a phenomenon that includes bribery (offering rewards to evade one's duties), nepotism (granting favors based on personal connections), and the illegal appropriation of public funds for personal use [10].

Scholarly literature offers numerous approaches to defining corruption; however, a unified concept has not yet been established. Due to the complexity of this phenomenon, it is difficult to define it precisely and attribute specific actions to it. Scholars generally identify two main approaches to defining corruption: the general and the specific (criminological) approaches. The general approach highlights the core characteristics of corruption, encompassing all aspects of its legal regulation. Supporters of this perspective assert that, in the contemporary world, corruption should be viewed as any actions that violate established norms and obstruct the development of particular industries, fields, or the state as a whole. At the core of such actions lies the exploitation of public resources for personal or corporate benefit, ultimately causing harm to public interests.

The specific approach interprets corruption as a complex social and criminological phenomenon rather than a strictly legal category. Within this perspective, the term "corrupt crime" is commonly used to describe various corruption-related offenses, such as bribery, official misconduct, and the abuse of power for personal, group, or corporate interests. Legal scholarship offers numerous definitions of corruption, formulated by both domestic and international researchers [11].

Summarizing the analysis of the essence of corruption, we can identify several key characteristics that play an important methodological role in further research on this topic:

1. An agreement between the parties, including an official and an interested participant, which presupposes a certain agreement.

2. Mutual benefit and interest, which can be expressed in both tangible and intangible forms.

3. The illegality of actions, reflected in the violation of criminal and other legal provisions that prohibit such conduct by officials.

4. The influence of a prior agreement on an official's decisions, which is evident in the execution of their professional responsibilities.

These attributes allow for a more comprehensive understanding of corruption networks and facilitate further analysis of the issue.

The first official international definition of corruption is believed to have been established in the "Code of Conduct for Law Enforcement Officials," adopted by the United Nations General Assembly on December 17, 1979. According to the Code, "the concept of corruption encompasses the commission or omission of any act in the performance of duties or due to these duties as a result of required or accepted gifts, promises, or incentives, or their unlawful receipt whenever such an action or inaction occurs" [12].

According to the Law of the Republic of Kazakhstan "On Combating Corruption", adopted on November 18, 2015, "corruption is the illegal use of official powers and related opportunities by persons holding responsible government positions, persons authorized to perform state functions, persons equated to those authorized to perform state functions, and officials for the purpose of obtaining or deriving material (non-material) benefits and advantages for themselves or third parties, as well as the bribing such individuals by offering them benefits and advantages" [13].

In our opinion, this legal definition is incomplete and does not encompass all possible forms of corruption. It is necessary to agree with the majority of experts that the legislative definition contains certain normative and theoretical gaps that require further refinement, particularly:

1) Uncertainty in identifying the subjects of corrupt actions, their interests, and roles, which leads to a blurring of distinctions between offenders, criminals, and affected parties.

2) It should also be noted that the aforementioned definition of corruption does not fully reflect the aspect of conflict of interest, which is a significant factor in the emergence of corruption. It is important for the law to emphasize situations where the personal interests of officials come into conflict with their official duties.

3) The definition primarily focuses on public officials authorized to perform state functions, while excluding representatives of the private sector, which narrows the scope of the law's application. Corruption in the private sector, which interacts closely with the education sector, should also be particularly targeted. Concurrently, while public sector corruption remains a key avenue of addressing the issue, the commercial facet of corruption remains highly relevant, as the private sector equips itself both as a source and a conduit of corruption.

4) the definition is mainly reactive (looking at already undertaken efforts) and does not put enough focus on preventive measures that enable action to be taken to combat corruption in the first instance.

5) The definition fails to account for modern forms of corruption (e.g., digital corruption, procurement corruption, digital service corruption) demanding greater clarification for their effective regulation.

This study has made it possible to explore the phenomenon of corruption in its complexity and multilevel character as a challenge for modern states. Corruption is known to have an impact on national economies, human rights, and social tension. Corruption as a concept has been subject to variegated interpretive frameworks from a theoretical standpoint, and explained the multitude of definitions in the academic literature.

Analysis on the etymological and historic dimension of the term suggest that corruption is a fundamental human concept with an ancient root, existing everywhere in human history and condemned in all cultures and religions. The findings of the study examined and confirmed the evolution of corruption, which causes the transition of corruption from isolated cases to a systemic phenomenon that has become an integral part of the socio-economic and political processes of society.

Methodologically, a set of general scientific and specific methods was used to ensure the completeness and depth of the study. The structuralization of heterogeneous approaches and data was also facilitated by theoretical analysis, synthesis, and generalization, and a comparative analysis of legislation and anti-corruption practices was carried out to establish the strengths and weaknesses of existing normative formations.

Four main groups have emerged as characteristic of the existing approaches to understanding corruption: legal approach, sociological approach, economical approach and socio-economical approach. All of these approaches shed light on certain aspects of corruption; yet, their fragmentation prevents the construction of a holistic plan of action against this phenomenon.

The analytical lens for interpreting the scientific results of the study is given by the institutional concept, which sees corruption as a systemic phenomenon reflecting social institutions and structures. It interprets the dissemination of corrupt practices based on institutional aspects, including deficiencies in legislation, shortcomings in state regulation and control apparatus, as well as the inadequacy of the anti-corruption ethos among society.

A comprehensive methodology has been applied, including a theoretical analysis and practical study of the legal framework and existing practices, thus ensuring the reliability of the research results. To minimize the subjective component of the analysis and to increase the objectivity of the conclusions obtained, it is necessary to use several scientific approaches and methods (comparative, theoretical, historical, synthesis, and generalization). The results of the study are once again proven to be valid and reliable, in both theoretical and empirical data that can be used for the development of science and practice.

Conclusions

Corruption erodes the very foundation of society where civil institutions are accustomed to its presence and state authorities abuse authority for personal gain. Its continuous metamorphosis breeds tremendous barriers to countermeasures. Corruption is a complex social phenomenon for which there is no common definition in scientific literature.

In order to build an anti-corruption culture that applies to people and society, understanding how corruption works and its forms is essential. This kind of culture is a hallmark of active civic engagement, and goes a long way in the protection of human rights, enhancement of public security, and maintaining legal stability. Promoting the values of anti-corruption strengthens the respect for democratic institutions and fosters a strong sense of accountability to the law. Kazakhstan has an urgent need for an anti-corruption ideology, one that can be internalized within the public consciousness, leading to the development of national pride, and strengthening the self-awareness of its people. This will be a crucial step toward building a society free from corruption.

Thus, as a result of the study on the problems of defining the essence of corruption as a socio-legal phenomenon, the following conclusions and recommendations have been made:

- The essence of corruption is manifested in anti-social behavior, characterized by actions that violate regulatory frameworks and hinder the development of a particular sphere of activity. Actions by public officials or by other persons entrusted with governmental or managerial functions, undertaken by virtue of their official position, legal status, or authority in a manner that damages society, the state, or individual citizens, aimed at obtaining material or non-material benefits for themselves, or for others;

- The research findings underline the importance of an integrated, holistic, interdisciplinary approach to both the study of corruption and its prevention, stressing the need for stronger anti-corruption culture, better legislation and greater international collaboration;

- Given the existing normative and theoretical conceptual gaps which require to be improved, we recommend making amendments and addenda to paragraph 6 of Article 1 of the Law of the Republic of Kazakhstan “On Combating Corruption”, spelling out the description “Corruption is the unlawful use of official (service) powers and linked possibilities by individuals who hold responsible public office, persons empowered to perform state functions, persons equated to those authorized to perform state functions and officials, as well as the use of their powers, connections or influence by representatives of the private sector in order to receive or extract assets (non-substantial) benefits and advantages for themselves or third parties, both personally or through intermediaries, as well as bribery of these individuals through the provision of advantages and benefits, including cases of conflict of interests and creation of frameworks that would facilitate such actions”;

– We propose to add an additional provision to paragraph 9 of Article of the Law of the Republic of Kazakhstan “On Combating Corruption”, the paragraph reads as follows: “Anti-corruption culture is a complex of values, legal perspective, knowledge and skills that forms an active intolerance to any manifestation of corruption. This extension is justified based on the understanding of corruption as a social and legal phenomenon, and therefore requires not only legal measures, but a transformation of public consciousness, which is primarily aimed at perceiving corruption as a threat to the stability of society and the state.”

The practical significance of this study lies in identifying gaps and shortcomings in the current anti-corruption legislation of the Republic of Kazakhstan, enabling the proposal of concrete and well-founded recommendations for improving the legal framework, implementing effective prevention mechanisms, and strengthening anti-corruption efforts at all levels. The research findings can be used in the development of state programs and strategies aimed at minimizing corruption risks and fostering a sustainable anti-corruption culture among public officials and the general population. The scientific value of the study consists in a comprehensive analysis of existing theoretical approaches to understanding corruption as a socio-legal phenomenon, which allows for the systematization of fragmented academic knowledge, clarification of the es-

sence and characteristics of corruption, and the establishment of a solid theoretical foundation for further research and the development of an interdisciplinary approach to the study of corruption.

The results of the study can be applied in the following areas: improvement of the legislation of the Republic of Kazakhstan on combating corruption by refining definitions and eliminating identified gaps; development and implementation of comprehensive anti-corruption programs and strategies at the national and institutional levels; educational activities and professional development of public officials, aimed at fostering a strong anti-corruption culture; scientific research related to the theoretical and practical aspects of corruption; public awareness campaigns to increase knowledge and promote societal rejection of corrupt practices.

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Ж.О. Ғалы, А.И. Бирманова

Әлеуметтік-құқықтық құбылыс ретіндегі сыбайлас жемқорлықтың мәнін анықтау мәселелері

Мақала жемқорлықтың мәнін әлеуметтік-құқықтық құбылыс ретінде зерттеуге арналған, ол оның көпдеңгейлі және көпқырлы сипатын ашады. Зерттеудің мақсаты — жемқорлықты көпдеңгейлі әлеуметтік-құқықтық феномен ретінде анықтаудағы теориялық және практикалық қиындықтарды айқындау, сондай-ақ оны түсіндіру мен оған қарсы іс-қимыл жасаудың кешенді тәсілін әзірлеу, бұл қазіргі жағдайларда ерекше өзекті. Зерттеу барысында жалпы ғылыми әдістер, соның ішінде теориялық талдау, синтездеу және қорытындылау қолданылды, бұл әртүрлі көзқарастарды жүйелеуге және жемқорлықтың негізгі белгілерін анықтауға мүмкіндік берді. Сондай-ақ ұлттық және халықаралық заңнамаға құқықтық талдау жүргізілді, бұл құқықтық олқылықтарды анықтауға және оларды жоюдың ықтимал жолдарын қарастыруға көмектесті. Алынған нәтижелер жемқорлықтың күрделі, институционалданған құбылыс екенін көрсетеді, ол тұрмыстық, әкімшілік және саяси

деңгейлерді қамтиды. Құқықтық ғылым мен заңнамада жемқорлықтың бірыңғай анықтамасының болмауы оның тиімді құқықтық реттелуін қиындатады. Нормативтік реттеу мәселелері анықталып, құқықтық анықтамаларды жетілдіру, оның ішінде субъектілер аясын кеңейту және мүдделер қақтығысына назар аударуды күшейту бойынша шаралар ұсынылды. Сондай-ақ, жемқорлықтың алдын алудың тиімділігіне қажетті шарт ретінде жемқорлыққа қарсы мәдениетті дамыту бойынша ұсыныстар жасалды, бұл оның теориялық және практикалық маңыздылығын, сондай-ақ осы салада одан әрі зерттеулер жүргізудің қажеттілігін растайды.

Кілт сөздер: құқықтық құбылыс, сыбайлас жемқорлық, парақорлық, сатып алу, сыбайлас жемқорлықтың анықтамасы, сыбайлас жемқорлықтың мәні, сыбайлас жемқорлыққа қарсы мәдениет, заңсыз әрекет, сыбайлас жемқорлыққа қарсы іс-қимыл, құқықтық тетіктер.

Ж.О. Галы, А.И. Бирманова

Проблемы определения сущности коррупции как социально-правового явления

Статья посвящена исследованию сущности коррупции как социально-правового явления, раскрывающему её многоуровневый и многоаспектный характер. Цель исследования - выявление теоретических и практических трудностей определения коррупции как многоуровневого социально-правового феномена, а также разработка комплексного подхода к её интерпретации и противодействию, что особенно актуально в современных условиях. В ходе исследования применялись общенаучные методы: теоретический анализ, синтез и обобщение, которые позволили структурировать разрозненные подходы и выявить сущностные признаки коррупции. Также были проанализированы национальное и международное законодательство, что помогло выявить нормативные пробелы и рассмотреть возможные пути их устранения. Полученные результаты свидетельствуют, что коррупция является сложным, институционализированным явлением, охватывающим бытовой, административный и политический уровни общества. Установлено отсутствие единого определения в юридической науке и законодательстве, что усложняет эффективное правоприменение. Выявлены проблемы нормативной регламентации и предложены меры по совершенствованию правовых формулировок, включая расширение субъектного состава и усиление внимания к конфликту интересов. Также предложены рекомендации по развитию антикоррупционной культуры как важного условия эффективной профилактики коррупции, что подтверждает её теоретическую и практическую значимость и необходимость дальнейших исследований в данной области.

Ключевые слова: правовое явление, коррупция, взяточничество, подкуп, определение коррупции, сущность коррупции, антикоррупционная культура, противоправное действие, противодействие коррупции, правовые механизмы.

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Правовые аспекты и криминалистическое предупреждение незаконного участия в предпринимательской деятельности (на примере Казахстана и Беларуси)

Проведен анализ уголовно-правовых норм, предусматривающих ответственность за незаконное участие в предпринимательской деятельности, содержащихся в Уголовных кодексах Казахстана и Беларуси. Акцентировано внимание на некоторых причинах и условиях, способствующих совершению исследуемого преступления. Высказано предложение о совершенствовании правовой нормы, устанавливающей уголовную ответственность за данный вид коррупционных преступлений. Обосновывается необходимость закрепления в уголовно-процессуальных кодексах Казахстана и Беларуси обязанности субъекта, осуществляющего предварительное (досудебное) расследование, принимать меры реагирования в каждом случае выявления причин и условий (обстоятельств) совершения любого вида преступлений. Автор указал на возможность реализации предупредительно-профилактических мер в процессе расследования исследуемого преступления путем проведения профилактической беседы в ходе допроса. Основными формами предупредительно-профилактической деятельности субъекта, осуществляющего предварительное (досудебное) расследование, названы правовое и криминалистическое просвещение. Указано на целесообразность реализации предупредительно-профилактических мер за пределами расследуемого уголовного дела о незаконном участии в предпринимательской деятельности. Объектами профилактического воздействия выступают организация (учреждение), в которой совершено коррупционное преступление, её руководящий состав и работники (служащие) данной организации.

Ключевые слова: предпринимательская деятельность, причины и условия, расследование, предупреждение, профилактика, правовое просвещение, криминалистическое просвещение.

Введение

Коррупция — один из факторов воспроизводства должностных и экономических преступлений, угрожающих национальной безопасности. Она превратилась в институциональный конструкт экономической системы [1; 293–299], препятствующий нормальному функционированию общества.

Количество зарегистрированных преступлений коррупционной направленности в Республике Казахстан (далее — Казахстан) за девять месяцев 2024 г., составило 1,5 тыс., что на 6,5 % больше, чем за аналогичный период 2023 года. При этом более половины уголовных дел связано со взяточничеством (дача взятки — 472 случая, получением взятки — 317 случаев), 246 преступлений квалифицировано как растрата чужого имущества [2].

В Республике Беларусь (далее — Беларусь) наблюдается динамика периодичности роста и снижения количества привлеченных к ответственности за коррупционные преступления. В 2023 г. за со-

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вершение коррупционных преступлений было осуждено 717 [3] лиц, что на 4,5 % больше, чем за 2022 г. (686 лица) и на 10,73 % больше, чем в 2021 г. (640 лиц) [4]. За первое полугодие 2024 года за совершение преступлений коррупционной направленности осуждено 328 лиц, что на 4,4 % меньше, чем в аналогичный период 2023 года (343 лица) [5].

Статистические данные Казахстана и Беларуси свидетельствуют о низком уровне выявления и расследования отдельных видов коррупционных преступлений. В их числе незаконное участие в предпринимательской деятельности (ст. 364 Уголовного кодекса Казахстана (далее — УК Казахстана) [6] и ст. 429 Уголовного кодекса Беларуси (далее — УК Беларуси) [7]). На распространенность незаконного участия в предпринимательской деятельности и одновременно низкую раскрываемость этих деяний указывают российские ученые [8; 77], [9; 10]. В определенной степени это связано с латентностью указанного вида преступлений и несовершенством уголовно-правовой нормы, позволяющей обойти запрет на пути достижения криминальной цели.

Несовершенство уголовно-правовой нормы, устанавливающей ответственность за незаконное участие в предпринимательской деятельности, связано с установлением запрета на совершение действий, которые фактически являются очевидными, что противоречит стремлению должностного лица сохранить их в тайне. Создание коммерческой структуры — процесс открытый, четко регламентированный законодательством и, одновременно, рискованный для государственного служащего любого ранга. Сложно представить, чтобы должностное лицо государственных органов или организаций, вопреки запретам, установленным иными нормативными актами, совершило действия, направленные на создание предпринимательской организации либо лично (открыто) участвовало в её управлении. Правоохранительной практике такие случаи неизвестны. В тоже время, как небезосновательно считают ученые, «можно участвовать в предпринимательской структуре и достаточно эффективно, оказывая ей содействие, без участия в управлении её делами, что и делается повсеместно должностными лицами» [10; 59].

В Казахстане и Беларуси проблема противодействия коррупции сохраняет свою актуальность. Её проявления в различных формах и видах создают препятствия на пути решения экономических и политических задач, подрывают авторитет государственной власти в глазах мировой общественности и собственного народа. В связи с этим очевидна необходимость проведения исследований незаконного участия в предпринимательской деятельности, как одного из проявлений должностных преступлений коррупционной направленности.

Исследованию незаконного участия в предпринимательской деятельности посвящены кандидатские диссертации российских ученых, например, В.С. Изосимова [11], Н.И. Верченко [12], в которых акцентируется внимание на уголовно-правовых и криминологических проблемах данного вида коррупционных проявлений. Проблемы расследования данного вида преступлений рассмотрены в диссертации А.С. Усенко [13]. Каких-либо исследований подобного уровня ученые Казахстана и Беларуси не проводили. В тоже время практические работники испытывают трудности в части предотвращения новых проявлений рассматриваемого вида коррупционных преступлений по причине отсутствия четкой научно-обоснованной системы мер их криминалистического предупреждения, ориентированного на причины и условия, способствующие совершению исследуемого преступного деяния.

Целью данной статьи является исследование нормативно-правовых аспектов незаконного участия должностных лиц в предпринимательской деятельности, а также мер предупреждения данных деяний, как составной части методики расследования, а также возможностей их реализации в практической деятельности следователя и иных лиц, уполномоченных осуществлять предварительное расследование.

В качестве объекта исследования выступают преступные действия должностных лиц, связанные с их незаконным участием в предпринимательской деятельности.

Предметом исследования является правовая регламентация незаконного участия в предпринимательской деятельности, а также меры криминалистического предупреждения данного вида преступных деяний должностных лиц.

Методы и материалы

Общенаучные и частнонаучные методы исследования составили методологическую основу данной статьи. Объект и предмет исследования обуславливают целесообразность использования системно-структурного методологического подхода. С учетом избранного подхода достижение цели иссле-

дования обеспечивалось посредством применения метода криминалистического анализа, а также иных методов познания, составивших методологическую основу данной работы.

Теоретическая база исследования представлена диссертационными работами Н.И. Верченко, В.С. Изосимова, А.С. Усенко, коллективной монографией под редакцией В.М. Хомича, статистическими данными с официального сайта Верховного суда Республики Беларусь, нормативными правовыми актами Казахстана и Беларуси, научными статьями М.Н. Абубакирова, В.Н. Боркова, И.Ш. Борчашвили, Н.В. Бугаевской, Н.А. Егоровой, Е.В. Зубенко, Н. Пановой, А.П. Спиридонова и др., а также публикациями автора данного исследования.

Результаты

Анализ материалов следственной и судебной практики правоохранительных органов, информации, полученной из научной литературы и средств массовой информации в отношении рассматриваемого вида преступлений, позволяет обратить внимание на объективные причины и условия, способствующие их совершению. Одной из них является несовершенство норм уголовных кодексов Беларуси и Казахстана, предусматривающих уголовную ответственность за незаконное участие в предпринимательской деятельности, что приводит не только к проблемам привлечения к уголовной ответственности, но и препятствует реализации мер предупреждения совершения данных преступлений. Для аргументации этого тезиса проанализируем признаки данного вида преступлений.

В соответствии со ст. 429 УК Беларуси данное деяние представлено как «учреждение должностным лицом, находящимся на государственной службе, организации, осуществляющей предпринимательскую деятельность, либо участие его в управлении такой организацией лично или через иное лицо вопреки запрету, установленному законом, если должностное лицо, используя свои служебные полномочия, предоставило такой организации льготы и преимущества или покровительствовало в иной форме» [7]. Схожая формулировка незаконного участия в предпринимательской деятельности содержится в ст. 364 УК Казахстана: «учреждение лицом, уполномоченным на выполнение государственных функций, либо приравненным к нему лицом, либо должностным лицом организации, осуществляющей предпринимательскую деятельность, либо участие в управлении такой организацией лично или через доверенное лицо вопреки запрету, установленному законом, если это деяние связано с предоставлением такой организации льгот и преимуществ или с покровительством в иной форме» [6].

Уголовная ответственность для должностных лиц наступает за незаконные действия, связанные с «учреждением организации, осуществляющей предпринимательскую деятельность» либо за «участие в управлении такой организацией» при условии предоставления ей (организации) льгот, преимущества или покровительства с использованием служебных полномочий, т.е. «уголовная ответственность наступает только в том случае, когда лицо, уполномоченное на выполнение государственных функций, либо приравненное к нему лицо, либо должностное лицо злоупотребляют своими полномочиями, предоставляют (либо добиваются предоставления) созданной или руководимой им организации различных льгот и преимуществ, либо оказывают ей покровительство в иной форме» [14; 67].

Установленный законодательством Беларуси и Казахстана порядок создания (учреждения) организаций, целевое назначение которых состоит в извлечении прибыли путем осуществления хозяйственной деятельности, исключает возможность сокрытия факта её учреждения должностным лицом. Это обстоятельство объективно препятствует непосредственному (открытому) совершению должностным лицом действий, направленных на личное учреждение коммерческой организации, но не исключает возможность подобных действий в его интересах иных лиц, что не предполагает уголовную наказуемость. Такую ситуацию следует рассматривать как мнимое учреждения организации, но в этом случае предполагается участие должностного лица в управлении такой организацией, что само по себе рассматривается как уголовно наказуемое деяние.

Исключается уголовная ответственность для должностного лица в случае учреждения им организации некоммерческой направленности либо за участие в управлении такой организацией. Если такая организация воспользовалась предоставленным ей законодательством правом заниматься предпринимательской деятельностью для достижения уставных целей, то учреждение или участие в её управлении должностных лиц государственных органов и организаций образует состав рассматриваемого нами преступления.

Возможен эффективный вклад должностного лица в развитие предпринимательской структуры, без его участия в управлении ее делами. В связи с этим ученые предлагают установить уголовную ответственность «не за участие в управлении, а за участие в деятельности такой организации» [10; 59]. Данную точку зрения поддерживает российский исследователь Н.Е. Егорова, предлагая заменить признак преступления «участие в управлении организацией» на признак «участие в предпринимательской деятельности организации» [15; 63].

Следует обратить внимание, что «участие в управлении организацией» предполагает реализацию властных функций, отнесенных к компетенции органа управления организацией, и связано с принятием решений от имени руководства организацией. Для «участия в деятельности организации» характерны различные формы, при условии использования должностным лицом своих служебных полномочий для предоставления организации льгот, преимуществ или покровительства с целью получения собственной выгоды, которая, как правило, имеет материальный характер.

Предоставление льгот и преимуществ либо покровительства со стороны должностного лица может проявляться, например, следующим образом:

1) создание условий для получения организацией заказа на выполнение работы, оказание услуги и т.п.;

2) оказание содействия в получении организацией различных документов, необходимых для осуществления предпринимательской деятельности (лицензий, сертификатов и др.);

3) обеспечение упрощенного и(или) ускоренного рассмотрения документов в государственных органах;

4) предоставление организации преимуществ в реализации права на аренду помещений, установление льготной арендной оплаты, освобождение от иных обязательств, связанных с арендой помещения;

5) незаконная передача организации государственного имущества, предоставление ей услуг, выполнение работ за счет государственных средств и др. [16; 46–49].

Выявление льгот и преимуществ либо покровительства, предоставленных должностным лицом организации, является важнейшим направлением деятельности органов предварительного расследования. В результате анализа предпринимательской деятельности организации проблема возникает в связи с различным толкованием понятий «льгота», «преимущество» и «покровительство» и необходимости их сочетания.

Обсуждение

В соответствии со словарем русского языка С.И. Ожегова, льгота — это «облегчение кому-нибудь, предоставляемое как исключение из общих правил», «преимущество» представлено как выгода, превосходство или исключительное право, привилегия, а покровительство — это «защита, заступничество, оказываемое кому-нибудь» [17; 268, 472, 446].

Субъектам, осуществляющим предпринимательскую деятельность, льготы предоставляются в связи с определенными обстоятельствами, на основе нормативно-правовых актов и в соответствии с установленными процедурами. Например, в Беларуси, с целью поддержки и социальной реабилитации инвалидов, установлена налоговая льгота для коммерческих организаций, в составе которых осуществляет трудовую деятельность данная категория граждан. Льготы не могут быть предоставлены должностным лицом при отсутствии объективных условий, определенных законодательством. В противном случае речь идет о преимуществах, незаконно предоставляемых субъекту хозяйствования за счет иных организаций и во вред им. Таким образом, должностное лицо превышает свои полномочия или злоупотребляет ими.

Конструкция уголовно-правовой нормы и её буквальное толкование вводит в заблуждение правоохранителей, считающих, что для ответственности необходимо выявление факта предоставления должностным лицом одновременно «льгот и преимуществ» [14; 69]. Такой взгляд представляется неверным, т.к. данные понятия имеют общие признаки, позволяющие исключить одно из них в содержании уголовно-правовой нормы. Мы согласны с мнением И.Ш. Борчашвили, предлагающего исключить из диспозиции рассматриваемой статьи термин «льготы», сохранив термин «преимущества» [14; 69].

Проведенный анализ нормы, предусматривающей уголовную ответственность за незаконное участие в предпринимательской деятельности, позволяет внести в неё изменения. На примере ст. 429 УК Беларуси представим её диспозицию следующим образом: учреждение должностным лицом, на-

ходящимся на государственной службе, организации, осуществляющей предпринимательскую деятельность, либо принимало участие в деятельности такой организации лично или через иное лицо вопреки запрету, установленному законом, если должностное лицо, используя свои служебные полномочия, предоставило такой организации преимущества или покровительствовало ей в иной форме.

С целью эффективного предотвращения незаконного участия в предпринимательской деятельности необходимо применять меры предупреждения и профилактики данного вида преступлений.

Некоторые меры общего характера, содержащиеся в программных и иных нормативных документах, не отражают особенности их осуществления субъектами, противодействующими коррупции. Значима роль в предупреждении и профилактике незаконного участия в предпринимательской деятельности следователей, ведущих борьбу с коррупционными преступлениями.

Уголовно-процессуальные кодексы Казахстана и Беларуси рассматривают возможность участия следователя в предупредительно-профилактической деятельности. При этом белорусские следователи (иные субъекты, осуществляющие предварительное расследование) выявляют «причины и условия», способствовавшие совершению преступления (ст. 90 УПК Беларуси) [18], а казахские следователи обнаруживают «обстоятельства», способствовавшие совершению уголовного правонарушения (ч. 4, ст. 113 УПК Казахстана) [19].

Правоохранительная деятельность по предупреждению и профилактике незаконного участия в предпринимательской деятельности может осуществляться по разным, но взаимосвязанным направлениям.

Во-первых, нормативно регламентирована мера, направленная на устранение причин и условий (обстоятельств), способствовавших совершению преступления. Возможность её реализации предусмотрена ст. 199 УПК Беларуси и ч. 1, ст. 200 УПК Казахстана. Указанные нормы предоставляют право субъекту, осуществляющему предварительное (досудебное) расследование, внести в организацию или должностному лицу представление о принятии мер по устранению причин и условий (обстоятельств или других нарушений закона), способствовавших совершению преступления. Однако, надо обратить внимание, что они не возлагают на лицо, осуществляющее досудебное расследование, обязанности принимать меры реагирования при наличии причин и условий (обстоятельств или других нарушений закона), способствовавших совершению расследуемого преступления.

Имея позитивную точку зрения по данному вопросу, мы ранее высказались об обязательности реагирования на выявленные причины и условия совершения преступления и предложили закрепить в УПК Беларуси соответствующую обязанность лица, осуществляющего предварительное расследование [20; 170].

Упомянутое представление субъект расследования вносит «в соответствующие организации или должностному лицу» (ст. 199 УПК Беларуси) или «в соответствующие государственные органы, организации или лицам, исполняющим в них управленческие функции» (ч. 1, ст. 200 УПК Казахстана). В качестве «соответствующих» выступают организации, где совершено анализируемое деяние, т.е. организация, в которой проходит служебная деятельность должностного лица, совершившего рассматриваемое деяние. Не исключается возможность направления представления руководителям вышестоящих организаций, уполномоченных контролировать подчиненных им должностных лиц.

Возможно направление представления в общественную организацию, в случае членства в ней виновного лица. Общественное влияние в ряде случаев являет собой альтернативу привлечения виновного к юридической ответственности [21; 55].

Во-вторых, не менее значимо осуществление индивидуальных мер предупредительного характера. Они направлены на участников уголовного процесса, а также организации (учреждения), где проходит служебная деятельность лица, обвиняемого в совершении анализируемого преступления.

Субъект, расследующий дело о незаконном участии в предпринимательской деятельности, находится в контакте с лицами, участвующими в производстве процессуальных действий. Наиболее значимо в аспекте реализации предупредительно-профилактических мер проведение допроса обвиняемого должностного лица и свидетелей.

В процессе допроса имеется возможность оказать позитивное воспитательное воздействие на допрашиваемое лицо. Оценка процессуального статуса допрашиваемого лица, степени его участия в совершении преступления позволяет выбрать способ воздействия, реализуемый в рамках профилактической беседы.

Предупредительно-профилактическая направленность допроса обвиняемого лица состоит в возможности передачи ему необходимых знаний о национальном праве и развития установки на его по-

зитивное восприятие, т.е. формирования правового сознания. Лицам, допрашиваемым в качестве свидетелей, разъясняется противоправность действий, в связи с которыми они дают показания.

Индивидуально-предупредительные меры целесообразно реализовать за пределами расследованного уголовного дела. В таком случае «объектами профилактического воздействия являются, во-первых, организация (учреждение), в которой проходит служебная деятельность виновного в совершении рассматриваемого деяния, во-вторых, руководящий состав (орган, администрация) организации, в-третьих, неопределённый круг иных лиц, осуществляющих свою деятельность в данной организации (учреждении)» [22; 63].

Профилактическая беседа может вестись в форме криминалистического либо правового просвещения граждан, что регламентировано национальным законодательством [23].

Криминалистическое просвещение [24; 26–31] сводится к разъяснению научно-правовой информации широким слоям населения с целью повышения их правосознания и правовой культуры. В таком случае деятельность по устранению причин и условий совершения коррупционных преступлений можно представить в виде выступлений, например, следователя в организациях (учреждениях).

Таким образом, предупредительно-профилактическая деятельность субъекта, осуществляющего предварительное (досудебное) расследование по устранению причин и условий (обстоятельств), способствовавших совершению незаконного участия в предпринимательской деятельности, должна осуществляться в отношении: 1) должностных лиц, обвиняемых в совершении данного преступления и иных лиц, вовлечённых в уголовное судопроизводство (например, свидетелей); 2) неопределённого круга лиц, осуществляющих свою деятельность в организации (учреждении), в которой было совершено коррупционное деяние; 3) руководящего состава организации, в которой совершено расследованное коррупционное преступление.

Выводы

На основании изложенного сформулированы следующие выводы и предложения:

1. Несовершенство уголовно-правовой нормы, предусматривающей ответственность за незаконное участие в предпринимательской деятельности, позволяет обойти запрет на пути достижения криминальной цели: получение должностным лицом выгоды материального характера в результате незаконного участия в деятельности коммерческой организации путем предоставления ей преимуществ или покровительства в иной форме с использованием своих служебных полномочий.

2. Предлагается изложить диспозицию ст. 429 УК Беларуси следующим образом: «учреждение должностным лицом, находящимся на государственной службе, организации, осуществляющей предпринимательскую деятельность, либо принимало участие в деятельности такой организации лично или через иное лицо вопреки запрету, установленному законом, если должностное лицо, используя свои служебные полномочия, предоставило такой организации преимущества или покровительствовало ей в иной форме». По аналогии возможно совершенствование ст. 364 УК Казахстана.

3. Оптимизации процессуальной деятельности следователей будет способствовать закрепление в УПК Казахстана и УПК Беларуси обязанности субъекта, осуществляющего предварительное (досудебное) расследование, принимать меры реагирования во всех случаях выявления причин и условий (обстоятельств), способствовавших совершению преступлений.

4. Реализация предупредительно-профилактических мер незаконного участия в предпринимательской деятельности осуществляется в процессе расследования уголовного дела в формах правового и криминалистического просвещения.

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А.М. Хлус

Кәсіпкерлік қызметке заңсыз қатысудың құқықтық аспектілері және криминалистикалық алдын алу (Қазақстан мен Беларусь мысалында)

Қазақстан мен Беларусь Қылмыстық кодекстерінде қамтылған кәсіпкерлік қызметке заңсыз қатысу үшін жауапкершілікті қарастыратын қылмыстық-құқықтық нормаларға талдау жүргізілді. Зерттеуге алынған қылмысты жасауға ықпал ететін кейбір себептер мен ахуалдарға назар аударылған. Сыбайлас жемқорлық қылмыстың осы түрі үшін қылмыстық жауапкершілікті белгілейтін құқықтық норманы жетілдіру жөнінде ұсыныс жасалды. Қазақстан мен Беларусьтің қылмыстық іс жүргізу кодекстерінде алдын ала (сотқа дейінгі) тергеп-тексеруді жүзеге асыратын субъектінің қылмыстың кез келген түрін жасаудың себептері мен шарттарын (мән-жайларын) анықтаудың әрбір жағдайында ден қою шараларын қабылдау міндетін белгілеу қажеттігі дәлелденген. Автор жауап алу кезінде қылмыстың алдын алу жөнінде әңгіме жүргізу арқылы тергелетін қылмысты тергеп-тексеру процесінде алдын алу шараларын жүзеге асыру мүмкіндігін көрсетті. Алдын ала (сотқа дейінгі) тергеп-тексеруді жүзеге асыратын субъектінің ескерту-алдын алу қызметінің негізгі нысандары құқықтық және криминалистикалық білім беру деп атап өтілген. Кәсіпкерлік қызметке заңсыз қатысу туралы қылмыстық істі тергеуден тыс алдын алу бойынша іс-шараларды жүзеге асырудың орындылығы көрсетілді. Сыбайлас жемқорлық қылмыс жасалған ұйым (мекеме), оның басшылық құрамы және осы ұйымның жұмысшылары (қызметкерлері) алдын алу бойынша іс-шаралар өткізу объектілері болып табылады.

Кілт сөздер: кәсіпкерлік қызмет, себептері мен жағдайлары, тергеу, алдын алу, профилактика, құқықтық тәрбие, криминалистикалық білім.

A.M. Khlus

Legal aspects and forensic prevention of illegal participation in entrepreneurial activity (on the example of kazakhstan and belarus)

The analysis of criminal law norms providing for liability for illegal participation in entrepreneurial activity contained in the Criminal Codes of Kazakhstan and Belarus is carried out. Attention is focused on some of the reasons and conditions that contribute to the commission of the crime under study. A proposal is made to improve the legal norm establishing criminal liability for this type of corruption crimes. The need to consolidate in the criminal procedure codes of Kazakhstan and Belarus the obligation of the subject carrying out the preliminary (pre-trial) investigation to take response measures in each case of identifying the causes and conditions (circumstances) of committing any type of crime is substantiated. The author pointed out the possibility of implementing preventive measures in the process of investigating the crime under study by conducting a preventive conversation during the interrogation. The main forms of preventive activities of the subject carrying out the preliminary (pre-trial) investigation are legal and forensic education. The expediency of implementing preventive measures outside the investigated criminal case on illegal participation in entrepreneurial activity is indicated. The objects of preventive impact are the organization (institution) in which the corruption crime was committed, its management and employees (employees) of this organization.

Keywords: entrepreneurial activity, causes and conditions, investigation, prevention, prophylaxis, legal education, forensic education.

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AI in AML: innovative approaches and potential to improve financial literacy of the population

The purpose of this study is to analyze the use of artificial intelligence (AI) for anti-money laundering (AML) and explore the potential of AI to improve the financial literacy of citizens in order to prevent fraud and participation in money laundering. With the development of modern technology, the ways in which crimes are committed have significantly changed, become more complex and transformed, especially the large-scale cyber-attacks that occur on a daily basis. Therefore, in the current realities, it is necessary to utilize effective technological solutions that can respond quickly to new threats. One such way is the application of artificial intelligence (AI) technologies, which is widespread across various industries, and AML is no exception. The study found that the advantage of using artificial intelligence in AML compliance is its functionality to allow for real-time monitoring and analysis. This makes it possible to detect potential threats or possible illegal activities in which citizens are involved, consciously and unconsciously, and conduct thorough investigations to protect citizens and the state. The main result, which the authors have reached, consists in practical proposals, based on foreign experience, to introduce AI into the AML systems of the Republic of Kazakhstan to detect, report and suppress suspicious money laundering operations.

Keywords: money laundering, artificial intelligence, digital technology, anti-fraud, citizen financial security, scams

Introduction

Money laundering has been a global problem for many years and has a great impact on the economic well-being of every country.

Money laundering is a type of offence in which criminal funds, passing through several stages of transformation, are introduced into the legal economy for further legitimate use. This negative phenomenon poses a serious threat to the national security of the country, adversely affects the stability, integrity, transparency and efficiency of financial systems, undermines economic welfare and hinders the economic development of the country.

The International Financial Action Task Force (FATF) lists drug trafficking, tobacco trafficking, jewelry trafficking, human trafficking, piracy, corruption, and illegal transactions in digital assets among the main types of crime characterized by money laundering [1].

The entire world community is fighting this criminal phenomenon, but despite all the efforts made by countries, billions of criminal funds are laundered every day. The current anti-money laundering system does not fully ensure the proper level of combating money laundering, so in the era of new technologies, it is necessary to create ways and methods that will allow to effectively resist this type of crime.

One of these ways is the implementation of artificial intelligence. AI opens up a wide range of opportunities in this area, providing innovative tools to monitor, analyze and prevent violations. With the ability to analyze large volumes of data, identify atypical transactions and track anomalies that are difficult for humans to spot, AI technologies can take fraud detection to a new level beyond classic risk control analysis by reducing resource intensity.

The purpose of this study is to comprehensively analyze the use of artificial intelligence to combat money laundering; to study the current problem of involving citizens as “droppers” and liability for this in the Republic of Kazakhstan; and to formulate proposals for the introduction of systems to monitor suspicious transactions to prevent the involvement of citizens in fraudulent schemes to launder money.

In order to achieve the established purpose, the following objectives are defined:

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- To conduct a study on the introduction of artificial intelligence technology to combat money laundering;

- to study the problem of involvement of citizens in fraudulent schemes as “droppers” and legal consequences for this;

- on the basis of foreign analysis to develop recommendations on introduction of AI technologies in monitoring systems of the Republic of Kazakhstan to combat fraud.

The issues of AI application in ensuring financial security and its impact on AML were considered in scientific articles of foreign scientists, such as Ray A., Shabsigh G., Afanasyeva D.V., Dyatlova A.F., Chebukhanova L.V. and others. However, the amount of study regarding the impact of AI on the AML system in the Republic of Kazakhstan, conducted by domestic authors was proved to be insufficient for further implementation of AI-based solutions. And hence, in our opinion, there is no detailed study of the actual problem of “droppers” in the country and measures that can contribute to combating this negative phenomenon.

Methods and materials

The methodological basis of the research is based on general scientific and special scientific methods of cognition of social and legal reality, such as cybernetic, empirical, statistical and comparative-legal methods. The application of cybernetic method allowed us to conclude how new AI technologies can be effective for citizens to avoid involvement in money laundering. The use of empirical and statistical methods allowed us to analyze court practice in criminal and civil cases related to the involvement of citizens in illegal transactions in the field of money laundering. Comparative legal method allowed studying foreign experience and formulating proposals for the implementation of this experience in the legal system of Kazakhstan.

Application of these methods allowed to analyze the practice the application of artificial intelligence for counteracting money laundering. The theoretical basis was formed by the works of domestic and foreign scientists who contributed to the study of artificial intelligence, its application in the AML system; materials of civil and criminal court decisions on this issue were studied. The empirical results are based on foreign practice of application of monitoring systems using AI technologies in existing financial systems to prevent AML risks.

Results

The analysis of this study reveals that despite the key benefits of digitalization, such as increased accessibility of financial services for citizens, there are a number of risks and challenges associated with the loss of data security and confidentiality, which can then be exploited by criminals for illegal purposes, involving citizens in fraudulent schemes. Judicial practice shows that citizens of the country are involved by criminals as “droppers” and carry out illegal transactions both at the conscious and subconscious levels. And since participation in such activities carries both civil and criminal liability, it is necessary to take a number of measures with regard to counteracting the participation of individuals in fraudulent money laundering schemes. Therefore, it is now becoming relevant for the financial sector to implement effective monitoring systems to detect suspicious transactions, meeting the requirements of AML legislation in the Republic of Kazakhstan.

Research by the FATF organization on the adoption of new technologies to meet AML/CFT standards has found that technologies such as artificial intelligence and application programming interfaces have the best outcome for customer due diligence [2].

The authors conclude that the field of financial AML monitoring is increasingly adopting artificial intelligence, which demonstrates fundamental abilities in solving financial and economic problems. By applying tools based on AI and machine learning, it becomes possible to analyze data quickly and accurately in real time, which can help solve problems related to the involvement of citizens in illegal financial transactions, as well as the misuse of personal data. However, apart from the positive side of using AI technologies in AML systems, there are risks ranging from data confidentiality issues to the quality of data sets and interpretability of AI models.

However, the positive experience of foreign countries has shown that the use of monitoring systems with the application of AI gives fast and effective results, helping to fight fraud and involvement of people in money laundering. This experience can be applied to the national financial system of the Republic of Kazakhstan.

Discussion

The ever-changing regulatory landscape, coupled with the increasing incidence of money laundering offences, has highlighted the need for better equipment with technologies to counter this offence [3]. Therefore, in order to achieve results, it is necessary to introduce new existing, low-cost and effective technologies that have the potential to improve anti-money laundering measures. Moreover, these measures are aimed at improving the quality of implementation of the FATF International Standards.

As early as 2021, the FATF has focused on such AI compliance tools in AML by publishing a handbook on "Opportunities and Challenges of New Technologies for AML/CFT". This publication contains the concept of AI, which is defined as a science that mimics human thinking abilities to perform tasks that normally require human intelligence, such as recognizing patterns, making predictions, recommendations or decisions [4]. AI, which uses advanced computational techniques to derive information from different types, sources, and quality (structured and unstructured) of analytical data to "autonomously" solve problems and perform tasks, has also been explored.

In the previously published article by Sidorova N.V. and the authors of this article it was noted that informatization and digitalization are already being introduced into various spheres of functioning of the state and society, using artificial intelligence, at a higher quality level [5; 82]. Government agencies and large corporations are using new AI technologies to protect citizens' personal data, especially in the banking sector. For example, due to biometric authentication, accelerated threat detection and prompt response to attacks with the help of AI security software embedded in applications, the safety of personal data is ensured and their leaks are prevented [6; 152].

Consider the strengths and weaknesses of using AI for anti-money laundering purposes. In terms of the benefits of AI for AML monitoring, AI allows for more sensitive and broader analysis, which radically expands the ability to assess money laundering risks. By using sophisticated algorithms, AI tools enable AML compliance to better understand money laundering risks, allowing for identification and analysis of illegal activity, providing a real digital solution. These digital AML tools can process huge amounts of data in a short period of time to gain insights into patterns and anomalies that may indicate the presence of money laundering or other financial crimes, which is quite difficult, time-consuming and labor-intensive for a typical individual. Artificial intelligence has great potential for automation, supporting fast processes and efficient workflows that enable professionals to perform higher-level tasks.

However, the introduction and application of new technologies in the AML system are associated with certain difficulties and problems, which are either regulatory or operational in nature. This is mentioned in the Concept for the Development of Financial Monitoring for 2022–2026, which notes that combating money laundering is one of the priority tasks for the financial sector since almost all financial monitoring subjects are involved in this illegal activity. The situation is aggravated by insufficient information work and a lack of systematic training in AML and the financial security of citizens [2].

It should also be noted that the introduction of AI into AML involves significant risks that need to be carefully considered. A recent IMF report showed that artificial intelligence, especially generative AI, poses a significant risk to the financial system [7]. These threats include data privacy breaches, bias in AI algorithms, the risk of inaccurate predictions and conclusions, and potential system failures due to cyberattacks that could contribute to inaccurate information.

However, despite all the risks, integrating AI into financial systems to prevent fraud is important for citizens, financial organizations and the country as a whole.

In recent years, Kazakhstan has seen an increase in the number of people involved in fraudulent money laundering schemes, including people mostly from vulnerable groups, such as students, unemployed, retirees and others. Such persons are called "Droppers" — people, who are used by fraudsters for registration of bank cards and accounts on them for subsequent withdrawal of criminally obtained funds. This is mostly money from drug trafficking, cyber fraud, illegal gambling activities and other crimes. Fraudsters often place adverts for remote work with high income, send offers via email, messengers and social networks. Dropper accounts are used to transfer and cash out money, for which they receive a certain reward, not realizing all the consequences of their role in criminal fraud due to ignorance of possible administrative and criminal liability. In 2024, the FMA of the Republic of Kazakhstan established facts of use for laundering criminal proceeds of 6.2 thousand "drop cards" with a total turnover of 24 billion tenge [8].

Droppers can be divided into two groups, those who gave their account details in explicit way and those who participated in the criminal scheme unconsciously. In the first case, citizens are aware of the possible

liability and, due to frivolity and quick flow of money, intent to participate in the crime increases significantly, making victims to follow their fraudulent schemes. Individuals who are unaware that they are assisting fraudsters typically receive a message regarding an "erroneous transfer" and, at the sender's request, return the funds to another (fraudulent) account, the details of which are provided by the perpetrators. Despite the absence of criminal intent, such citizens will find it difficult to prove to the police that they are not part of a criminal scheme.

Participation in such schemes can have serious consequences, including confiscation of property, and administrative and criminal penalties. Also, citizens participating as droppers may suffer reputational damage in the banking sector, which may affect, for example, further obtaining a mortgage or loan.

For example, a ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the Republic of Kazakhstan satisfied the claim of Mr T. to recover over 20 million tenge from the "droppers". The court found that Mr T, misled by the fraudsters, transferred the above amount to the accounts and cards of four Kazakhstan citizens. The latter, in turn, not fully realizing the criminal origin of the money received, transferred it to unidentified persons as previously agreed. Given that the "droppers" did not take measures to find out the reasons for the receipt of the money and transferred it to other persons, the court considered these actions as the disposal of them at their discretion and therefore ordered to return the received unjustified remuneration [9].

Regarding material liability, this recovery is possible based on Article 953 of the Civil Code of the Republic of Kazakhstan on unjust enrichment [10]. In practice, there are existing cases in which droppers are obliged to pay money to victims of fraud, even if they did not realize their actions. As of the end of 2024, claims from 83 victims for more than 160 million tenge have been filed with the courts, of which 52 have already been satisfied. For example, in the Kostanai region, two civil lawsuits were pending against 19-year-old students who were used by fraudsters for their purposes and the plaintiffs demanded to recover more than 9 million each [11].

Criminal liability can occur only for deliberate complicity in fraudulent actions under Article 28, 190 of the Criminal Code and provides up to 10 years of imprisonment [12]. Currently, the Criminal Code of the Republic of Kazakhstan does not provide a special article for "droppers".

However, the Prime Minister of the Republic of Kazakhstan Bektenov O.A., reported that the interdepartmental working group under the Ministry of Justice is developing the introduction of criminal liability for the group of "droppers" [13]. Criminals engage droppers to transfer money to their personal accounts, thereby making them complicit in the offence and criminally liable. It is also important to remember that the main responsibility for laundering and cashing illegal funds falls on the owner of the account through which these funds pass.

This surge in fraud in the country has been fueled by the low awareness of citizens in the field of anti-fraud and money laundering. Therefore, the government now needs to take practical steps to protect citizens by organizing interaction between banks and other organizations, regulators and law enforcement agencies.

One of the methods of fighting scams is anti-fraud systems, which perform their functions on predefined algorithms, helping to identify suspicious transactions in real time. Fraud is unauthorized actions aimed at deceiving users and illegally obtaining benefits. Modern anti-fraud systems use artificial intelligence to analyze huge data sets. Such systems are particularly effective in analyzing complex, non-linear relationships and are able to identify new methods of crime that may not be visible to humans. For example, they detect suspicious activity and help block a ford even before fraudsters do any damage. These systems detect, for example, unusual transaction times and locations, suspicious transfer amounts, or activity in time zones that are atypical for the user.

Since persons (groups of persons) committing fraudulent schemes to obtain unjustified income have certain, similar qualities and attributes, AI "biometrics" algorithms can identify them and prevent offences. This helps law enforcement officials to carry out a quick and complete investigation of economic crimes. Nevertheless, it should be noted that AI is only a tool for law enforcement agencies and cannot replace them yet [14; 228].

AI technologies can be used to detect unknown malware, automatically classify threats and respond to them independently by feeding data to a control center. Domestic scientists such as Sydykova S. Zh., Akhmetov A.A., Sardarbekova A.K. noted that with the help of artificial intelligence based on machine learning, new technologies are created that are constantly learning, collecting new information and regulating processes, which allows for solving the ever-growing problem of data density in AML. Such AI technologies

help to identify suspicious customer transactions that are quite difficult to detect by applying rules or human resources alone [15; 132].

AI is now being actively used for financial services. There are fintech chatbots that help customers manage accounts, track spending and receive financial advice. These chatbots can assist citizens in obtaining fast and reliable information about suspicious transfers, and the account to which they intend to transfer their funds, to secure their money and minimize the risks of being involved in fraudulent schemes.

It may also be noted that several functioning platforms for detecting fraudulent activities, such as FICO Falcon Platform and SAS Fraud Management, which use artificial intelligence and machine learning to analyze transactions and identify suspicious activity [16].

Also notable is a Cambridge-based startup called "Featurespace", which has developed its ARIC Risk Hub to monitor transactions and detect fraudulent transactions using advanced machine learning models. ARIC Risk Hub utilizes advanced, explainable anomaly detection, allowing customers to automatically identify risks, detect new attacks, and detect suspicious activity in real time [17].

An advanced AI tool called MuleHunter.AI, which has been developed by the Reserve Bank of India's (RBI) Special Innovation Unit, Reserve Bank Innovation Hub (RBIH), has emerged as a successful case study in the fight against fraud. The technology specializes in detecting and identifying "mule" accounts that are often used for money laundering and has already been piloted in two public sector banks in the country [18].

In the Russian Federation, second-tier banks, such as Tinkoff Bank, Sberbank and VTB use a recently created drop monitoring system that, based on the analysis of a large number of transactions, compiles scenarios of customer behavior and a portrait of the "dropper" to identify suspicious transactions and conduct additional checks [19].

Analyzing foreign experience of introducing AI into anti-fraud and anti-money laundering systems allows us to conclude that such tools are necessary to improve the current system and contribute to the effective prevention of emerging threats, which ensures a safe and secure environment for the entire state.

It should be noted that the Republic of Kazakhstan is making significant steps to prevent fraud in the country. At the moment, the Anti-Fraud Centre of the National Bank has already been created, which is working to identify and prevent fraudulent transactions. For six months of work it has already registered about 18 thousand incidents. The Centre has blocked fraudulent transactions totaling about 1.5 billion tenge [20]. All second-tier banks and leading microfinance institutions are connected to the Antifraud Centre.

Therefore, it is advisable to consider the possibility of applying foreign experience in the creation and implementation of Kazakhstan's monitoring systems based on artificial intelligence technology, which will allow for effectively combating financial threats, detecting money laundering and other suspicious transactions.

Conclusions

Countering money laundering threats is crucial as they are constantly evolving, posing significant risks to the integrity and stability of the financial system, requiring proactive measures. Therefore, a relevant tool to help combat this problem is the application of artificial intelligence. AI has the potential to improve the accuracy and efficiency of measures to detect and prevent suspicious activity, thus countering new ways of money laundering. While machine learning alone will not solve the money laundering problem, it is a tool that significantly improves the efficiency and effectiveness of AML processes.

Innovative artificial intelligence technologies are facilitating more accurate risk assessment in digital identification and monitoring, assessing risks in a cost-effective manner and streamlining customer due diligence processes. A distinctive feature of these technologies is their ability to process large amounts of information in record time, sometimes beyond human capabilities, transferring data to others in simple and reliable ways, as a result of data standardization. However, the application of AI carries risks that can affect the correctness of decisions made, the reliability of information and the loss of sensitive data.

The study found that AI has revolutionized fraud prevention by offering advanced technologies that increase the effectiveness of fraud detection and prevention efforts. The implementation of these techniques can enable the Republic of Kazakhstan to better respond to new risks and improve the financial well-being of citizens due to the increasing involvement of citizens in fraudulent money laundering schemes.

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Л.К. Кусаинова, М.Г. Альбекова, Н.О. Дулатбеков

AML саласындағы ЖИ: инновациялық тәсілдер және халықтың қаржылық сауаттылығын арттыру әлеуеті

Зерттеудің мақсаты — ақшаны жылыстатумен (AML) күресу үшін жасанды интеллекті (ЖИ) пайдалану мүмкіншіліктерін талдау және алаяқтықтың алдын алу мен ақшаны жылыстатуға қатысуын болдырмау мақсатында азаматтардың қаржылық сауаттылығын арттыру үшін ЖИ әлеуетін зерттеу. Заманауи технологиялардың дамуымен қылмыс жасау тәсілдері айтарлықтай өзгерді, күрделене түсті және түрленді, әсіресе бұл күнделікті жасалатын ауқымды кибершабуылдарға қатысты. Сондықтан, қазіргі жағдайда жаңа қауіптерге тез жауап бере алатын тиімді технологиялық шешімдерді қолдану қажеттілігі туындап отыр. Осындай әдістердің бірі көптеген салаларда кеңінен қолданылып жүрген ЖИ технологиялары және AML-де тыс қалған жоқ. Зерттеу барысында, AML талаптарын орындау саласында жасанды интеллекті пайдаланудың артықшылығы оның нақты уақыт режимінде мониторинг пен талдауға жасауға мүмкіндік беретіні ең басты функционалдығы екендігі анықталды. Бұл, азаматтар саналы түрде де, бейсаналық түрде де қатысатын ықтимал қауіпті немесе ықтимал заңсыз әрекеттерді анықтауға және азаматтар мен мемлекетті қорғау мақсатында мұқият тергеу жұмыстарын жүргізуге мүмкіндік береді. Авторлар зерттеу нәтижесінде мынадай негізгі қорытынды жасаған: ақшаны жылыстату бойынша күдікті операцияларды анықтау, хабарлау және жолын кесу үшін, шетелдік тәжірибеге сүйене отырып жасалған Қазақстан Республикасының AML жүйесіне ЖИ енгізу бойынша практикалық ұсыныстарын беру.

Кілт сөздер: ақшаны жылыстату, жасанды интеллект, цифрлық технологиялар, антифрод, азаматтардың қаржылық қауіпсіздігі, алаяқтық.

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ИИ в сфере AML: инновационные подходы и потенциал повышения финансовой грамотности населения

Цель данного исследования — проанализировать использование искусственного интеллекта (ИИ) для борьбы с отмыванием денег (AML) и изучить потенциал ИИ для повышения финансовой грамотности граждан с целью предотвращения мошенничества и участия в отмывании денег. С развитием современных технологий способы совершения преступлений значительно усложнились и трансформировались, особенно это касается масштабных кибератак, которые совершаются ежедневно. Поэтому в нынешних реалиях необходимо использовать эффективные технологические решения, которые способны быстро реагировать на новые угрозы. Одним из таких способов является применение технологий искусственного интеллекта (ИИ), который повсеместно применяется во многих отраслях, и AML не является исключением. В рамках исследования установлено, что преимущество использования искусственного интеллекта в сфере соблюдения требований AML заключается в его функциональности, позволяющей осуществлять мониторинг и анализ в режиме реального времени. Это позволяет обнаружить потенциальную угрозу или возможную противоправную деятельность, в которой участвуют граждане как сознательно, так и бессознательно, также провести тщательное расследование с целью защиты граждан и государства. Основной результат, к которому пришли авторы, заключается в практических предложениях, основанных на зарубежном опыте, по внедрению ИИ в AML системы Республики Казахстан для обнаружения, сообщения и пресечения подозрительных операций по отмыванию денег.

Ключевые слова: отмывание денег, искусственный интеллект, цифровые технологии, анти-фрод, финансовая безопасность граждан, мошенничество

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Применение искусственного интеллекта в борьбе с наркопреступлениями в Казахстане: новые горизонты и возможности

Научная статья представляет собой комплексный анализ потенциала искусственного интеллекта в сфере его применения при расследовании уголовных правонарушений в Республике Казахстан. Целью данного исследования является анализ влияния применения искусственного интеллекта на процесс расследования наркопреступлений в Республике Казахстан. Для достижения поставленных целей использовались методы анализа научной литературы и сбора данных, что позволило сформулировать теоретическую основу исследования и определить ключевые направления применения ИИ. Также был проведен технологический анализ существующих инструментов ИИ, что помогло оценить их пригодность и значимость для правоприменительной практики. Результаты исследования показали, что ИИ способен значительно улучшить начальные этапы расследования наркопреступлений, способствуя разработке алгоритма расследования, формулированию следственных версий, оптимизации сбора доказательств и повышение эффективности мониторинга интернет-пространства для выявления и блокировки незаконной активности, связанной с распространением наркотиков. Выводы исследования подчеркивают научную и практическую ценность внедрения ИИ в досудебное расследование наркопреступлений, открывая новые перспективы для повышения эффективности и справедливости судебной системы. Исследование также указывает на потенциальные области применения ИИ в обучении правоохранительных органов и усовершенствовании методик расследования рассматриваемых преступлений.

Ключевые слова: уголовный процесс, расследование, наркопреступность, искусственный интеллект, эффективность деятельности следователя, оптимизация сроков расследования, алгоритм расследования, следственные действия, предупреждение наркопреступлений, инновационные технологии, интернет.

Введение

На одном из последних выступлений Главы государства Касым-Жомарта Токаева на расширенном заседании Правительства было отмечено, что фундаментальным фактором в дальнейшем реформировании казахстанской правовой системы во всех сферах деятельности государства становится развитие искусственного интеллекта. В таких условиях необходимо иметь четкую стратегию действий, направленных на преодоление серьезных вызовов новой эпохи [1].

В одном из своих очередных посланий народу Казахстана, Президент также отметил, что одним из серьезных вызовов современной эпохи является цифровая преступность. Он уделяет повышенное внимание вопросам цифровизации и внедрения инноваций, обозначив одной из стратегических задач — превратить Казахстан в IT-страну [2].

В настоящее время особую актуальность приобретает изучение применения искусственного интеллекта (далее — ИИ) в контексте борьбы с преступностью. В настоящее время, сфера информатизации и связи активно вовлекает возможности ИИ в процессы, связанные с совершением преступлений, включая экономические преступления и распространение наркотиков через интернет. Справедливо отметить, что, согласно данным правовой статистики наркопреступления занимают второе место по количеству регистрации в Едином реестре досудебных расследований (далее ЕРДР), после преступлений против собственности [3]. Данное обстоятельство ставит перед правоохранительными органами задачу опережающего реагирования на совершение наркопреступлений, что является ключевым для эффективного расследования и предупреждения, а также достижения основных целей уго-

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ловного процесса. Таким образом, важность разработки и внедрения инновационных подходов, основанных на ИИ, в правоохранительную деятельность неоспорима.

Введение использования ИИ в расследовании наркопреступлений раскрывает значимые аспекты интеграции передовых технологий в сферу правоприменения. Применение ИИ в криминалистике и уголовном судопроизводстве позволяет значительно повышать эффективность и быстроту расследований, а также способствует более точному анализу больших массивов данных, что критически важно в условиях увеличения объемов цифровой информации.

Таким образом, актуальность изучения влияния ИИ на расследование наркопреступлений обусловлена стремительным развитием технологий, так и изменениями в правовой сфере, что открывает новые перспективы для повышения эффективности и справедливости судебной системы.

Целью данного исследования является анализ влияния применения искусственного интеллекта на процесс расследования наркопреступлений в Республике Казахстан. Основное внимание уделяется возможностям ИИ повысить эффективность и оперативность деятельности органов расследования, а также точность и объективность судебных разбирательств.

Исходя из поставленной цели, сформулирован ряд задач:

- изучение возможностей применения ИИ в правоприменительной практике органов расследования;

- определить, какие аспекты расследования наркопреступлений следует автоматизировать с помощью ИИ, для достижения наибольшей эффективности;

- проанализировать правовые и этические аспекты на основе анализа специальной литературы по исследуемой проблематике;

- разработать рекомендации по улучшению процессов расследования наркопреступлений с использованием ИИ на основе анализа правоприменительной практики;

- определить, как внедрение ИИ в процесс расследования наркопреступлений может повлиять на скорость и качество досудебного производства.

На основе анализа всевозможных научных работ по исследуемой проблематике можно выделить существующие противоречия между теорией и практикой применения ИИ в расследовании преступлений. Вопросы внедрения ИИ в правоохранительную деятельность поднимают серьёзные проблемы как технического, так и этического характера. Основное напряжение связано с разрывом между теоретическим потенциалом и практической реализацией ИИ.

С одной стороны, высокая восприимчивость криминалистики к новым технологиям побуждает исследователей к интеграции ИИ в расследование преступлений, что подтверждается в работах многих учёных. С другой стороны, вопросы конфиденциальности и этичности использования ИИ в правоохранительной деятельности вызывают осторожность и даже сопротивление среди профессионалов и общественности.

Проблемы, связанные с автоматизацией анализа данных и прогнозированием преступлений, вызывают опасения относительно возможного исключения человеческого элемента из процесса расследования, что может подставить под угрозу точность и справедливость следственных действий [4].

Такие дискуссии указывают на необходимость разработки новых методологий и нормативных рамок, которые позволят эффективно интегрировать ИИ в уголовное правосудие, соблюдая при этом этические нормы и права человека.

Относительно пробелов в существующих исследованиях или теоретических школах, связанных с внедрением ИИ в расследование преступлений, следует отметить несколько ключевых аспектов.

Во-первых, наблюдается недостаток комплексных исследований. Существует ограниченное количество комплексных исследований, которые охватывают все аспекты применения ИИ в уголовном расследовании, охватывая технические, правовые и этические вопросы, что включает в себя разработку и внедрение специализированных алгоритмов для различных аспектов расследования, таких как предиктивная аналитика, обработка данных и распознавание образов.

Во-вторых, это этические и правовые вопросы. Проблемы конфиденциальности и возможное нарушение прав человека, связанные с автоматизацией процедур расследования уголовных дел, являются значительными. Вопросы ответственности и прозрачности ИИ-систем, а также их влияние на принятие решений в уголовном правосудии требуют дальнейшего изучения и разработки соответствующих нормативных правовых актов [5].

В-третьих, проблемой остается интеграция и стандартизация. Технические сложности, связанные с внедрением ИИ в существующие системы уголовного расследования, включая необходимость

стандартизации подходов и методов работы с ИИ, до сих пор недостаточно исследованы. Особого внимания требует совместимость ИИ-систем с различными национальными и международными правовыми рамками.

В-четвертых, важным аспектом является также качество и доступность данных, необходимых для обучения ИИ в условиях его применения в процессе расследования преступлений. Проблемы, связанные с предвзятостью данных и ошибками в алгоритмах, могут привести к ошибочным выводам и решениям, что требует дополнительных исследований и методологических разработок в этой области [6].

На наш взгляд, для более глубокого понимания существующих вопросов, исследователям необходимо проводить мультидисциплинарные исследования, вовлекая специалистов из различных областей знаний, в том числе, практических работников органов расследования.

Современные исследования казахстанских и зарубежных исследователей подчеркивают необходимость пересмотра традиционных подходов к уголовному процессу в свете стремительного развития информационных технологий [7], [8]. Реформы законодательства и обновление правоприменительной практики, стимулируемые развитием ИИ, акцентируют внимание на необходимости создания нормативной базы, регулирующей использование искусственного интеллекта в правоохранительной деятельности. Также учеными рассматривается потенциал ИИ в области кибербезопасности и профилактики киберпреступлений, подчеркивая его способность к автоматизации процессов обнаружения угроз и анализа сетевой активности [4].

Таким образом, актуальность изучения влияния ИИ на расследование наркопреступлений обусловлена стремительным развитием технологий, так и изменениями в правовой сфере, что открывает новые перспективы для повышения эффективности и справедливости судебной системы.

Методы и материалы

В рамках исследования влияния искусственного интеллекта (ИИ) на процессы расследования наркопреступлений в Республике Казахстан, применялся комплексный методологический подход, включающий анализ научной литературы, сбор и анализ данных, а также технологический анализ. Обширный обзор научных источников позволил сформировать теоретическую базу для исследования, выявить ключевые аспекты и определить основные направления развития использования ИИ в правоохранительной деятельности. Анализ литературы способствовал глубокому пониманию текущего состояния применения ИИ в уголовных расследованиях, особенно в контексте наркопреступлений. Сбор и анализ данных, включая статистические данные о наркопреступлениях и отчеты правоохранительных органов, предоставили объективную основу для оценки актуальности темы исследования. Технологический анализ существующих решений и инструментов ИИ подтвердил их значимость и пригодность для улучшения процессов в сфере правоприменения. Указанные методы обеспечили возможность оценить реальные результаты внедрения ИИ в действующую систему расследований наркопреступлений, а также выявить потенциальные проблемы и препятствия на пути его интеграции. Применение данного комплексного подхода позволило всесторонне оценить потенциал ИИ и его вклад в повышение эффективности расследования наркопреступлений в Казахстане.

Результаты

Исследование правоприменительной практики расследования наркопреступлений показывает, что основную проблему составляет первоначальный процесс, а именно — его организация.

Составление алгоритма при расследовании наркопреступлений играет ключевую роль для достижения успешного результата. Он является достаточно сложным, мыслительным процессом, который обусловлен множеством факторов.

Изначально, расследование рассматриваемого вида преступлений требует учета многообразия преступных методов. Алгоритмы должны быть адаптированы к различным целям и задачам, что включает методы решения и последовательности следственных действий, что требует не только глубокого знания законодательства, но и осведомленности о специфике конкретных видов преступлений [9].

К тому же, преступники активно используют современные технологии, в том числе интернет, для сбыта наркотиков, что делает процесс их идентификации и сбора доказательств особенно слож-

ным. Правоохранительные органы вынуждены разрабатывать специализированные подходы и техники для выявления и анализа цифровых следов, в чем, несомненно, может помочь применение ИИ.

Так, применение ИИ для создания пошагового алгоритма на основе имеющейся первоначальной информации, поспособствует органам расследования не упустить важные моменты. Опытные следователи при этом могут самостоятельно, на основе имеющегося опыта формулировать «промты» (точные технические задания) для создания алгоритма расследования. В свою очередь, для молодых специалистов использование ИИ окажет непосильную помощь в понимании построения расследования и выработке профессиональных навыков.

Следующим положительным моментом внедрения ИИ в расследование наркопреступлений является его возможность моделирования различного рода следственных версий, благодаря своей способности анализировать большие объемы данных и выявлять скрытые закономерности и связи. Использование ИИ позволит осуществить глубокий анализ действий преступников, их коммуникаций и транзакций, что особенно важно в условиях современной цифровизации преступной деятельности, где традиционные методы могут оказаться неэффективными, ведь человеческий анализ способен упускать определенные важные моменты. На наш взгляд, применение ИИ поспособствует формированию обоснованных следственных версий на начальном этапе расследования.

Благодаря прогностическим возможностям, ИИ способен предсказывать потенциальные действия преступников, основываясь на анализе текущих и предыдущих данных, что позволяет следователям опережать развитие событий, оптимизируя стратегию расследования и улучшая качество следственных действий. Кроме того, ИИ способствует углублению понимания механизмов преступлений, что критически важно для разработки следственных версий о способах и методах совершения наркопреступлений. Например, анализ виртуальных следов на цифровых носителях при расследовании распространения наркотиков бесконтактным способом может раскрыть не только методы работы преступников, но и возможные связи между различными участниками преступной деятельности через сеть интернет. Таким образом, мы предполагаем, что использование ИИ в расследовании наркопреступлений станет незаменимым инструментом для обоснования и уточнения следственных версий, что значительно повысит эффективность и точность расследования.

Следующим положительным аспектом внедрения ИИ при расследовании наркопреступлений является производство допросов основных участников совершенного уголовно-наказуемого деяния. Так, перед началом допроса в теории уголовного процесса отмечается важность его предварительной подготовки и формулировки основных вопросов для допрашиваемого. На основе имеющейся информации, ИИ может оказать существенную помощь следственным органам, указывая на ключевые аспекты, которые необходимо учитывать при формулировании вопросов, чтобы избежать наводящих формулировок. Данный подход позволит повысить объективность и точность сбора информации в ходе следствия.

Кроме того, ИИ может производить анализ уже имеющихся допросов. Так, автоматизированный анализ позволит идентифицировать несоответствия и закономерности в показаниях свидетелей и основных фигурантов дела, что поспособствует глубокому исследованию собранной информации. ИИ обеспечит высокую точность анализа, помогая выявлять ложные или измененные показания, и поспособствует более быстрой обработке данных, что сократит время расследования. Немаловажным является то, что ИИ способно исключать человеческий фактор в виде предвзятости или ошибочной интерпретации представляемой информации. Возможности ИИ на столько велики, что он способен даже производить считывание поведенческих паттернов в представленном ему на анализ протоколе допроса, что поможет органу расследования определить достоверную или недостоверную информацию предоставил допрашиваемый.

В академических кругах казахстанских исследователей регулярно обсуждаются сложности, связанные с назначением судебных экспертиз по делам о наркопреступлениях [10], [11]. В большинстве случаев, эксперты сталкиваются с проблемами неправильно сформулированных вопросов, что мешает им предоставить обоснованное и достоверное заключение.

На наш взгляд данную проблему, также может решить применение ИИ, совершенствуя данный процесс, позволяя улучшить точность правильной постановки вопросов, что является весьма значимым для достижения объективности и надежности экспертных заключений при расследовании наркопреступлений [12], [13].

Отметим также, что немаловажной и сложной ситуацией, с которой столкнулся Казахстан в последнее время является незаконная реклама наркотиков в сети интернет. Сотрудники управлений и

департаментов по борьбе с наркопреступностью осуществляют на постоянной основе мониторинг интернет-сайтов, с целью их блокировки. Однако на сегодняшний день данный процесс осуществляется вручную [14]. В этой связи, мы считаем, что применение ИИ способно не только оптимизировать данный процесс, но и сократить его время.

На наш взгляд, использование ИИ внесёт значительный вклад в экономию времени и ресурсов, позволяя правоохранительным органам сосредоточить усилия на анализе и решении более сложных задач, тем самым повышая общую эффективность борьбы с наркопреступностью. Автоматизация рутинных процессов мониторинга снижает нагрузку на сотрудников и минимизирует вероятность ошибок и упущений.

Таким образом, интеграция ИИ в системы мониторинга за распространением контента, связанного с наркотиками, является ключевым элементом стратегии повышения эффективности национальной безопасности и правопорядка в Казахстане. Это не только улучшит процессы расследования, но и поспособствует формированию более безопасного информационного пространства.

Справедливо отметить, что исследование внедрения ИИ в процесс расследования наркопреступлений в Республике Казахстан демонстрирует потенциал достижения значительных результатов, открывающие новые перспективы для повышения эффективности и справедливости уголовного процесса. На основе анализа судебно-следственной практики, было установлено, что ИИ способен значительно улучшить организацию исходного этапа расследования наркопреступлений, облегчая формулировку следственных версий, оптимизируя сбор доказательств, совершенствуя процесс формулировки вопросов для производства экспертных исследований, а также упрощая работу по мониторингу интернет-сайтов, распространяющих наркотики.

Применение ИИ позволит органам расследования эффективно анализировать большие объемы данных, выявлять скрытые закономерности и связи, что особенно важно при работе с цифровыми следами преступников. Данные обстоятельства позволяют не только ускорить процесс расследования, но и значительно повысить его точность за счет объективного анализа информации без человеческой предвзятости.

Новизна представленного исследовательского подхода заключается в интеграции ИИ в уголовное судопроизводство Казахстана, что является отражением глобальных трендов цифровизации и информатизации общества. Подобные инновации вносят вклад в трансформацию правоохранительной системы страны, повышая ее способность адаптироваться к вызовам современной эпохи и эффективно бороться с наркопреступностью. Таким образом, ИИ не только усиливает справедливость процессов расследования, но и способствует развитию Казахстана как передовой IT-страны, следуя стратегическим задачам, поставленным главой государства.

На основе изучения предоставленных материалов, концепция искусственного интеллекта (ИИ) в расследовании наркопреступлений находит возможность своего применения в нескольких ключевых аспектах уголовного правосудия Республики Казахстан: алгоритмический анализ данных, моделирование следственных версий, оптимизация допросов, анализ предыдущих допросов, формулировка вопросов экспертизы и мониторинг интернет-пространства.

Обсуждение

Рассматривая применение технологий ИИ в расследовании наркопреступлений на территории Республики Казахстан, мы оценили их влияние на повышение эффективности работы, проводимой органами расследования. Результаты, полученные в ходе данного исследования, коррелируют с результатами, проводимыми учеными по аналогичной тематике. Данное обстоятельство подтверждает широкое признание потенциала применения ИИ при расследовании преступлений.

Однако, вопреки общему признанию преимуществ применения ИИ, в академических кругах продолжаются дискуссии, относительно возникновения возможных негативных рисков. Таким образом, при применении возможностей ИИ следует уделять особое внимание соблюдению баланса между использованием инновационных технологий и должным обеспечением неприкосновенности частной жизни и защиты личной персональной информации граждан.

В целях интерпретации результатов исследования, отметим, что в работе раскрываются возможности сокращения как стратегических, так и технических проблем производства досудебных расследований, благодаря использованию ИИ. Так, применение ИИ, на наш взгляд, поспособствует более тщательному анализу информации и оперативному реагированию на уголовные правонарушения в

сфере наркопреступности, что приведёт к эффективности расследования и достижению целей уголовного процесса.

Обобщая данные нашего исследования вместе с результатами схожих научных работ, мы убеждаемся в том, что внедрение ИИ способно кардинально трансформировать правоприменительную практику расследования наркопреступлений.

Достоверность полученных выводов обоснована применением современных методов научного исследования и личным практическим опытом авторов работы в правоохранительных органах Республики Казахстан, что обеспечивает возможность их применения для дальнейших исследований в схожих областях. Вместе с тем, важным остается продолжение процесса детального рассмотрения потенциальных рисков и мониторинга развития информационных технологий с целью обеспечения соответствия возможностей применения ИИ с этическими стандартами в сфере правоприменения.

Выводы

В представленной научной статье, которая направлена в основном на анализ применения ИИ в деятельности по расследованию наркопреступлений в Республике Казахстан, демонстрируются значительные перспективы для повышения эффективности процессуальной деятельности органов расследования. Основные результаты, представленные в работе, подтверждают, что использование ИИ в действительности поспособствует точности анализа собранных в ходе расследования данных, а также в целом позволит сократить сроки процесса досудебного производства.

Кратко излагая результаты проведенной работы, отметим, что внедрение технологий ИИ предоставит возможность уменьшить продолжительность проведения большинства следственных действий, усилить общую результативность деятельности органов расследования посредством комплексного анализа имеющейся информации.

Научная и практическая ценность проведенного исследования заключается в подтверждении значимости интеграции ИИ в процесс расследования, что способствует трансформации правоприменительной системы и ее адаптации к вызовам цифровой эпохи. Научная ценность заключается в разработке и апробации моделей ИИ, которые могут быть адаптированы для различных аспектов криминалистики и уголовного процесса.

Возможные сферы применения результатов: результаты могут быть применены для усовершенствования методик расследования, обучения правоохранительных органов, а также в сферах, связанных с анализом кибербезопасности и предотвращением киберпреступлений. Кроме того, данные подходы могут быть интегрированы в международные программы по борьбе с наркотрафиком.

Достоверность полученных результатов базируются на актуальных данных и современных методологиях, что обеспечивает их высокую достоверность. Однако необходимо учитывать потенциальные этические и правовые риски, связанные с использованием ИИ в правоохранительной деятельности. Таким образом, представленное исследование открывает новые горизонты для использования ИИ в борьбе с наркопреступлениями, предоставляя научное обоснование для дальнейшей интеграции передовых технологий в уголовное правосудие и повышения эффективности правоприменения в Казахстане.

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Қазақстанда есірткі қылмыстарына қарсы күресте жасанды интеллекті қолдану: жаңа көкжиектер мен мүмкіндіктер

Мақала Қазақстан Республикасындағы қылмыстық құқық бұзушылықтарды тергеу кезінде жасанды интеллектің қолдану саласындағы әлеуметін кешенді талдау қарастырылған. Зерттеудің мақсаты Қазақстан Республикасындағы есірткі қылмыстарын тергеу процесіне жасанды интеллекті қолданудың әсерін саралау. Қойылған мақсаттарға жету үшін ғылыми әдебиеттерді талдау және деректерді жинау әдістері қолданылды, бұл зерттеудің теориялық негізін тұжырымдауға және жасанды интеллекті қолданудың негізгі бағыттарын анықтауға мүмкіндік берді. Сондай-ақ қолданыстағы жасанды интеллект құралдарына технологиялық талдау жүргізілді, бұл олардың құқық қолдану практикасы үшін жарамдылығы мен маңыздылығын бағалауға көмектесті. Зерттеу нәтижелері жасанды интеллект есірткі қылмыстарын тергеудің бастапқы кезеңдерін едәуір жақсарта алатынын, тергеу алгоритмін жасауға, тергеу нұсқаларын тұжырымдауға, дәлелдемелер жинауды оңтайландыруға және есірткінің таралуына байланысты заңсыз әрекеттерді анықтау және бұғаттау үшін интернет кеңістігін бақылаудың тиімділігін арттыруға көмектесетінін көрсетті. Зерттеу нәтижелері есірткі қылмыстарын сотқа дейінгі тергеуге жасанды интеллекті енгізудің ғылыми және практикалық құндылығын көрсетеді, сот жүйесінің тиімділігімен әділдігін арттырудың жаңа перспективаларын ашады. Зерттеу сонымен қатар құқық қорғау органдарын оқытуда және қарастырылып отырған қылмыстарды тергеу әдістерін жетілдіруде жасанды интеллекті қолданудың әлеуетті салаларын көрсетеді.

Кілт сөздер: қылмыстық процесс, тергеу, есірткі қылмысы, жасанды интеллект, тергеуші қызметінің тиімділігі, тергеу мерзімдерін оңтайландыру, тергеу алгоритмі, тергеу әрекеттері, есірткі қылмыстарының алдын алу, инновациялық технологиялар, интернет.

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Application of artificial intelligence in combating drug offences in Kazakhstan: new horizons and opportunities

The scientific article presents an in-depth analysis of the potential applications of artificial intelligence in enhancing the investigation of criminal offenses within the Republic of Kazakhstan. The purpose of this study is to analyze the impact of the application of artificial intelligence on the process of investigation of drug offences in the Republic of Kazakhstan. To achieve the set objectives, the methods of analyzing scientific literature and data collection were used, which allowed to formulate the theoretical basis of the study and identify the key areas of AI application. A technological analysis of existing AI tools was also conducted, which helped to assess their suitability and significance for law enforcement practice. The results of the study showed that AI can significantly improve the initial stages of drug crime investigations by helping to develop an investigative algorithm, formulate investigative leads, optimize evidence collection and improve the effectiveness of internet monitoring to detect and block illegal activity related to drug distribution. The findings of the study highlight the scientific and practical value of introducing AI into pre-trial investigation of drug offences, opening new perspectives to improve the efficiency and fairness of the judicial system. The study also points to potential applications of AI in training law enforcement agencies and improving investigative techniques for the offences in question.

Keywords: criminal process, investigation, drug crime, artificial intelligence, efficiency of investigator's activity, optimization of investigation time, investigation algorithm, investigative actions, prevention of drug crimes, innovative technologies, internet.

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Information and communication technologies of the "Smart City" in the system of identification: forensic aspect

This article examines the application of information and communication technologies (ICT) in forensic practice within the framework of the Smart City concept. Particular attention is paid to the use of intelligent video surveillance systems, machine learning algorithms, cloud computing, and biometric technologies to enhance the accuracy of personal identification and improve the responsiveness of law enforcement agencies. The integration of automated facial recognition systems with state and private sector databases is analyzed, along with their development prospects in light of regulatory and technical considerations. The study explores forensic aspects of ICT implementation in personal identification processes, including the application of artificial intelligence (AI) and big data analytics for identifying wanted individuals, preventing crimes, and increasing the transparency of law enforcement operations. Statistical data are presented to demonstrate the effectiveness of digital technologies in crime detection and public safety enhancement. Additionally, modern video surveillance systems and their functional capabilities in forensic identification are described. The relevance of further modernization and standardization of digital platforms for personal identification, their integration with national databases, and the improvement of personal data protection mechanisms has been substantiated. The prospects for establishing a unified national AI-based video surveillance system are considered, aiming to improve response efficiency, reduce identification errors, and enhance forensic analysis methodologies.

Keywords: information and communication technologies, personal identification, forensic science, Smart City, artificial intelligence, digital security, video surveillance, biometric identification, digital forensics, big data analytics.

Introduction

Over the past decades, the digitalization of society has radically changed the processes of public safety, law enforcement and identity verification. The concept of a "smart city" involves the integration of advanced ICT to improve the quality of life of citizens, ensure law and order and effectively manage the urban environment. The experience of South Korea in integrating data management systems [1] is considered a model in the design and implementation of Smart City infrastructure. In particular, traffic flow data is synchronized in real time with the operations of emergency response services.

A similar integrated approach will be applied to other projects that rely on Internet of Things (IoT) technologies and cloud-based solutions. The overarching goal of these technological synergies is to enhance the quality of life for urban residents and improve the overall efficiency of city infrastructure. The concept of a "smart city" includes many components for creating an intelligent environment and smart management: from smart lighting to smart bus stops [2; 284]. One of the main areas of this concept is the improvement of personal identification systems, which play an important role in forensic practice and crime investigation.

The growth of the population of megacities, the increasing level of urbanization and the expansion of digital technologies require the adaptation of traditional methods of forensic identification to new challenges. Modern solutions based on video analytics, biometrics, artificial intelligence and big data analysis technologies allow law enforcement agencies to more effectively identify suspects, witnesses and victims of crimes. This will reduce the investigation time and help prevent errors.

The relevance of the study is based on the need to develop new methods of forensic identification in the context of intensive digitalization. In Kazakhstan, as in many other countries, digital transformation programs aimed at improving public safety are being actively implemented. In particular, the Smart Nur-

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Sultan and Smart Almaty projects have made significant progress in the development of urban intelligent systems. However, issues of legal regulation, personal data protection, reliability of identification algorithms and resistance to cyber threats remain unresolved.

The purpose of this study is a comprehensive analysis of forensic aspects of the use of ICT in personal identification systems. The main hypothesis is that modern digital technologies will contribute to increasing the efficiency of forensic identification, but this requires improving the regulatory framework, implementation methodology and technical adaptation to existing law enforcement systems. The article discusses modern methods of personal identification, their effectiveness, limitations and development prospects in the context of the Smart City concept.

Thus, the aim of the study is to identify the advantages and disadvantages of using ICT in forensics, determine promising areas for the development of personal identification technologies, and formulate recommendations for their integration into law enforcement activities.

In recent years, Kazakhstan has been actively developing the regulatory framework in the field of digital technologies and personal data protection. The adoption of laws regulating the collection, processing and protection of personal data, as well as the use of electronic documents and electronic digital signatures, demonstrates the state's interest to ensure a balance between technological progress and the protection of citizens' rights.

The purpose of this study is to examine the possibilities and prospects for using Smart City ICT in forensic practice, including personal identification. To achieve this goal, it is planned to analyze existing digital technologies for personal identification, assess their forensic significance, identify regulatory and technical obstacles, and develop proposals for improving the methodology and mechanisms for their implementation in law enforcement practice.

Methods and materials

This study is based on a comprehensive set of scientific methods that enable an in-depth analysis of the use of information and communication technologies (ICT) in the process of personal identification in forensic practice. The following methods were employed: Analysis and synthesis were used to systematize information about modern technologies for personal identification and to determine their forensic significance. Induction and deduction allowed the identification of logical relationships between the development of ICT and their influence on the effectiveness of criminal investigations. The historical-legal method was applied to study the evolution of legal regulation of digital identification both in Kazakhstan and abroad. The comparative legal method was used to analyze the experience of countries such as the EU, USA, and China in implementing smart city technologies for the purpose of personal identification.

The formal-legal method made it possible to assess the compliance of existing legislation with the requirements of digital forensics. Digital forensic methods, such as video analytics, biometric systems, big data analysis, and the use of digital traces, were utilized to evaluate their potential applications in forensic practice. The use of these methods helped to identify the current capabilities and limitations of ICT in forensic identification, as well as to outline directions for further improvement.

The Smart City concept represents an integrated system of urban management based on the convergence of ICT, the Internet of Things (IoT), cloud computing, and artificial intelligence (AI) technologies. The main objectives of implementing these technologies are to improve citizens' quality of life, optimize urban processes, ensure public and traffic safety, and reduce crime rates through intelligent data analysis and automated surveillance systems.

The concept of a "smart city" is a comprehensive system for managing the urban environment based on the integration of ICT, the Internet of Things (IoT), cloud computing and artificial intelligence technologies. The main goals of implementing these technologies are to improve the quality of life of citizens, optimize urban processes, ensure public and road safety, and reduce crime through intelligent data analysis and automated video surveillance systems.

An important element of the digitalization of law enforcement agencies within the framework of the "Smart City" concept is the development of intelligent video surveillance systems, automated identification tools, and crime analysis systems. [3; 45]. In Kazakhstan, video surveillance systems are integrated with the databases of the Ministry of Internal Affairs (MIA), which allows for the prompt identification of individuals, the detection of crimes, and the prevention of offenses.

The automated system for recording violations "Sergek" operates in 13 cities of Kazakhstan (Astana, Almaty, Shymkent, Turkestan, Atyrau, Taraz, Semey, Aktau, Kostanay, Kulsary, Kyzylorda, Kokshetau,

Taldykorgan) and three regions (Zhetysu, Turkestan, Almaty). In the capital of the country, about 6 thousand cameras of this system are installed, which are used to record violations of traffic rules (traffic rules), recognize faces, search for criminals and missing persons, monitor places of mass gathering of citizens, and analyze the characteristics of vehicles using artificial intelligence technologies.

The implementation of the "Sergek" system has had a significant positive impact on the level of public safety and road traffic. For example, in Astana alone, cameras recorded more than 1 million violations in 2024, while 842 thousand incidents were identified in 2023. Thanks to the implementation of this technology, the mortality rate in road accidents decreased by 48 %, the overall crime rate by 67 %, and the number of traffic violations by 72 % [4].

Results

The study found that the use of information and communication technologies (ICT) in personal identification systems significantly enhances the effectiveness of forensic practice. The key findings are as follows:

Identification of core personal identification technologies

The analysis revealed that the most widely used technologies in forensic practice include biometric systems (facial recognition, fingerprint scanning, iris recognition), video analytics, and digital trace analysis. The application of artificial intelligence in processing data from video surveillance systems improves the accuracy and speed of suspect identification.

Evaluation of legal aspects and existing barriers

The study identified gaps in the legal regulation of ICT use in forensics, particularly regarding the protection of personal data and the legality of collecting and storing biometric information. International experience (EU, USA, China) demonstrates the need to balance effective crime investigation with the protection of human rights.

Problems and limitations of technologies

Although facial recognition algorithms show high efficiency in controlled environments, their accuracy can decline due to lighting changes, camera angles, or the use of disguises. The analysis of digital traces requires significant computational power and effective methods for filtering false positives. Additional security measures are needed to counter cyber threats, including the potential manipulation of biometric data.

Practical implementation of technologies in Kazakhstan

Smart City projects in Kazakhstan (Smart Nur-Sultan, Smart Almaty) provide successful examples of integrating ICT into public safety systems. The use of facial recognition-enabled video surveillance systems has yielded positive results in crime prevention and offender identification. Thus, the findings confirm that smart city technologies hold great potential for forensic identification. However, their implementation requires improvements in legal regulation, increased algorithm reliability, and the mitigation of associated risks.

The implementation of the National Video Surveillance System project, designed to last until 2030, began in Astana and Almaty in 2025. Within the framework of this project, it is planned to install 10 thousand modern video surveillance cameras, deploy 502 hardware and software systems on the street and road network, integrate 8 thousand cameras at strategically important facilities (including those vulnerable to terrorism), and create a single situation center.

Artificial intelligence technologies will be used to manage urban transport, analyze big data, and improve forensic monitoring, which will significantly improve public and road safety. The technology has already demonstrated high efficiency: 46 wanted criminals have been detained in Astana using this system, and about 30 people have been identified in Almaty. The Ministry of Internal Affairs continues to implement the strategy to expand the intelligent video surveillance system and integrate it into a single digital law enforcement network throughout the country.

Discussion

The application of information and communication technologies (ICT) in forensic personal identification represents a crucial stage in the development of modern forensic science. The integration of smart city technologies — including surveillance systems, biometric identification, digital trace analysis, and big data processing — creates new opportunities for crime detection and ensuring public safety. However, alongside their effectiveness, these technologies raise several legal, ethical, and practical concerns.

Comparative Analysis

Comparing the results of this study with existing research in the field makes it possible to identify key trends and challenges. International experience demonstrates a wide use of ICT for personal identification. For example, in China, the United Kingdom, and the United States, facial recognition-enabled surveillance systems are used effectively in public spaces with high population density to identify suspects. However, researchers highlight risks related to the quality of source data, the adaptability of algorithms to different ethnic and age groups, and the possibility of biometric data forgery.

In Kazakhstan, a trend toward digitalization in the law enforcement system is evident. Programs such as Smart Nur-Sultan and Smart Almaty represent visible efforts to integrate ICT into urban governance. However, their application within the forensic domain remains underdeveloped.

Critical Evaluation of Technological Effectiveness

Although modern methods of identification offer high levels of accuracy, their practical implementation depends on several factors:

Data quality and accessibility: The reliability of surveillance and biometric identification largely depends on the quality of the input images and the conditions under which they are captured.

Data processing speed: The growing volume of data requires rapid analysis and powerful computational capacity from law enforcement agencies.

False data and cybersecurity threats: While modern technologies enhance identification processes, they also make it possible to forge biometric traits. This raises the risk of database breaches, personal data leaks, and manipulation of digital evidence.

Therefore, improving the effectiveness of ICT in forensics requires not only the enhancement of algorithms, but also stronger cybersecurity measures, greater transparency in data processing procedures, and tighter control over their application.

Legal and Ethical Aspects

The widespread adoption of digital identification systems requires a fundamental revision of the legal framework. In Kazakhstan, legislative acts concerning the protection of personal data and the use of biometric technologies are not yet fully aligned with the current challenges of digital forensics. Key legal concerns include:

Defining the procedures for the collection, storage, and processing of biometric data;

Establishing limits on state intrusion into individuals' private lives;

Ensuring transparency in the application of surveillance and facial recognition technologies.

From an ethical perspective, it is crucial to maintain a balance between public safety and the protection of individual rights. In China, for instance, the excessive use of surveillance has sparked concerns about a mass monitoring system, whereas EU countries apply strict regulations under the General Data Protection Regulation (GDPR). For Kazakhstan, it is essential not only to develop mechanisms for the effective use of identification technologies, but also to create systems that do not infringe on citizens' rights. This includes the implementation of independent monitoring and the development of clear usage protocols.

Key smart city technologies used in forensics:

– AI-powered video surveillance — cameras with facial recognition and automatic behavior analysis; [5; 5].

– biometric identification — fingerprints, iris, voice characteristics;

– Big data analysis systems — monitoring digital traces, including mobile devices and social networks;

– Automated video surveillance systems for public places — monitoring crowds, identifying suspicious actions.

Research has shown that the use of ICT in law enforcement significantly increases the efficiency of identification of individuals, reduces the likelihood of identification errors and increases the speed of response. However, there are certain challenges, such as the protection of personal data, the accuracy of identification algorithms and their adaptation to the conditions of a particular country.

For further development of the "Smart City" concept in forensics, it is necessary to improve the regulatory framework, introduce mechanisms for monitoring compliance with citizens' rights, and standardize the methodology for introducing ICT into the personal identification system.

The main laws regulating the ICT sector and personal data protection in Kazakhstan are:

– The Law of the Republic of Kazakhstan "On Personal Data and Their Protection" (№ 94-V dated May 21, 2013) regulates the issues of collection, processing and protection of personal data of citizens;

– The Law of the Republic of Kazakhstan "On Informatization" (№ 418-V dated November 24, 2015) regulates public relations in the field of informatization, including the creation, development and use of informatization objects;

– The Law of the Republic of Kazakhstan "On Electronic Documents and Electronic Digital Signatures" (January 7, 2003, № 370-II) establishes the legal basis for the use of electronic documents and electronic digital signatures.

These legislative acts form the basis for regulating digital technologies and protecting personal data in the country. However, despite the existing legal framework, a single standard for integrating biometric data into law enforcement information systems has not yet been developed, which indicates the need for further improvement of legal regulation.

It is necessary to comprehensively modernize legal instruments for regulating digital technologies, develop a unified standard for integrating public and private databases, and implement cybersecurity measures to protect information from unauthorized access.

International experience in regulating digital identification technologies demonstrates various approaches to ensuring a balance between the effectiveness of law enforcement and the protection of citizens' rights.

European Union: Since 2018, the General Data Protection Regulation (GDPR) has imposed strict requirements on the processing of personal and biometric data. This regulation requires citizens to obtain explicit consent for the collection and processing of their data and provides for the "right to be forgotten". The use of automated facial recognition systems in public places is prohibited, except in cases of threat to national security.

The USA: There is no federal regulation of biometric data, but some states use local laws. The California Consumer Privacy Act (CCPA) requires transparency when collecting personal data, while the Illinois Biometric Information Privacy Act (BIPA) requires companies to obtain consent before collecting people's biometric data and that the information not be disclosed to third parties without authorization.

Chinese People's Republic. The country widely uses a facial recognition system integrated with the national social credit system. Biometric technologies are actively used to identify citizens in public places, on transport, in the banking sector and in law enforcement agencies. Compared to the EU and the US, Chinese legislation does not impose significant restrictions on the protection of personal data, which allows the state to widely use personal identification technologies.

An analysis of international experience shows that Kazakhstan needs to develop its own regulatory model that takes into account national security requirements and principles of personal data protection. The optimal solution may be to adapt the best international practices, including the European approach to protecting biometric information and the American local regulatory system.

Analysis and empirical research

Comparative Analysis of the Implementation of Smart City Technologies in Different Countries

1. People's Republic of China. China is a world leader in the use of personal identification technologies in law enforcement. As part of the national project "Sharp Eye", more than 600 million video surveillance cameras equipped with facial recognition and analytical functions applied to behavioral data have been installed. Artificial intelligence makes it possible to predict crimes, detect offenses and quickly identify suspects. However, the widespread use of digital surveillance raises issues of privacy of personal data and government oversight.

2. The United States of America. In the United States, personal identification technologies are widely used, but they are accompanied by strict legal regulations. In some states (for example, California), the use of facial recognition technologies by the police is prohibited due to the high probability of errors. In addition, the Federal Bureau of Investigation (FBI) actively uses the Next Generation Identification (NGI) system, which stores more than 165 million biometric data. This will help improve the efficiency of law enforcement investigative activities.

3. European Union. EU countries are seeking to find a balance between the efficiency of digital technologies and the protection of personal data. In 2022, the European Parliament proposed a draft law on AI that would impose strict requirements on the use of artificial intelligence in personal identification processes. Automatic real-time facial recognition is prohibited in public places and is only permitted in cases of a threat to national security.

4. Republic of Kazakhstan. Digitalization of law enforcement agencies in Kazakhstan is developing rapidly. The Smart City projects in Astana and Almaty involve the integration of intelligent video surveillance

and data analysis systems into the infrastructure of the Ministry of Internal Affairs [6]. However, the country has not yet adopted a single regulatory legal act governing the use of biometric identification. This indicates the need to develop a legislative framework that determines the procedure for using personal identification technologies.

Improving legal regulation

– The modern world is rapidly changing under the influence of digital technologies [7; 150]. To effectively use identification technologies in law enforcement agencies, it is necessary to implement the following measures:

– develop a unified law on the use of biometric data, which should clearly regulate the procedure for collecting, storing and processing information;

– introduce state control mechanisms in identification systems, which will prevent violations and illegal use;

– develop standards for the ethical use of information and communication technologies (ICT) in forensics, which should ensure a balance between the effectiveness of the investigation and the protection of citizens' rights.

Adaptation of foreign experience in Kazakhstan

For the successful implementation of "smart city" technologies in the personal identification system, Kazakhstan needs to take into account international experience:

– Study of China's experience in the large-scale use of video surveillance systems in compliance with the principles of personal data protection;

– Application of the European Union's experience in regulating biometric identification and implementing standards of transparency in the use of technologies;

– Analysis of the model for integrating American biometric databases with law enforcement agencies.

The Impact of Digital Transformation on the Future of Forensic Practice

As technology advances, forensic science faces new challenges:

– training specialists in digital forensics and big data analysis;

– developing methods to combat cybercrime aimed at hacking identification systems;

– implementing a national digital security program that includes measures to protect personal data and prevent illegal use of technology.

Thus, within the framework of the Smart City concept, the development of ICT is becoming an important tool in forensics. However, for their effective use, a comprehensive approach is needed, including improving the regulatory framework, introducing advanced technologies and increasing the digital literacy of industry specialists.

Conclusions

Modern information and communication technologies, thanks to their integration into the concept of the "Smart City", play an important role in the field of forensics, providing new ways of a personal identification. The development of intelligent video surveillance systems, biometric identification, digital fingerprinting and big data analysis has significantly increased the accuracy and speed of identification processes [8]. However, the implementation of these technologies is accompanied by a number of problems, such as data security, adaptation of algorithms, as well as their legal and ethical application.

An analysis of international experience shows that different countries use different models for regulating personal identification technologies. While the European Union has limited the use of facial recognition systems in public places, China, on the contrary, is actively developing centralized surveillance platforms, and the United States uses local regulatory measures at the level of individual states in this area. Kazakhstan needs to develop a balanced regulatory system that takes into account advanced international experience and national specifics.

In addition, the development of artificial intelligence and machine learning technologies opens up new prospects for forensics. Modern algorithms allow us to reduce the number of errors in face recognition, increase the accuracy of identification and expand the capabilities of digital trace analysis. However, the effective use of these technologies requires constant updating of cybersecurity methods, which in turn requires the development of a comprehensive information security strategy.

Information and communication technologies (ICT) are fundamentally transforming methods of personal identification in forensic practice. The methods and technological solutions examined in this study

demonstrate that the use of ICT enhances both the accuracy and speed of identification, reduces the influence of human error, and minimizes the likelihood of mistakes. However, large-scale implementation is accompanied by legal, technical, and ethical challenges.

Key Findings:

ICT as a tool for forensic identification — video analytics, biometric systems, digital traces, and artificial intelligence algorithms have become integral components of modern law enforcement. These technologies support not only rapid crime investigations but also proactive crime prevention.

Legal, technical, and ethical constraints — legislation in Kazakhstan and other countries must adapt to the new realities of digital forensics. The protection of personal data, the legality of biometric data collection and use, and the risks of misuse by public and private entities remain critical concerns.

Prospective directions for development — enhancing multifactor identification systems, updating the regulatory framework, strengthening cybersecurity, and integrating data from multiple sources will contribute to the effective application of ICT in forensics.

Practical Significance of the Research:

For law enforcement agencies — to improve identification methods, accelerate investigation processes, and increase crime detection rates.

For technology developers — to create more accurate, reliable, and secure identification systems.

For legislators and legal experts — to develop a sound legal framework that ensures the lawful use of ICT in forensic practice.

For the academic community — to further develop new theoretical and methodological approaches in digital forensics.

Final Evaluation

The integration of smart city technologies into forensic identification systems offers significant potential, but requires a comprehensive approach to address technical, legal, and ethical issues. In the future, it will be necessary not only to improve recognition algorithms but also to ensure the transparency of their application and the protection of citizens' personal data.

Thus, the digitalization of forensic science is not only a technological but also a social process. The synergy of technological innovation, legal regulation, and ethical standards can foster a balanced identification system — one that ensures public safety while safeguarding individual rights.

Ethical aspects of the use of information and communication technologies also remain an important area for further development. The use of digital technologies should be carried out in accordance with the principles of non-discrimination, transparency and respect for the rights of citizens [9]. Government agencies, the scientific community and technology companies need to collaborate to develop standards [10] that ensure a balance between effective law enforcement and the protection of personal data.

Based on the conducted research, the following main areas of further development can be identified:

1. Technical improvements — development of machine learning algorithms, increasing the accuracy of face recognition, improving cybersecurity systems.

2. Methodological solutions — unification of forensic identification methods, adaptation of international experience, expansion of digital data analysis tools.

3. Practical implementation — implementation of pilot projects, advanced training of specialists, development of interdepartmental cooperation in the field of personal identification.

In the context of digitalization, the future of forensics depends on the successful integration of Smart City technologies into the activities of law enforcement agencies. Only a comprehensive approach that includes technological, legal and methodological aspects will make it possible to achieve significant progress in ensuring public safety.

Thus, ICT within the framework of the Smart City concept is a powerful tool for future forensics. Their effective use requires a comprehensive approach, including legal regulation, technical improvements, data protection and compliance with ethical standards. Only if these conditions are met will it be possible to create a reliable and fair identification system that will contribute to strengthening law and order and public safety.

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Жеке басын анықтау жүйесіндегі «Ақылды қала» ақпараттық-коммуникациялық технологиялары: криминалистикалық аспект

Мақалада «Ақылды қала» (Smart City) тұжырымдамасы аясында ақпараттық-коммуникациялық технологияларды (АКТ) криминалистикалық практикада қолдану мүмкіндіктері талданған. Әсіресе, бейнебақылаудың интеллектуалды жүйелерін, машиналық оқыту алгоритмдерін, бұлттық есептеулерді және биометриялық технологияларды құқық қорғау органдарының жедел әрекет етуі мен жеке басты дәл анықтауын жақсарту мақсатында пайдалану мәселелері қарастырылған. Мемлекеттік және жеке ұйымдардың дерекқорларымен интеграцияланған автоматтандырылған бет-әлпетті тану жүйелерінің мүмкіндіктері мен оларды нормативтік-құқықтық және техникалық аспектілерді ескере отырып дамыту перспективалары зерттелген. Мақалада криминалистикадағы АКТ-ны қолдану ерекшеліктері қарастырылған, оның ішінде жасанды интеллект (ЖИ) пен үлкен деректерді талдау арқылы іздеудегі тұлғаларды анықтау, қылмыстардың алдын алу және құқық қорғау органдары жұмысының ашықтығын арттыру мәселелері зерделенген. Цифрлық технологиялардың қылмысты ашудағы және қоғамдық қауіпсіздікті қамтамасыз етудегі тиімділігін дәлелдейтін статистикалық мәліметтер келтірілген. Криминалистикалық сәйкестендіру барысында қазіргі заманғы бейнебақылау жүйелері мен олардың функционалдық мүмкіндіктері сипатталған. Жеке басты анықтаудың цифрлық платформаларын әрі қарай жаңғырту және стандарттау, оларды ұлттық дерекқорлармен интеграциялау және жеке деректерді қорғау механизмдерін жетілдіру қажеттілігі негізделген. ЖИ негізінде ұлттық бейнебақылау жүйесін құру перспективалары қарастырылған, бұл құқық қорғау органдарының жедел әрекет етуін күшейтіп, сәйкестендірудегі қателіктерді азайтуға және криминалистикалық талдау әдістерін жетілдіруге мүмкіндік береді.

Кілт сөздер: ақпараттық-коммуникациялық технологиялар, жеке басты анықтау, криминалистика, «Ақылды қала», жасанды интеллект, цифрлық қауіпсіздік, бейнебақылау, биометриялық сәйкестендіру, цифрлық криминалистика, үлкен деректерді талдау.

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Информационно-коммуникационные технологии «Умного города» в системе установления личности: криминалистический аспект

В статье анализируются возможности применения информационно-коммуникационных технологий (ИКТ) в криминалистической практике в рамках концепции «Умного города» (Smart City). Особое внимание уделяется использованию интеллектуальных систем видеомониторинга, алгоритмов машинного обучения, облачных вычислений и биометрических технологий для повышения точности идентификации личности и оперативности реагирования правоохранительных органов. Исследуется

интеграция автоматизированных систем распознавания лиц с базами данных государственных и частных организаций, а также перспективы их развития с учетом нормативно-правовых и технических аспектов. Рассматриваются криминалистические аспекты применения ИКТ в процессе установления личности, включая использование искусственного интеллекта (ИИ) и анализа больших данных для выявления разыскиваемых лиц, предотвращения преступлений и повышения прозрачности работы правоохранительных структур. Приведены статистические данные, подтверждающие эффективность цифровых технологий в раскрытии преступлений и обеспечении общественной безопасности. Описаны современные системы видеонаблюдения и их функциональные возможности в процессе криминалистической идентификации. Обоснована необходимость дальнейшей модернизации и стандартизации цифровых платформ идентификации, включая их интеграцию с национальными базами данных и развитием механизмов защиты персональной информации. Рассмотрены перспективы создания единой национальной системы видеомониторинга на основе ИИ, которая обеспечит повышение оперативности реагирования, снижение ошибок идентификации и усовершенствование методов криминалистического анализа.

Ключевые слова: информационно-коммуникационные технологии, установление личности, криминалистика, «Умный город», искусственный интеллект, цифровая безопасность, видеомониторинг, биометрическая идентификация, цифровая криминалистика, анализ больших данных.

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Некоторые актуальные вопросы применения темпоральных норм к ранее заключенным контрактам на недропользование

Статья посвящена актуальным вопросам применения общих и специальных темпоральных норм к ранее заключенным контрактам на недропользование в Республике Казахстан. В ней обосновано, что из таких контрактов возникли и могут возникать в разные периоды не одно, а многочисленные и самые разные правоотношения, в том числе после вступления в силу Кодекса РК от 27.12.2017 г. «О недрах и недропользовании». Данный кодекс предусматривает специальные положения о применении его норм к отношениям из ранее заключенных контрактов, возникающим после вступления его в силу. Перечень применимых к таким отношениям норм содержится в п. 3 ст. 277. В статье обосновано, что при их применении необходимо учитывать стабилизированные условия ранее заключенных контрактов, а также исключения, на которые гарантии стабильности не распространяются. Также обосновывается, что приоритет темпоральных норм, предусмотренных Кодексом о недрах, не исключает применение к ранее заключенным контрактам темпоральных норм, установленных в ГК РК, в частности, к тем, отношениям, которые не урегулированы Кодексом. Также обосновано, что проблемным вопросом для ранее заключенных контрактов является вопрос о стабилизации законодательства, действовавшего на момент заключения контрактов.

Ключевые слова: общие и специальные темпоральные нормы, применение к ранее заключенным контрактам на недропользование изменений законодательства, гарантии стабильности контрактов на недропользование.

Введение

Законодательство Республики Казахстан о недрах и недропользовании прошло несколько этапов становления и развития. Одним из первых был Кодекс РК «О недрах и переработке минерального сырья», принятый Верховным Советом 30 мая 1992 г. В последующем были приняты: Указ Президента РК от 18.04.1994 № 1662 «О нефтяных операциях», Указ Президента РК, имеющий силу закона от 5.04.1994 г. № 1637 «О дополнительных мерах по упорядочению недропользования для геологического изучения и добычи полезных ископаемых». Наиболее значимых в истории развития законодательства были Указы Президента РК, имеющие силу Закона, от 28.06.1995 г. «О нефти» (далее — Указ или Закон о нефти) и от 27.01.1996 г. «О недрах и недропользовании» (далее — Указ или Закон о недрах 1996 г.). В период действия Указа о нефти и Указа о недрах в Казахстане были заключены большинство наиболее крупных контрактов, в том числе на осуществление нефтяных операций. Дан-

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ные Указы, которые были переименованы в 2004 г. в законы, утратили силу в связи с вступлением в силу Закона РК от 24.06.2010 г. «О недрах и недропользовании» (далее — Закон о недрах 2010 г.). В настоящее время в Казахстане действует Кодекс от 27.12.2017 г. «О недрах и недропользовании» (далее — Кодекс о недрах).

В связи с изложенным одним из актуальных вопросов остается о применение изменений законодательства о недрах и гражданского законодательства к ранее заключенным контрактам на недропользование. В настоящее время в Казахстане действуют ряд контрактов, которые были заключены до вступления в силу Кодекса о недрах (далее — ранее заключенные контракты). На практике долгосрочные контракты на недропользование «переживают» не один этап реформирования законодательства. Гарантии стабильности условий недропользования для инвестора в этой связи является одним из важных вопросов.

Следует отметить, что из ранее заключенных контрактов на недропользование после вступления в силу Кодекса о недрах возникают и могут возникать многочисленные и разнообразные отношения. Контракт на недропользование не является основанием для возникновения одного единственного контрактного правоотношения. Из него может возникать комплекс разных правоотношений, причем в разные периоды времени и разного характера. Например, это могут быть отношения по исполнению определенных обязательств за текущий год или квартал; отношения, возникающие в связи с нарушением конкретного обязательства за определенный период; отношения по расторжению контракта за не устранение конкретных нарушений и др. Так, отношения по исполнению обязательства по внутристрановой ценности в работах и услугах, которые ранее назывались обязательствами по казахстанскому или местному содержанию, и отношения по исполнению обязательства по объему добычи полезного ископаемого за определенный период — это разные отношения. Такие отношения могут возникать как до вступления в силу соответствующих норм Кодекса о недрах, так и после.

Нормы, определяющие действие норм активных актов во времени, в науке именуются темпоральными нормами [1]. Такие нормы могут быть общими или специальными [2; 36].

Общий подход закреплен в ст. 43 Закона РК от 06.04.2016 г. «О правовых актах» (далее — Закон о правовых актах), заключается в том, что нормативно-правовой акт не имеет обратной силы, за исключением отдельных случаев. Так согласно п. 1 указанной статьи действие нормативного правового акта не распространяется на отношения, возникшие до его введения в действие. В п. 2 предусмотрено, что исключения из этого правила представляют случаи, когда обратная сила нормативного правового акта или его части предусмотрена им самим или актом о введении в действие нормативного правового акта, а также когда последний исключает обязанности, возложенные на граждан, или улучшает их положение. В пунктах 3 и 4 указанной статьи признаны не имеющими обратной силы законы, возлагающие новые обязанности на граждан или ухудшающие их положение, а также законы, устанавливающие или усиливающие ответственность. Общая темпоральная норма предусмотрена также в ст. 4 ГК.

Кодекс о недрах не предусматривает специальных норм о применении его положений к контрактным или лицензионно-контрактным отношениям, возникшим до его введения в действие, то есть об обратной силе. Соответственно, можно полагать, что он не подлежит применению к таким отношениям. Что касается отношений по ранее заключенным контрактам, которые возникли и могут возникнуть после введения в действие Кодекса о недрах, то следует отметить, что, в отличие от положений п. 1 ст. 43 Закона о правовых актах, Кодекс предусматривает специальные нормы, согласно которым не все его положения применяются к таким отношениям.

Материалы и методы

В статье использованы нормативные правовые акты Республики Казахстан, регулирующие отношения в сфере недропользования, законодательство о действии нормативных правовых актов во времени, о стабилизации условий недропользования, а также доктринальные источники по вопросам правовых нормах, их классификации, темпоральных нормах и стабильности законодательства в сфере недропользования. Проблемные вопросы связаны с определением соотношения общих и специальных темпоральных норм для применения к отношениям, возникающим из ранее заключенных контрактов на недропользование. Методологическую основу исследования составляют методы системного познания, формально-юридического и сравнительно-правового исследования.

Результаты

Кодекс о недрах вступил в силу с 29.06.2018 г., за исключением отдельных положений, вступивших в силу ранее или позже указанной даты. Принятие и вступление в силу данного Кодекса ознаменовал новый этап в развитии законодательства РК о недрах и недропользовании. Кодекс о недрах ввел ряд новых положений в сферу недропользования, в том числе, установил два разных режимов недропользования, а именно, контрактный — для разведки и добычи углеводородов и добычи урана, лицензионный — для остальных видов операций по недропользованию, исключил тендер как непрозрачный способ проведения торгов, предусмотрел такой новый вид операций по недропользованию как старательство, ввел подготовительный период между этапами разведки и добычи и многое другое. В связи с этим, для ранее заключенных контрактов на недропользование актуален вопрос о применении к отношениям, возникающим из таких контрактов, положений Кодекса о недрах и изменений гражданского законодательства.

Следует отметить, что Кодекс о недрах представляет собой комплексный нормативный правовой акт, содержащий частноправовые и публично-правовые нормы. Положения о действии норм гражданского законодательства во времени предусмотрены в ст. 4 ГК РК (далее — ГК). Данная статья устанавливает общее положение о том, что акты гражданского законодательства не имеют обратной силы и применяются к отношениям, возникшим после их введения в действие. Применительно отношений, возникших до введения в действие акта гражданского законодательства, установлено, что он применяется к правам и обязанностям, возникшим после введения его в действие. Отношения сторон по договору, заключенному до введения в действие акта гражданского законодательства, регулируются в соответствии со статьей 383 ГК.

Таким образом, специальные положения о применении актов гражданского законодательства к отношениям сторон по договору, заключенному до введения в действие такого акта, регулируются статьей 383 ГК. В данной статье предусмотрено общее положение о стабилизации условий гражданско-правовых договоров. Согласно п. 2 указанной статьи, если после заключения договора законодательством устанавливаются обязательные для сторон правила, отличающиеся от тех, которые действовали при заключении договора, условия заключенного договора сохраняют силу, за исключением, когда законом установлено, что его действие распространяется на отношения, возникшие из ранее заключенных договоров.

В комментариях к указанным нормам ГК отмечается, что применение новых законодательных правил, к условиям ранее заключенных договоров, возможно только в случаях, когда законодательством установлено, что его действие распространяется на отношения, возникающие из ранее заключенных договоров [3; 383]. Под понятием «отношения, возникающие из ранее заключенных договоров», на наш взгляд, имеются в виду отношения по договору, которые возникли после вступления в силу изменений законодательства. Такие отношения, по общему правилу, регулируются стабилизированными условиями договора.

Из этого правила могут быть исключения, которые должны быть предусмотрены при принятии изменений законодательства. Так, Законом РК от 10.02.2011 г. № 406-IV в п. 2 ст. 760 ГК были внесены изменения, устанавливающие запрет для банков изменять размер вознаграждения по вкладам в одностороннем порядке, за исключением случаев продления срока вклада, предусмотренных договором банковского вклада. До таких изменений, согласно п. 2 указанной статьи банки не вправе были изменять размер вознаграждения по вкладам в одностороннем порядке, если иное не предусмотрено договором банковского вклада. Статьей 2 Закона РК от 10.02.2011 г. изменения в п. 2 ст. 760 ГК были распространены и на ранее заключенные договоры банковского вклада, условия которых допускали одностороннее изменение банком размера вознаграждения по вкладу.

К отношениям из договора, возникшим до внесения изменений в законодательство, по общему правилу новое законодательство не должно применяться. Исключение из этого правила могут быть предусмотрены при введении в силу нового законодательства.

Примером применения изменений законодательства к ранее возникшим отношениям являются положения п. 8 **постановления Верховного Совета Республики Казахстан от 27 декабря 1994 г. «О введении в действие Гражданского Кодекса Республики Казахстан (общая часть)»**, согласно которому судебное производство по делам о прекращении права собственности по основаниям, не предусмотренным Гражданским Кодексом (общая часть), подлежит прекращению. Соответственно, если основания для прекращения права собственности возникли до вступления в силу ГК и такие ос-

нования ГК не предусмотрены, то к таким отношениям, если есть судебный спор, применяются нормы ГК.

Одним из важных аспектов применения специальной темпоральной нормы, предусмотренной в ст. 383 ГК, является вопрос о пределах распространения стабилизационных положений. В частности, идет ли речь только об императивных нормах гражданского законодательства, или это касается и публично-правовых норм. В комментарии к указанной статье рассматривается пример введения лицензирования деятельности, которая не подлежала лицензированию в момент заключения договора. Ответ на этот вопрос, по мнению автора комментария, содержится в п. 2 ст. 383 ГК. Обосновывается, что положения этого пункта основываются на общем положении, что действие вновь принятого закона распространяется только на те правоотношения, которые возникли после введения в действие этого закона [3; 382]. В комментарии к ст. 4 ГК рассматривается другой пример из судебной практики, когда новый закон предусмотрел норму о прекращении действия лицензии адвоката, который вышел из гражданства РК. В момент получения лицензии такого требования не было. Суд апелляционной инстанции, оставляя в силе решение суда первой инстанции, удовлетворившего иск Министерства юстиции о лишении лица лицензии на право занятия адвокатской деятельностью, наряду с другими аргументами, указал на то, что нормы ст. 4 ГК не применимы к таким отношениям. В комментарии отмечается, что этого вполне достаточно для обоснования неприменимости к данным отношениям п.1 ст. 4 ГК [4; 69-70].

Другим актуальным вопросом является вопрос о пределах распространения стабилизационных положений договора, относятся ли они только к тем условиям договора, по которым стороны могут договариваться, или они распространяются на императивные и диспозитивные нормы, которые в момент заключения договора регулировали данные отношения.

Рассматривая пределы распространения гарантий стабильности законодательства применительно к недропользованию, Е.В. Нестерова отмечает, что приоритет договора перед законодательством, установленный в п. 2 ст. 383 ГК РК, распространяется только на условия договора, которые могли быть согласованы сторонами [5; 100]. М.И. Брагинский и В.В. Витрянский считают, что, поскольку диспозитивная норма не отличается от императивной до тех пор, пока стороны не включат в договор иное, в указанной ситуации диспозитивная норма, подобно норме императивной, также должна считаться находящейся за пределами договора [6; 242-243]. Российский исследователь, О.А. Кузнецова, принявшая подход о включении диспозитивных норм в число договорных условий, полагает, что при введении в действие новой диспозитивной нормы сохраняется действие (ультраактивность) старых диспозитивных норм. Императивные нормы, по ее мнению, в число условий договора не входят, следовательно, согласно ст. 422 Кодекса они силу не сохраняют. А вновь принятая императивная норма на основании ст. 4 ГК РФ будет действовать немедленно, то есть в отношении тех договорных прав и обязанностей, которые возникнут после введения ее в действие. Также ею обосновано, что согласно п. 2 ст. 422 ГК РФ условия договора, соответствующие старой императивной норме, безусловно, сохраняют силу [2; 37-38, 41].

Обсуждение

На наш взгляд, в контексте ст. 383 ГК РК речь не идет о императивных нормах публичного права. Однако, при этом необходимо иметь в виду, что основанием возникновения гражданских прав могут лежать административные акты. Так, лицензии на недропользование до внесения изменений в законодательство о недрах и о нефти Законом РК от 11 августа 1999 г. № 467-1, наряду с контрактами, являлись основаниями возникновения права недропользования как вещного права. С принятием Кодекса о недрах 2017 г. лицензионный режим стал основным режимом осуществления операций по недропользованию и не применяется только к разведке и добыче углеводородов, а также добыче урана. Однако, отмена лицензий на недропользование в 1999 г. или, напротив, их введение в 2018 г., никак не влияет на условия контрактов на недропользование, заключенных до вступления в силу Закона от 11 августа 1999 г. или Кодекса о недрах. Другой вопрос, когда речь идет о лицензировании отдельных видов работ при осуществлении операций по недропользованию, связанных с промышленной безопасностью и т.д. Во-первых, полагаем, что эти вопросы не должны являться предметом договора. Во-вторых, даже если в нем есть такие условия, полагаем, что императивные нормы, принятые после заключения договора, должны применяться к таким договорам. Другой пример — это экологические требования, предусмотренные императивными нормами экологического законодательства, которые не могут быть предметом соглашения сторон. Даже если в договор стороны включили такие

требования, соответствующие императивным законодательным нормам, при изменении законодательства к соответствующим отношениям сторон должны применяться новые императивные нормы.

При этом следует иметь в виду, что гарантии стабильности не распространяются на ряд отраслей законодательства. Так, например, согласно п. 7 ст. 36 Кодекса о недрах, гарантии, установленные частью первой указанного пункта, не распространяются на изменения в законодательстве Республики Казахстан в области обеспечения национальной безопасности, обороноспособности, экологической безопасности, здравоохранения, налогообложения, таможенного регулирования и защиты конкуренции, за исключением случая, предусмотренного частью третьей указанного пункта.

Что касается вопроса о том, могут ли императивные и диспозитивные нормы признаваться условиями договора, полагаем, что это может зависеть от содержания договора, природы и правового значения таких норм. В п. 1 ст. 382 ГК РК содержится положение, из которого следует, что, если стороны договора не исключили применение диспозитивной нормы либо не установили условие, отличное от предусмотренного в ней, условие договора определяется диспозитивной нормой. В данном случае полагаем, что диспозитивная норма инкорпорируется в содержание договора и становится его условием. Императивная норма, которая включена в содержание договора, также может стать ее условием. Например, стороны могут в договор включить на основании императивной нормы, предусмотренной в п. 2 ст. 401 ГК, такое основание для расторжения договора в судебном порядке как существенное нарушение. Даже если в последующем такая императивная норма была бы изменена или отменена, полагаем, что условие договора будет продолжать действовать.

Однако это не может относиться к публично-правовым нормам. Считаем, что включение публично-правовых норм в содержание договора не превращает их в договорные условия, согласованные сторонами. Иное может вытекать из законодательства. Так, в Казахстане ранее заключенные контракты на недропользование устанавливали налоговый режим. Например, согласно п. 3 ст. 282 НК РК 2001 г. налоговый режим по второй модели, указанной в ст. 283 Кодекса, определяется только в контракте о разделе продукции. Налоговый режим, устанавливаемый таким контрактом, должен был соответствовать положениям налогового законодательства РК, действующим на дату подписания (заключения) контракта. При этом элементы налогов могли определяться контрактами. Так, согласно ст. 288 указанного Кодекса размер подписного бонуса закреплялся в контракте.

Следует отметить, что к контрактам на недропользование положения ст. 383 ГК применяются, если иное не предусмотрено законодательством о недрах и недропользовании. Так, норма о применении Кодекса о недрах к ранее заключенным контрактам содержится в ст. 277. Согласно п. 2 ст. 277 Кодекс применяется к отношениям по недропользованию, возникшим после введения его в действие, за исключением случаев, предусмотренных главой 35. В п. 3 указанной статьи приведен перечень положений Кодекса о недрах, которые подлежат применению к отношениям, возникшим из ранее заключенных контрактов и выданных лицензий. Этот перечень является достаточно широким, но он не охватывает ряд положений Кодекса о недрах. Соответственно, положения, которые не перечислены в п. 3 ст. 277 Кодекса о недрах, не применяются к ранее заключенным контрактам и выданным лицензиям.

Из п. 3 ст. 277 Кодекса о недрах следует, что к отношениям по ранее заключенным контрактам и выданным лицензиям, возникающим после вступления его в силу, подлежат применению положения глав 1, 2 и 5 (с оговоркой), 6, 7, 9, 10, 13, а также положения иных указанных глав, параграфов и статей с учетом предусмотренных исключений. Вместе с тем, полагаем, что применение к ранее заключенным контрактам некоторых из указанных в п. 3 ст. 277 Кодекса о недрах положений может исключаться в связи гарантиями, которые имеют недропользователи по контрактам. Так, согласно п. 14 ст. 277 Кодекса о недрах со дня введения его в действие был признан утратившим силу Закон о недрах 2010 г. Однако ряд положений указанного Закона сохранили свое действие и применимы к соответствующим отношениям в сфере недропользования, возникшим по контрактам на недропользование, заключенным, и лицензиям, выданным до вступления в силу Кодекса, а также в иных случаях, предусмотренных Кодексом. В перечне норм, сохранивших свое действие, указана ст. 30 Закона о недрах 2010 г., в которой закреплены гарантии недропользователя. В данной статье предусмотрено, что изменения и дополнения законодательства, ухудшающие результаты предпринимательской деятельности недропользователя по контрактам, не применяются к контрактам, заключенным до внесения данных изменений и дополнений. Указанные гарантии не распространяются на изменения законодательства Республики Казахстан в области обеспечения национальной безопасности, обороноспо-

собности, в сферах экологической безопасности, здравоохранения, налогообложения и таможенного регулирования.

Соответственно, если то или иное применимое к контракту положение, перечисленное в п. 3 ст. 277 Кодекса о недрах, ухудшает результаты предпринимательской деятельности недропользователя по контрактам, оно не должно применяться к соответствующим контрактным отношениям. Так, например, согласно п. 3 ст. 277 Кодекса о недрах к ранее заключенным контрактам применяются положения ст. 106, за исключением п. 2 указанной статьи в отношении соглашений (контрактов) о разделе продукции, утвержденных Правительством РК, и контракта на недропользование, утвержденного Президентом РК. В ст. 106 содержатся нормы об основаниях и порядке досрочного прекращения действия контракта, в том числе по требованию компетентного органа. Однако, положения указанной статьи могут ухудшать результаты предпринимательской деятельности недропользователя. В такой ситуации, полагаем, что должны применяться условия контракта. С учетом вышеизложенного, полагаем, что не все перечисленные в п. 3 ст. 277 Кодекса о недрах, применимы к отношениям, возникающим из ранее заключенных контрактов.

Ухудшение результатов предпринимательской деятельности должны доказываться недропользователем. В литературе отмечается, что «недропользователем должна быть доказана конкретная причинно-следственная связь между спорным изменением и дополнением законодательства, с одной стороны, и прогнозируемым или имеющем место «ухудшением результатов предпринимательской деятельности, с другой»» [7].

При применении к ранее заключенным контрактам на недропользование темпоральных норм Кодекса о недрах следует учитывать, что из таких контрактов могут возникать гражданско-правовые отношения, которые не регулируются Кодексом. К таким отношениям на основании п. 4 ст. 1 Кодекса о недрах применяются нормы гражданского законодательства. Полагаем, что применение к ним изменений гражданского законодательства должно определяться нормами ГК.

Одним их актуальных вопросов стабилизации условий недропользования является вопрос о том, предусмотрены ли в действующем законодательстве гарантии стабильности для недропользователей по ранее заключенным контрактам законодательства. Для таких контрактов, как указано выше, гарантии стабильности предусмотрены в ст. 30 Закона о недрах 2010 г. Из редакции указанной статьи следует, что гарантии стабильности относятся к контрактам, а не к недропользователям или их инвестициям. Это дает нам основание полагать, что отсылка к контрактам, а по сути, к их содержанию, означает стабилизацию их условий, а не всего законодательства, применяемого к отношениям, в которых участвует данный недропользователь. Для стабилизации законодательства следовало предусмотреть такие гарантии не для контракта, а для недропользователя и (или) его инвестиций.

Гарантии стабильности законодательства были предусмотрены в ст. 6 Закона об иностранных инвестициях 1994 г. только для иностранных инвесторов и применялись исключительно к иностранным инвестициям в значении указанного Закона. М.К. Сулейменов неоднократно подчеркивал, что гарантии, предусмотренные в ст. 6 Закона об иностранных инвестициях 1994 г., являются гарантиями стабильности законодательства. Так, в одной из своих публикаций он пишет, что-то же можно сказать о главной гарантии, которая больше всего интересует иностранных инвесторов — стабильность законодательства (ст. 6 Закона «Об иностранных инвестициях»). Речь идет о так называемой «дедушкиной оговорке». Можно брать разные варианты «дедушкиной оговорки»: широкий, как в казахстанском законе, более узкий, как в российском законе об иностранных инвестициях. Но в любом случае эта норма должна быть предельно четкой [8; 156]. В другой своей публикации М.К. Сулейменов, рассматривая вопрос об изменениях законодательства о недрах и о нефти, пишет, что суть проблемы заключается в выяснении того, существует ли в настоящее время так называемая «дедушкина оговорка», или положение о стабильности законодательства, которое так четко было сформулировано в знаменитой ст. 6 Закона об иностранных инвестициях? [9; 326]. «Дедушкину оговорку» в контексте ст. 6 Закона об иностранных инвестициях 1994 г. он относит к стабильности законодательства [10; 440].

В случае, если такие стабилизационные положения предусмотрены (продублированы) в контракте, возникает вопрос о природе таких стабилизационных положений и основаниях применения таких стабилизационных условий контракта на недропользование. Полагаем, что если недропользователь утратил статус иностранного инвестора в значении указанного Закона, то стабилизационные положения контракта, которые продублированы из Закона, не могут к нему применяться. Гарантии от изменения законодательства, предусмотренные в Законе об иностранных инвестициях 1994 г., не яв-

ляются договорными гарантиями. Это не предмет соглашения сторон, и включение таких гарантий в текст контракта не превращает их в договорные гарантии. В связи с этим полагаем, что национальные инвесторы не могут иметь такие гарантии.

Анализ темпоральных норм, предусмотренных в ГК и Кодексе о недрах, таким образом, показывает, что приоритетными для ранее заключенных контрактов являются нормы, закрепленные в Кодексе о недрах. Однако, это не исключает применение к таким контрактам темпоральных норм, предусмотренных в ГК, в частности, к тем отношениям, которые не урегулированы Кодексом.

Заключение

Вопросы применения как общих, так и специальных темпоральных норм к отношениям, возникающим из ранее заключенных контрактов на недропользование, имеют важное как теоретическое, так и практическое значение. Многие контракты на недропользование «пережили» не одну реформу законодательства о недрах. Темпоральная норма, предусмотренная в ст. 4 ГК, действует, в том случае если действие закона во времени не определяется специальной темпоральной нормой. Примером специальной темпоральной нормы в ГК является ст. 383. Однако, в регулировании отношений в сфере недропользования приоритет имеют нормы Кодекса о недрах, который в ст. 277 предусматривает специальные темпоральные нормы. Пунктом 3 указанной статьи предусматриваются положения Кодекса, которые подлежат применению к ранее заключенным контрактам и выданным лицензиям. Этот перечень, хотя и является достаточно широким, но он не охватывает все положения Кодекса о недрах. Соответственно, нормы, не перечисленные в п. 3 ст. 277 Кодекса, не применяются к ранее заключенным контрактам. При применении к таким контрактам темпоральных норм, предусмотренных в п. 3 ст. 277 Кодекса, следует учитывать гарантии недропользователей. Так, согласно п. 14 ст. 277 в отношении ранее заключенных контрактов сохранили свое действие гарантии стабильности, предусмотренные в ст. 30 Закона о недрах 2010 г. Такие гарантии относятся к изменениям и дополнениям законодательства, ухудшающим результаты предпринимательской деятельности недропользователя по контрактам, но не распространяются на изменения законодательства Республики Казахстан в области обеспечения национальной безопасности, обороноспособности, в сферах экологической безопасности, здравоохранения, налогообложения и таможенного регулирования. Соответственно, если то или иное применимое к контракту положение, перечисленное в п. 3 ст. 277 Кодекса о недрах, ухудшает результаты предпринимательской деятельности недропользователя по контрактам, то такое положение, с учетом установленных исключений, не должно применяться к соответствующим контрактным отношениям. Вместе с тем, полагаем, что установление в ст. 277 Кодекса о недрах специальных темпоральных норм не исключает применение темпоральных норм, предусмотренных ГК, к гражданским отношениям по контрактам, не урегулированным Кодексом о недрах.

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К.М. Ильясова, Г.Т. Казиева, Г.А. Алиханова

Жер қойнауын пайдалануға бұрын жасалған келісімшарттарға темпоральдық нормаларды қолданудың кейбір өзекті мәселелері

Мақала Қазақстан Республикасында бұрын жасалған жер қойнауын пайдалануға арналған келісімшарттарға жалпы және арнайы уақытша нормаларды қолданудың өзекті мәселелеріне арналған. Онда мұндай келісімшарттардан бір ғана емес, көптеген және әртүрлі құқықтық қатынастар, соның ішінде «Жер қойнауы және жер қойнауын пайдалану туралы» 27.12.2017 жылғы ҚР Кодексі күшіне енгеннен кейін пайда болуы мүмкін және туындауы мүмкін екендігі негізделген. Бұл кодекс оның күшіне енгеннен кейін туындайтын бұрын жасалған келісімшарттардан қатынастарға оның нормаларын қолдану туралы арнайы ережелерді көздейді. Мұндай қатынастарға қолданылатын нормалардың тізімі 277-баптың 3-тармағында көрсетілген. Мақалада оларды қолдану кезінде бұрын жасалған келісімшарттардың тұрақтандырылған шарттарын және тұрақтылық кепілдіктері қолданылмайтын ерекшеліктерді ескеру қажет екендігі негізделген. Сондай-ақ, жер қойнауы туралы Кодексте көзделген темпоральдық нормалардың басымдығы ҚР Азаматтық кодексінде көзделген темпоральдық нормалардың бұрын жасалған келісімшарттарға, атап айтқанда, Кодексте реттелмеген қатынастарда қолданылуын жоққа шығармайтындығы зерделенген. Сонымен қатар, бұрын жасалған келісімшарттар үшін түйткілді мәселе келісімшарттар жасалған кезде қолданыста болған заңнаманы тұрақтандыру мәселесі екендігінде.

Кілт сөздер: жалпы және арнайы темпоральдық нормалар, бұрын жасалған жер қойнауын пайдалануға арналған келісімшарттарға заңнамадағы өзгерістерді қолдану, жер қойнауын пайдалануға арналған келісімшарттардың тұрақтылығына кепілдік беру.

K.M. Ilyassova, G.T. Kaziyeva, G.A. Alikhanova

Some topical issues of applying temporal norms to previously concluded subsurface use contracts

The article is devoted to topical issues of the application of general and special temporal norms to previously concluded contracts for subsurface use in the Republic of Kazakhstan. The article substantiates that not one, but numerous and very different legal relations have arisen from such contracts and may arise in different periods, including after the entry into force of the Code of the Republic of Kazakhstan dated December 27, 2017 “About the subsoil and subsoil use”. This Code provides for special provisions on the application of its rules to relations from previously concluded contracts that arise after its entry into force. The list of norms applicable to such relations is contained in paragraph 3 of Article 277. The article substantiates that when applying them, it is necessary to take into account the stabilized conditions of previously concluded contracts and exceptions to which stability guarantees do not apply. The article also substantiates that the priority of the temporal norms provided for in the Subsoil Code does not exclude the application to previously concluded contracts of the temporal norms provided for in the Civil Code of the Republic of Kazakhstan, in particular, to those relations that are not regulated by the Code. It is also proved that a problematic issue for previously concluded contracts is the issue of stabilization of legislation in force at the time of the conclusion of contracts.

Keywords: general and special temporal norms, application of changes in legislation to previously concluded contracts for subsurface use, guarantees of stability of contracts for subsurface use.

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Правовое регулирование вопросов использования товарного знака в Республике Казахстан

К рассмотрению предлагаются способы использования товарного знака, предусмотренные различными нормативно-правовыми актами, раскрывается значение каждого из таких способов. На основе анализа правовой базы иностранных государств описаны способы использования товарных знаков, не предусмотренные законодательством Республики Казахстан. При этом способы использования товарных знаков исследованы различными субъектами права, играющими разные процессуальные роли в указанных правоотношениях, и выявлены противоречия в нормативных актах по данной проблематике. Также определена взаимосвязь между понятиями использования товарного знака и введением его в оборот. Обоснована необходимость гармонизации норм национального и регионального законодательства по вопросу использования знаков, а также уточнения положений, закрепленных в кодексах и законах. Установлено, что не все виды использования товарного знака могут являться нарушением исключительных прав. Приведены возможные способы использования товарных знаков, а также представлены предложения по изменению национального законодательства Республики Казахстан с целью исключения разночтений и упрощение его правоприменения на практике. В статье подробно обсуждаются проблемы в правоприменения, включая сложности, связанные с доказательством использования товарного знака. Предложены направления совершенствования законодательства, направленные на усиление правовой защиты товарных знаков и повышение эффективности их коммерческого использования в Республике Казахстан. Исследование показало, что действующее законодательство Казахстана требует доработки для устранения терминологических противоречий и пробелов. Предложены меры по унификации понятийного аппарата, расширению перечня способов использования товарных знаков и усилению их правовой защиты. Результаты работы могут быть использованы для совершенствования нормативно-правовой базы и судебной практики в сфере интеллектуальной собственности.

Ключевые слова: товарный знак, использование, интеллектуальная собственность, исключительные права, введение в оборот, правонарушения при использовании товарного знака, субъекты товарного знака.

Введение

В юридической научной литературе имеется достаточное количество источников, описывающих незаконное использование товарных знаков, ответственность за такие действия, а также способы предупреждения и борьбы с данным негативным явлением. Однако сам термин «использование товарного знака», несмотря на его кажущуюся очевидность и подробное законодательное регулирование, практически не обсуждается научным сообществом. Тем не менее, широкую дискуссию вызывает термин «товарный знак» в контексте правоприменительной практики. Правовая неопределенность вышеуказанного термина порождает неоднозначность его толкования, что, в свою очередь, приводит к затруднениям при рассмотрении гражданско-правовых споров в сфере защиты интеллектуальной собственности. В связи с чем, актуальным представляется исследование вопросов сущности и содержания термина «товарный знак», определение условных границ и пределов его использования.

Для правильного понимания вопросов защиты прав на товарные знаки, прежде всего, следует разобрать способы их использования, рассмотреть субъектов, применяющих товарные знаки, а также установить границы такого использования. В этой связи, в своей статье «Что такое использование товарных знаков?» патентный поверенный Ю.А. Болотов отмечает, что вопрос об установлении, что

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такое использование товарного знака, является более сложным, чем кажется при первом рассмотрении гражданско-правовых законодательных актов, в том числе в сфере правового регулирования товарных знаков в Республике Казахстан (далее — РК) [1; 44].

Актуальность рассматриваемой темы обусловлена ее значением для правоприменительной практики, в том числе для правильного и единообразного толкования законодательства судебными органами. В связи с этим, термин нуждается в систематизации, что предполагает необходимость теоретического и практического осмысления всех возможных способов использования товарных знаков в целях дальнейшего совершенствования законодательства.

Методы и материалы

При подготовке данного исследования применялись как общенаучные, так и частнонаучные методы, такие как анализ, синтез и индукция, способствующие раскрытию сущностных составляющих рассматриваемой проблематики, с учетом национального и регионального законодательства, регулирующего использование товарного знака. Осуществлен системный сравнительно-сопоставительный анализ и обобщение научных достижений в исследуемой сфере. Это, в свою очередь, предоставляет возможность, с одной стороны, — выявить противоречия и недоработки действующего законодательства, с другой, — определить направления и перспективы совершенствования законодательных актов.

В качестве материалов исследования используются нормативно-правовые акты, существующая правоприменительная практика, научные труды казахстанских и зарубежных авторов.

Результаты

В целом проведённый анализ привёл к следующим результатам.

1. Способы использования товарных знаков не сведены в одну конкретную статью какого-либо единого нормативно-правового акта. Они «разбросаны» по различным кодексам и законам.

2. Не вполне однозначно определено, что введение товарного знака в оборот — это и есть использование товарного знака. Куда проще было бы объединить эти два понятия.

3. Понятие «введение товарного знака в оборот» является более широким, чем «введение товара в оборот».

4. Различные субъекты правоотношений могут использовать товарный знак по-разному.

5. Не ко всем способам использования товарного знака применено условие о том, что тот или иной способ должен относиться к товарам и услугам, для которых товарный знак охраняется.

6. Имеет место применение различной терминологии к одним и тем же однопорядковым действиям. Например, передача права — уступка права, размещение знака — применение знака.

7. Некоторые способы можно было бы объединить в один родовой способ. Например, «реклама-вывеска» можно объединить в одну лишь «рекламу», а «печатная продукция-печатное издание-официальный бланк-деловая документация» можно было бы объединить в «печатную продукцию».

Обсуждение

В качестве товарного знака может использоваться любая маркировка, зарегистрированная как товарный знак, позволяющая отличать товары и услуги, реализуемые и предоставляемые одними лицами, от аналогичных товаров и услуг, реализуемых другими лицами.

Институт товарного знака, использования товарного знака в своё время исследовался такими учеными как Т.Е. Каудыров, С.Д. Кульжамбекова [2; 261], И.А. Близнец, Э.П. Гаврилов, О.В. Добрынин [3; 3], Н.Б. Мынбаева, А.Р. Медьяева [4], М. Чайков [5; 56], Я. Солодникова [6; 21] и др.

В соответствии с гражданским законодательством РК правообладателю предоставляется исключительное право пользования и распоряжения товарным знаком как объектом интеллектуальной собственности (пункт 1 статьи 1025 ГК РК) [7]. Более уточнённая норма содержится в Законе Республики Казахстан от 26 июля 1999 года N 456 «О товарных знаках, знаках обслуживания, географических указаниях и наименованиях мест происхождения товаров» (далее — Закон о товарных знаках). Законодатель конкретизирует и устанавливает пределы распространения исключительного права пользования и распоряжения владельца товарного знака, ограничиваясь товарами и услугами, указанными в свидетельстве (пункт 4 статьи 4) [8]. Похожая норма содержится в пункте 1 статьи 1 Закон о товарных знаках.

На уровне регионального законодательства, а именно в рамках Договора о Евразийском экономическом союзе, предусматривается регулирование вопросов, связанных с использованием товарного знака. Так, согласно статье 12 Приложения 26 к Договору о ЕАЭС, владелец товарного знака обладает исключительным правом на его использование в соответствии с нормами законодательства страны-члена, распоряжение этим правом, а также возможность запрещать третьим лицам применять товарный знак или схожие до степени смешения обозначения в отношении товаров и (или) услуг, относящихся к одной категории [9].

Необходимо отметить, что понятие «использование» имеет неопределенное толкование. Так С.Д. Кульжамбекова указывает на неоднозначность термина «использование товарного знака», обращая внимание на различную трактовку в законодательствах разных стран: от реального использования (изготовление, применение на товар и т.п.) до номинального (в рекламе, печатных изданиях) [2; 261].

Законодательство РК содержит в себе противоречия не только между различными нормативно-правовыми актами, но и в пределах одного такого акта.

Правовая природа

Прежде всего необходимо определить правовую природу термина «использование товарного знака». Согласно действующему законодательству, под использованием подразумевается введение товарного знака в оборот в любой форме: продажа, ввоз, изготовление и т.п. (пункт 2 статьи 1025 ГК РК) [7]. Аналогичная конструкция применяется законодателем в Законе о товарных знаках (подпункт 9) статьи 1). Из чего следует вывод, что как и в общей, так и в специальной норме, понятие «использование товарного знака» раскрывается через термин «введение в оборот».

Между тем, разграничивать необходимо понятия «введение товара в оборот» и «введение в оборот товарного знака», поскольку сфера применения и характер действий вышеуказанных понятий различаются между собой. Действующее законодательство не содержит нормы, позволяющей определить конкретный момент введения того или иного товара в гражданско-правовой оборот. Тогда как в научной литературе этот термин приводится, как уже само собой разумеющийся.

Международная судебная практика демонстрирует различия в толковании и применении вышеуказанных терминов. Так, одним из примеров является судебное заключение по спору между «Peak Holding AB» и «Axolin-Elinor AB» [10]. Суд принял решение, согласно которому не могут считаться введенными в оборот товары с соответствующим товарным знаком, фактическая реализация которых не была осуществлена владельцем товарного знака. При этом, суд отметил, что данное требование касается и тех владельцев товарных знаков, которые осуществили ввоз такого товара в ту или иную страну и предложили данный товар потребителю. Таким образом, суд установил момент введения товара в оборот — после фактической продажи товара, указывая, что иные действия, предшествующие фактической продаже (*реклама, предложение, ввоз, поставка и т.п.*) не могут являться введением товара в гражданский оборот.

В этой связи необходимо отметить, что в отличие от понятия «введение товара в оборот», термин «введение в оборот товарного знака» имеет более широкое толкование *(с момента импорта, рекламы и т.п.)*.

Таким образом, понятия «использование» и «введение» товарного знака можно отнести к категории равнозначных, однако указанные понятия кардинально отличаются от понятия «введения товара в оборот», являясь более широкими и объёмными.

Субъекты

Владелец товарного знака.

Исследование субъектов, использующих товарный знак, играет важную роль в определении сущности и правовой природы понятия «использование товарного знака». Одним из основных субъектов является владелец товарного знака. Понятие владельца товарного знака (правообладателя) содержится в статье 1 Закона о товарных знаках. Для владельцев товарного знака устанавливается обязанность использования данного товарного знака *(пункт 1 статьи 19)*. Примечательно, что в соответствии с пунктом 4 статьи 19 Закона о товарных знаках, одновременно с владельцем товарного знака обязанность по использованию товарного знака возлагается на лицо, которому такое право передано или предоставлено на основании договора уступки *(пункт 1 статьи 21)* или лицензионного договора *(пункт 1 статьи 21)* [8]. В случае передачи исключительного права на товарный знак по гражданско-правовому договору уступки права требования происходит смена владельца товарного знака. Соответственно, у первого владельца прекратится обязанность использовать товарный знак и

доказывать такое использование. Вследствие указанного, упоминание пункта 1 статьи 21 Закона о товарных знаках в статьи 19 не имеет смысла.

Лицо, нарушившее исключительное право на товарный знак.

Исключительное право на товарный знак охраняется специальным Законом о товарных знаках *(пункт 1 статьи 43)*, отдельными нормами ГК РК *(пункт 1 статьи 1032)* и иными нормативными правовыми актами.

За незаконное использование чужого товарного знака предусматривается административная ответственность *(статья 158 КоАП РК)*.

Таким образом, в числе субъектов, помимо владельцев товарного знака и иных субъектов гражданского оборота, появляется лицо, нарушившее исключительное право на товарный знак — правонарушитель.

Закон о товарных знаках дает определение нарушению исключительного права на товарный знак, устанавливая его характерные признаки. К ним, в первую очередь, относится отсутствие согласия владельца на введение в оборот: 1) самого товарного знака; 2) обозначений, сходных с товарным знаком до степени смешения. В случае общеизвестного товарного знака такое использование запрещено для любых товаров и услуг [8]. В данном случае необходимо отметить, что правонарушитель, хотя и вводит товарный знак в оборот или использует товарный знак, поскольку не является владельцем товарного знака, не подлежит исполнению обязанности, установленной в пункте 4 статьи 19 Закон «О товарных знаках».

Еще одним признаком правонарушения является использование товарного знака его в средствах массовой информации без согласия владельца. Прямой нормы, разрешающей использовать товарный знак в СМИ, в действующем законодательстве не содержится. Однако, исходя из принципа свободы предпринимательской деятельности и отсутствия запретов со стороны государства, право владельца на использование товарного знака в СМИ считается подразумеваемым. Примечательно, что товарный знак может быть использован третьими лицами в интернет-ресурсах, и, соответственно, в онлайн-платформах, которые, согласно Закону РК «Об онлайн-платформах и онлайн-рекламе», также являются интернет-ресурсами [11]. То есть, использование товарного знака в маркетплейсах также может трактоваться как «использование товарного знака».

Субъекты договорных отношений

Гражданским законодательством предусмотрена возможность передачи исключительных прав на товарный знак третьим лицам путем заключения лицензионного договора [7]. Субъектом правоотношений в сфере использования товарного знака в данном случае является лицензиат в контексте договора комплексной предпринимательской лицензии либо лицензионного договора в пределах, установленных соответствующим соглашением, нормами закона.

В международном праве существуют иные подходы к регулированию использования товарного знака. Так, не считается нарушением исключительного права введение товарного знака в оборот на территории одной из стран ЕАЭС иными лицами, если данный товар был введен в оборот на территории любого из государств-членов ЕАЭС самим владельцем товарного знака или с его согласия. сТаким образом, потребители товаров, обозначенных товарным знаком, также могут выступать в роли пользователей товарного знака.

При этом не следует утверждать, что потребители товаров помимо вышеуказанных прав могут использовать аналогичные с владельцем права на товарный знак, предусмотренные пунктом 2 статьи 1025 ГК РК, а также пунктом 9 статьи 1 Закона о товарных знаках. В частности, не допустимо, что после покупки товара с товарным знаком у официального дилера, потребитель товара может заключить с третьими лицами лицензионный договор с последующей передай исключительных прав на товарный знак. Также сложно предположить, что после приобретения законно введённого в оборот товара с товарным знаком у потребителя возникает право на изготовление новых товаров с этим же товарным знаком. Конечно, потребитель может совершать все эти действия, однако, в таком случае, они станут нарушать права владельца товарного знака. Следовательно, только часть способов «использования товарного знака», предусмотренная в пункте 2 статьи 1025 ГК РК и в пункте 9 статьи 1 Закона о товарных знаках, применима для потребителя.

Основываясь на вышеизложенном, можно выделить следующую группу субъектов в сфере отношений по использованию товарного знака:

1) владелец товарного знака;
2) правонарушитель;

3) лицензиат;
4) потребитель товаров с товарным знаком.

Способы использования товарного знака

Анализ действующего законодательства и обобщение способов использования товарного знака, которые описаны в статье 1025 ГК РК, а также статьях 1, 19, 43 Закона товарных знаках, позволили систематизировать способы использования товарного знака следующим образом.

Таблица 1

Распределение способов использования товарного знака согласно законодательства Республики Казахстан

Статья 1025 ГК РК	Статья 1 Закона о товарных знаках	Статья 19 Закона о товарных знаках	Статья 43 Закона о товарных знаках
изготовление, применение, ввоз, хранение, предложение к продаже, продажа товарного знака или товара, обозначенного этим знаком, использование в вывесках, рекламе, печатной продукции или иной деловой документации	изготовление, применение, ввоз, хранение, предложение к продаже, продажа товара с обозначением товарного знака, применение в вывесках, рекламе, печатной продукции	применение товарного знака на товарах, для которых он зарегистрирован, и (или) их упаковке владельцем товарного знака или лицом, которому такое право передано или предоставлено на основании договора в соответствии с пунктами 1 и 2 статьи 21 Закона изготовление, ввоз, хранение, предложение к продаже, продажа товара с обозначением товарного знака, применение его в рекламе, вывесках, печатных изданиях, на официальных бланках,	рекламирование товарного знака в масс-медиа

Многие из данных способов использования, приведённых в различных источниках, повторяют друг друга. Однако их систематизация позволяет выделить все эти способы в отдельный список.

Нами предпринята *попытка представить собственное авторское видение следующих способов использования товарного знака*, представленное ниже.

Способы использования товарных знаков

1. размещение на товаре товарных знаков, в отношении которых он охраняется *(статья 1 Закона о товарных знаках)*;

2. размещение товарного знака на упаковках товаров, в отношении которых он охраняется *(статья 1 Закона о товарных знаках)*;

3. применение товарного знака на товарах, для которых он зарегистрирован *(статья 19 Закона о товарных знаках)*;

4. применение на упаковках товара товарных знаков, для которых он зарегистрирован *(статья 19 Закона о товарных знаках)*;

5. изготовление товара с обозначением товарного знака *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

6. ввоз товара с обозначением товарного знака *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

7. хранение товара с обозначением товарного знака *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

8. предложение к продаже товара с обозначением товарного знака *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

9. продажа товара, обозначенного товарным знаком *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

10. применение/использование товарного знака в вывесках *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

11. применение/использование товарного знака в рекламе *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;

12. применение/использование товарного знака в печатной продукции *(статья 1 Закона о товарных знаках; статья 1025 ГК РК)*;

13. применение товарного знака в печатных изданиях *(статья 19 Закона о товарных знаках)*;
14. применение товарного знака на официальных бланках *(статья 19 Закона о товарных знаках)*;
15. применение/использование товарного знака в деловой документации *(статьи 1, 19 Закона о товарных знаках; статья 1025 ГК РК)*;
16. изготовление товарного знака *(статья 1025 ГК РК)*;
17. применение товарного знака *(статья 1025 ГК РК)*;
18. ввоз товарного знака *(статья 1025 ГК РК)*;
19. хранение товарного знака *(статья 1025 ГК РК)*;
20. предложение к продаже товарного знака *(статья 1025 ГК РК)*;
21. продажа товарного знака *(статья 1025 ГК РК)*;
22. иное введение товара с обозначением товарного знака в оборот *(статья 1 Закона о товарных знаках);*
23. иное введение товарного знака в оборот *(статьи 1, 19 Закона о товарных знаках)*.

Список способов использования товарных знаков получился достаточно длинным и даже не исчерпывающим, учитывая, что он заканчивается такими способами, как «иное введение в оборот».

Тем не менее, следует обратить внимание на каждый из данных способов, расшифровать их, а также унифицировать таким образом, чтобы они не взаимоисключали друг друга и соответствовали юридической технике.

Размещение или применение товарного знака на товарах и их упаковке, вероятнее всего, следует рассматривать, как синонимичные понятия. Так, согласно словарю С.И. Ожегова слово «разместить» означает поместить что-либо и куда-либо, найти место для чего-либо. В то же время слово «применить» означает осуществить на практике, привести в исполнение [12; 875].

Согласно словарю Д.Н. Ушакова, термин «изготовить» означает произвести что-либо [13; 375]. То есть, в зависимости от степени готовности товара на нём можно либо разместить и применить товарный знак, если товар уже полностью изготовлен и имеет завершённый товарный вид, либо можно заменить на товарный знак в процессе производства. К примеру, если казахстанский дистрибьютор моторного масла с товарным знаком MOBIL наносит на готовую продукцию дополнительную наклейку со своим товарным знаком KULAN OIL, то это является размещением или применением товарного знака на уже готовом товаре (рис. 1):

Рисунок 1. Пример размещения товарного знака на уже готовом товаре.
Примечание: составлено на основе источника [14]

Если же боттлер компании «The Coca-Cola Company» в процессе производства газированного напитка изготавливает бутылки для этого напитка, то в ещё незавершённом товаре уже используется объёмный товарный знак в виде этой бутылки (рис. 2):

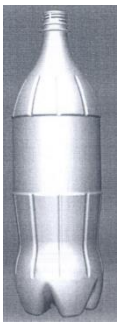

Рисунок 2. Пример объемного товарного знака
Примечание: составлено на основе источника [15]

Необходимо отметить, что под размещением и применением товарного знака понимаются действия, совершаемые в отношении уже готового товара. В данном контексте для расшифровки термина следует обратиться к словарю Ушакова, согласно которому слово «применить» означает «дать употребление чему-либо», то есть использовать. В качестве примера можно привести любого водителя, который при вождении автомобиля с товарным знаком, применяет данный вид товара.

Ввоз товара с обозначением товарного знака, согласно определению из пункта 48 статьи 3 Кодекса РК «О таможенном регулировании» означает действия, связанные с пересечением таможенной границы, в результате которых товары были доставлены на таможенную территорию любым возможным способом [16].

Примечательно, что вывоз товара с товарным знаком не рассматривается законодателем в качестве способа использования товарного знака. Такой подход представляется нелогичным, поскольку если правообладатель попытался воспрепятствовать вывозу товаров в другую страну по любой причине, то ему бы это не удалось из-за существующего пробела в законодательстве.

Под хранением товара с товарным знаком по смыслу главы 39 ГК РК понимается помещение таких товаров в какое-либо место с целью обеспечения сохранности (предотвращения несохранности) такого товара.

Предложение товара с товарным знаком к продаже, согласно статье 395 ГК РК, означает оферту — предложение о заключении договора купли-продажи на определённых условиях с выражением намерения лица, сделавшего предложение, считать себя связанным обязательством в случае его принятия.

Следующую объединённую группу способов использования составляют размещение товарного знака в рекламе, а также в вывесках. В соответствии с подпунктом 1-3) статьи 1 Закона РК «О рекламе», реклама определяется как информация, распространяемая или размещаемая в любой форме и с использованием любых средств, адресованная неопределенному кругу лиц. Её целью является создание или поддержание интереса к физическому или юридическому лицу, их товарам, товарным знакам, работам или услугам, а также содействие их продвижению и реализации [17].

В свою очередь, согласно подпункту 7-2) статьи 1 Закона РК «О рекламе» от 19 декабря 2003 года № 508, вывеска определяется как информация, содержащая наименование и род деятельности физических или юридических лиц, включая средства их индивидуализации. Она размещается у входа в здание, по числу входов, на ограждениях территории, крышах, фасадах зданий, пристроек или временных сооружений, где физические или юридические лица фактически находятся, реализуют товары, выполняют работы или оказывают услуги [17]. Таким образом, вывеска — это и есть разновидность рекламы, и, соответственно, два данных понятия можно было бы объединить в одно.

Можно также выделить особую группу способов использования знака в рамках отношений в процессе размещения рекламы. К таким способам относятся использование товарного знака на печатной продукции; на официальных бланках; в деловой документации и т.п.

В данном случае необходимо обратить внимание на следующие факты. Термин «использование» в словосочетаниях «использование в печатной продукции», «использование в деловой документации», приведён в статье 1025 ГК РК, и по своей сути является тавтологией, так как пункт 2 статьи 1025 ГК РК описывает именно способы использования товарного знака. В таком случае формулировка «использование товарного знака» отождествляется с «использованием товарного знака в печатной продукции».

Кроме того, необходимо разобраться, что именно понимается под терминами «печатная продукция», «печатное издание», «официальный бланк», и «деловая документация».

Согласно определению, приведенному в журнале «Реклама и полиграфия», под печатной продукцией понимается совокупность всей издательской продукции и печатных изделий полиграфии, включающая не только книги, брошюры, журналы, газеты, но и визитные карточки, формуляры, билеты, этикетки, упаковки, тары и прочее [18; 47]. При этом согласно подпункту 11) статьи 1 Закона РК «О средствах массовой информации», периодическое издание представляет собой такие формы печатной продукции, как газета, журнал, альманах, бюллетень, а также их приложения [19]. То есть, применение товарного знака в печатных изданиях — это и есть применение этого товарного знака в печатной продукции.

Согласно тому же источнику, под деловой документацией понимаются фирменные бланки, конверты, визитные и аналогичные материалы. Следовательно, понятие «деловая документация» также входит в более широкое понятие «печатная продукция».

Адекватного определения термину «официальный бланк» законодательство РК не содержит. Однако, если под этим термином имелись в виду фирменные бланки юридического лица, то, по сути, они также являются печатной продукцией, и, соответственно, их можно было бы объединить с данным понятием, не выводя в отдельное.

Таким образом, термины «печатная продукция», «периодическое издание», «деловая документация» и «официальный бланк» можно было бы объединить под одним родовым понятием — «печатная продукция».

Отдельно стоящим и относительно новым способом использования является применение товарного знака в доменном имени. Примечательно, что данный способ указан только в статье 19 Закона «О товарных знаках». Это означает, что использование товарного знака происходит только тогда, когда сам владелец товарного знака применяет его в доменном имени. Из этого следует, что если любое третье лицо применяет товарный знак в доменном имени, то это уже не является использованием. Также положение статьи 19 вышеназванного закона не уточняет, в какой именно форме товарный знак может быть использован в домене: в том виде, в котором он зарегистрирован, включая доменное имя первого уровня (kz, com.kz, қаз) или только включая доменное имя первого уровня. Очевидно, что никакие другие, кроме словесных товарных знаков, не могут быть использованы в доменных именах, однако это в Законе не уточняется.

Ещё одной небольшой группой способов использования является передача права на товарный знак (статья 19 Закона «О товарных знаках») и заключение лицензионного договора на использование товарного знака (статья 1028 ГК РК). В соответствии с пунктом 1 статьи 21 Закона «О товарных знаках», исключительное право на товарный знак может быть передано другому лицу полностью или частично в отношении определённых товаров или услуг путем заключения договора уступки. Соответственно, законодатель под передачей права понимает заключение договора уступки прав на товарный знак. По утверждению Ю.А. Болотова, данный способ использования товарного знака может быть осуществлён только его владельцем, и может означать только то, что при уступке права начинается новый срок «неиспользования товарного знака» [1]. При таком положении дел достаточно нелогично уступку права называть использованием товарного знака, так как при уступке владелец не использует товарный знак, а осуществляет своё право на распоряжение знаком.

Необходимо отметить, что действующие нормы Закона о товарных знаках различают такие действия как демонстрация товаров на выставках в качестве способа использования товарного знака *(статья 19)*. Данный факт указывает на исключительность владельца использовать товарный знак вышеуказанным способом, поскольку устанавливается ограничение для других лиц демонстрировать товар на выставках.

Вопросы возникают и отношении других способов использования товарного знака, как изготовление, применение, ввоз, хранение, предложение к продаже и продажа *(статья 1025 ГК РК)*. Товарный знак всё же является нематериальным активом, и достаточно сложно, если вообще возможно, придумать, как его можно изготавливать, хранить, ввозить и т.д. В свое время Кульжамбекова С.Д. писала, что в эту статью ГК РК планируется внести изменения, так как возникают противоречия в трактовке [2]. С тех пор прошло довольно много времени, однако и на сегодняшний день, соответствующие изменения в законодательстве так и не внесены.

И наконец, последнюю группу способов использования составляют иное введение товара с обозначением товарного знака в оборот и иное введение товарного знака в оборот. Под этими способами

использования понимаются любые иные сделки, как предусмотренные, так и напрямую не предусмотренные законодательством РК, которые можно совершить с товарами. Например, это может быть дарение товара, сдача товара в аренду, залог, розыгрыш товара, а также иные, не противоречащие закону, действия. Что касается иного введения товарного знака в оборот, то так как это понятие является родовым, более широким, чем введение товара в оборот, то в него могут включаться любые действия, и даже те, которые на сегодняшний день ещё не известны большинству потребителей.

Заключение

На основе системного правового анализа избранной научной тематики научного исследования можно сформулировать следующие основные выводы:

1. Является актуальной систематизация всех способов использования товарного знака, унификация понятийного аппарата, исключение тавтологий, разночтений и применения двойного смысла, объединение способов использования в родовые понятия, применение требований о соответствии каждого из способов к товарам и услугам, для которых товарный знак охраняется. Выявлена необходимость внедрения такого способа использования, как использование в доменном имени, в общий перечень способов использования, чтобы не только владелец знака мог таким образом использовать товарный знак. Определена возможность дополнения способов использования таким способом, как «вывоз (экспорт) товаров».

2. С целью обеспечения единообразного толкования положений Закона «О товарных знаках» и Гражданского Кодекса РК, необходимо исключение неработающих способов использования из положений ГК РК.

3. Считаем необходимым провести дальнейшую проработку вопроса унификации и совершенствования законодательств с целью поиска баланса интересов всех задействованных субъектов. Для этого необходимо провести ряд изменений, и предельно понятно распределить, какой субъект и на какой способ использования может претендовать.

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Қазақстан Республикасында тауар таңбасын пайдалану мәселелерін құқықтық реттеу

Талқылауға әртүрлі нормативтік-құқықтық актілерде көзделген тауар таңбасын пайдалану тәсілдері ұсынылған, сондай-ақ осындай әрбір пайдалану тәсілінің мәні ашылған. Шетел мемлекеттерінің құқықтық базасына жүргізілген талдау негізінде Қазақстан Республикасының заңнамасында көзделмеген тауар таңбасын пайдалану тәсілдері ашып көрсетілді. Бұл ретте тауар таңбасын пайдалану тәсілдері аталған құқықтық қатынастарда әртүрлі процестік рөл атқаратын құқық субъектілері тарапынан зерттеліп, осы мәселеге қатысты нормативтік актілер арасындағы айқын қайшылықтар анықталды. Сонымен қатар, тауар таңбасын пайдалану ұғымы мен оны айналымға енгізу арасындағы өзара байланыс айқындалды. Ұлттық және өңірлік заңнамалардағы тауар таңбасын пайдалану мәселелері бойынша нормаларды үйлестіру, кодекстер мен заңдарда бейнеленетін көзқарастарды нақтылау қажеттілігі негізделді. Тауар таңбасын пайдаланудың барлық түрлері ерекше құқықтарды бұзу болып табыла бермейтіні анықталды. Сондай-ақ, тауар таңбасын пайдаланудың ықтимал тәсілдері келтіріліп, Қазақстан Республикасының ұлттық заңнамасын біріздендіру және оны практикада қолдануды жеңілдету мақсатында өзгерістер енгізу бойынша ұсыныстар берілді. Мақалада құқықты қолдану саласындағы мәселелер, соның ішінде тауар таңбасын пайдалануды дәлелдеу кезіндегі қиындықтар кеңінен талқыланған. Тауар таңбаларын құқықтық қорғауды күшейту және оларды Қазақстан Республикасында коммерциялық пайдаланудың тиімділігін арттыруға бағытталған заңнаманы жетілдіру бағыттары ұсынылған. Зерттеу нәтижесінде Қазақстан Республикасының қолданыстағы заңнамасы терминологиялық қайшылықтар мен олқылықтарды жою үшін жетілдіруді талап ететіні анықталды. Тауар таңбасын пайдалану тәсілдерінің тізбесін кеңейту, ұғымдық аппаратты біріздендіру және құқықтық қорғауды күшейту бойынша шаралар ұсынылды. Жұмыстың нәтижелері зияткерлік меншік саласындағы нормативтік-құқықтық базаны және сот практикасын жетілдіру үшін пайдаланылуы мүмкін.

Кілт сөздер: тауар таңбасы, пайдалану, зияткерлік меншік, ерекше құқықтар, айналымға енгізу, тауар таңбасын пайдаланудағы құқықбұзушылықтар, тауар таңбасының субъектілері.

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Legal regulation of the issues of trademark use in the Republic of Kazakhstan

The article discusses various methods of using trademarks as provided by different regulatory legal acts and explains the significance of each method of use. Based on an analysis of the legal frameworks of foreign countries, trademark usage methods not covered by the legislation of the Republic of Kazakhstan are revealed. The ways trademarks are used are examined from the perspective of different legal entities playing various procedural roles in these legal relationships, and significant contradictions in the relevant legal acts are identified. Furthermore, the relationship between the concepts of trademark use and its introduction into commercial circulation is defined. The need for harmonization of national and regional legislation regarding trademark use, as well as clarification of positions reflected in codes and laws, is substantiated. It is established that not all forms of trademark use constitute a violation of exclusive rights. Finally, potential ways of using trademarks are presented, along with proposals for amending the national legislation of the Republic of Kazakhstan to eliminate inconsistencies and simplify its practical legal application. The article extensively discusses issues of law enforcement, including challenges related to proving the use of a trademark. Suggestions are made for improving legislation aimed at strengthening the legal protection of trademarks and enhancing their commercial utilization in Kazakhstan. The research shows that Kazakhstan's current legislation requires revision to address terminological contradictions and legal gaps. Measures are proposed for unifying

the conceptual framework, expanding the list of trademark usage methods, and strengthening their legal protection. The results of this study can be used to improve the regulatory legal framework and judicial practice in the field of intellectual property.

Keywords: trademark, usage, intellectual property, exclusive rights, introduction into circulation, trademark usage violations, trademark subjects.

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Legal regulation of smart contracts in Switzerland and the United Kingdom: a comparative legal analysis

This paper presents an analysis of the legal regulation of smart contracts in Switzerland and the United Kingdom — two leading countries in the field of digital technologies. The study examines the key approaches to the formation and execution of smart contracts, their place within the law and legislation, as well as their influence on the development of IT technologies. The central issue in regulating smart contract-related relations lies in the ambiguity of their legal nature and the lack of regulatory provisions in legislation, particularly in the Civil Code of the Republic of Kazakhstan. Special attention is given to legislative initiatives in both countries. The research shows that Switzerland has successfully integrated blockchain technologies into its legal system through the adoption of specialized legal frameworks. In contrast, the United Kingdom emphasizes the adaptation of common law to the challenges of the emerging digital economy. The article compares the two countries' approaches in the definition and application of smart contracts, their legal status, taxation issues and data protection. In Switzerland, this is the Law on Distributed Registries (DLT Act), and in the UK, the recommendations of the Law Commission of England and Wales. The paper also focuses on security issues (cyber threats and data protection), potential risks and the cross-border use of smart contracts. A comparative analysis of both jurisdictions' approaches is presented, along with their potential for further development, including participation in global standardization initiatives. In conclusion, the authors underscore the necessity of establishing international legal standards for the effective and secure use of smart contracts.

Keywords: smart contracts, blockchain, legislation, legal regulation, Switzerland, the United Kingdom, digital economy, cross-border transactions, judicial practice, Anglo-Saxon legal system, continental legal system.

Introduction

The United Kingdom and Switzerland are actively developing countries in terms of scientific and economic innovation, with a high level of advancement in digital technologies. Both states are witnessing significant progress in areas such as artificial intelligence, fintech, cybersecurity, 5G and smart cities. In Switzerland, the "Digital Switzerland" program is being implemented, aimed at fostering the digital economy and supporting technological startups [1]. In the United Kingdom, a similar initiative is being pursued through the "UK Digital Strategy" [2].

Smart contracts are an essential component of the digital economy, which ensure transparency and automation of transactions. While the legal status of smart contracts in the CIS countries raises numerous questions, European jurisdictions have made notable progress in this area. The United Kingdom and Switzerland, as leading hubs of financial technology, demonstrate differing approaches to legal regulation. These two countries have different legal systems, which is certainly important in the context of smart contracts.

In order to improve domestic legislation and for the development of Kazakh legal science, we believe that it will be useful to learn about the legal regulation of smart contracts in these two leading jurisdictions, about their features and differences in this area.

The purpose of this article is to conduct a comparative legal analysis of the legal regulation of smart contracts in the United Kingdom and Switzerland, to explore their features and development prospects. After finishing one part of the article, the authors used methods of comparative legal analysis, the study of judicial practice and regulations. This article may also be of interest due to the fact that the United Kingdom follows the Anglo-Saxon (common law) legal tradition, while Switzerland adheres to the Romano-Germanic (continental) legal system.

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Methods and materials

The sources for this article include official documents such as the reports of the Law Commission of the United Kingdom (2019), the Swiss Blockchain Act (2021), in addition, scientific publications and data from international organizations were used. The research used methods of comparative analysis, examination of case law, normative legal framework and doctrinal sources. The primary materials include legislative acts, scientific papers on topic of blockchain and smart contracts, as well as reports from governmental commissions.

The comparative analysis was conducted with due consideration of the specific features of the legal systems of Switzerland and the United Kingdom. In order to assess the prospects for the application of smart contracts, a systemic approach was adopted, which involves the analysis of the interaction between legal and technical aspects.

The principal research methods of the article are methods of comparative legal analysis, synthesis, deduction, induction and systematization. Since the topic of smart contracts affects many areas and industries, general scientific, private scientific and private legal methods were used in this study.

Results

Smart contracts represent a form of software code that is executed automatically upon the occurrence of certain predefined conditions. This unique type of agreement is based on distributed ledger technology (DLT), which ensures immutability, transparency and decentralization [3]. The main characteristics of smart contracts include:

1. automatic execution: the absence of human involvement reduces the risks of delays and errors. For example, in the insurance sector, smart contracts can autonomously issue compensation upon the occurrence of an insured event. According to Swiss Re, such solutions have reduced processing time by up to 50 % [4].

2. independence from third parties: according to PwC data, intermediaries are no longer required, which allows for cost savings of up to 30 % in transaction expenses [5].

3. transparency: all operations and contractual terms are accessible to the contracting parties. For instance, in supply chain management systems such as IBM Food Trust, smart contracts have enabled the tracking of product origin to be reduced from several days to several seconds [6].

Nevertheless, the legal nature of smart contracts remains a subject of ongoing debate. One of the central issues is whether smart contracts can be recognized as legally binding agreements.

Switzerland

Switzerland has established itself as one of the global leaders in the regulation and development of blockchain and related technologies. The country benefits from progressive legislation, a favorable tax policy and strong support for innovation. As a result, Switzerland has succeeded in attracting a significant number of blockchain startups and companies operating in the field of digital assets. The so- called “Crypto Valley”, located in the canton of Zug, is widely known as a hub for leading blockchain enterprises. Notable organizations based there include the Ethereum Foundation, Cardano, Tezos, and others [7]. The blockchain industry plays a particularly important role in the Swiss economy. According to the Swiss Blockchain Federation, more than 1,000 blockchain companies were registered in the country in 2023, supporting over 6,000 workplaces.

Key sectors of blockchain application include:

1. financial technologies (FinTech) — decentralized finance (DeFi), crypto-banking, tokenized assets.

2. supply chains and logistics — product tracking using blockchain technology (e.g., IBM Food Trust projects).

3. insurance — automated insurance payouts using smart contracts (for instance, Swiss Re).

4. public administration — pilot projects applying blockchain technology in electronic voting and land registry systems.

In the canton of Zug, known as “Crypto Valley”, blockchain startups attracted over USD 4 billion in investments between 2017 and 2023 [8].

Switzerland was among the first countries to introduce legislative changes aimed at regulating blockchain technologies. In 2021, the country adopted the Blockchain Act, which clarified the legal status of digital assets, regulated the use of smart contracts in the financial sector, and established safeguards for the protection of counterparties’ rights. Under Swiss law, if smart contracts meet the general requirements for contracts as defined by the Swiss Civil Code, they may be recognized as legally binding agreements. These

requirements include the mutual consent of the parties, the lawfulness of the subject matter, and the legal capacity of the parties to enter into a contract [9]. Although the Swiss Law on Distributed Ledger Technology (DLT) does not contain a direct definition of smart contracts, it nevertheless creates conditions for their recognition and use in a legal context. In particular, legislative adaptation has eliminated legal uncertainties associated with the transfer of assets and rights via blockchain technology. A practical example of such implementation is the development of an integrated certified electronic signature for smart contracts based on blockchain technology, designed by the Zurich University of Applied Sciences (ZHAW) in collaboration with the telecommunications company Swisscom. An example of practical implementation is the development of an integrated certified electronic signature for a blockchain-based smart contract, which was invented by the Zurich University of Applied Sciences (ZHAW) together with the telecommunications company Swisscom. This solution provides legal authentication of smart contracts and complies with Swiss legal requirements for written form in contracts involving the transfer of certain rights.

Thus, Switzerland actively promotes the integration of smart contracts into its legal system, ensuring their legitimacy and support at the legislative level [10].

For instance, according to data from the Swiss Blockchain Federation, 70 % of smart contracts in Switzerland are used in the financial sector, thereby underscoring their legal significance [11]. Moreover, Swiss authorities actively engage with representatives of the private sector to strike a balance between innovation and the protection of market participants' interests. One of the key features of smart contracts is their application in the field of asset tokenization, which significantly simplifies the processes of asset transfer and accounting. Switzerland is also actively developing a legal framework for working with decentralized finance (DeFi) platforms, thus facilitating the integration of smart contracts into the banking sector. Financial institutions and banks in the country are increasingly adopting blockchain technologies to reduce transaction costs and ensure transparency in operations.

Switzerland offers favorable tax conditions for the use of blockchain technologies. Smart contract used in financial transactions may fall under the scope of the Financial Services Act (FinSA). For example, from 2018 to 2023, tax incentives in the canton of Zug attracted more than 960 blockchain startups [12].

If smart contracts process personal data, the Federal Act on Data Protection (FADP) applies, which imposes additional obligations on users and developers. The risk of data breaches is reduced due to the fact that companies commit to storing transaction data in encrypted form [13].

The Swiss Federal Act on Data Protection (FADP) governs the processing of personal data of individuals and guarantees their security and confidentiality. An updated version of the Act came into force in 2023, aligning the legislation with modern standards [14]. Key provisions of the FADP include:

1. the Act applies to companies that process personal data in Switzerland or those that have Swiss clients;

2. data processing must comply with the principles of lawfulness, proportionality, and transparency;

3. individuals have the right to access, rectify or delete their personal data and to object to its processing;

4. organizations are required to notify data security breaches, maintain a record of processing activities and appoint data protection officers;

5. cross-border data transfers are permitted only to countries with an adequate level of protection or with the use of specific safeguards (e.g., standard contractual clauses);

6. liability for non-compliance: stricter sanctions have been introduced, including fines of up to CHF 250,000 for individuals.

The United Kingdom

The United Kingdom is rapidly developing blockchain technologies with the ambition of becoming a global hub for digital assets and decentralized finance (DeFi). Through flexible regulation, a high concentration of tech startups, and government support, the country has created favorable conditions for the integration of blockchain across various sectors of the economy.

Blockchain plays a significant role in the United Kingdom economy, particularly in the field of financial technologies (FinTech). According to the United Kingdom Blockchain Association, over 500 blockchain companies operated in the country in 2023, providing more than 3,000 workplaces. The four primary areas of blockchain application in the United Kingdom include:

1. financial sector — digital payments, tokenized assets, and decentralized finance (DeFi);

2. public administration — pilot projects using blockchain for land registries and digital identity systems;

3. legal technologies (LegalTech) — automation of transactions through smart contracts;

4. supply chains — product tracking using blockchain (e.g., Walmart and IBM projects).

The capital, London, remains the leading European center for FinTech innovation, attracting billions of dollars in blockchain startup investments [15].

The United Kingdom is also actively developing a legislative framework for digital technologies. In 2019, the Law Commission of England and Wales published a report confirming that smart contracts may be recognized as legally binding agreements under the current legal framework.

In this country, smart contracts are governed by the principles of common law. The aforementioned report confirmed that smart contracts meet the essential elements of contract law. Key aspects include the possibility of using code to demonstrate the parties' intentions and interpreting the terms of the agreement in light of their digital execution [16].

British case law demonstrates flexibility in addressing matters involving digital assets. In a 2019 case, cryptocurrency was recognized as property, thereby paving the way for the use of smart contracts in commercial transactions [17].

The United Kingdom is also actively developing software standards applicable to smart contracts, including code transparency requirements, data protection controls, and cybersecurity standards. Under English law, smart contracts are treated as valid agreements provided, they meet the following conditions: the intention to create legal relations; the presence of offer, acceptance, consideration; the requirements correspond to good faith [18].

For example, in 2022, 60 % of companies using smart contracts in the United Kingdom implemented them in supply chain management, resulting in a 20 % reduction in administrative costs.

Smart contracts used in the financial sector fall under the scope of the Financial Services and Markets Act (FSMA) and the relevant regulations issued by the Financial Conduct Authority (FCA). According to the Bank of England, integrating smart contracts into banking operations has reduced transaction processing costs by 15 % [19].

The General Data Protection Regulation (GDPR) applies in the United Kingdom and imposes strict requirements on the processing of personal data, which also extends to smart contracts. Particular attention is paid to anonymity and security issues. For instance, 25 % of data breaches in the financial sector in 2021 were attributed to inadequate protection of smart contract systems [20].

Comparative Analysis

The key distinction between the approaches of the United Kingdom and Switzerland lies in the degree of legal formalization. Switzerland aims to develop specialized legislation, whereas the United Kingdom emphasizes the adaptation of existing legal norms. Each of these approaches has its advantages: the Swiss model offers a high degree of legal certainty, while the British model provides flexibility and universality.

It is also worth noting that both countries are actively engaged in the development of global standards for the regulation of smart contracts. They participate in the work of the European Commission and the International Chamber of Commerce [21].

The Swisscom project is an example of successful smart contract integration in Switzerland, utilizing blockchain technology to manage digital assets. The United Kingdom, on the other hand, has implemented projects such as TradeLens, which applies smart contracts to automate logistics processes — resulting in a 30 % reduction in port delays [22].

While both jurisdictions follow progressive approaches, certain unresolved issues remain. For instance, according to reports from the European Blockchain Observatory, approximately 35 % of all smart contract incidents are due to code vulnerabilities, underscoring the need for the development of robust security standards. From a legal standpoint, the cross-border use of smart contracts poses significant challenges: differences in legal systems create barriers to their widespread application [23].

Discussion

We made a comparative analysis of the legal regulation of smart contract in two jurisdictions, and this helped to identify both common features and significant differences in the approaches of both states. Both Switzerland and the United Kingdom recognize the legal force of smart contracts, however, their integration into existing legal systems involves distinct characteristics.

Legal recognition. According to the conclusions of Müller and Kramer, in Switzerland, a smart contract is considered legally binding if it complies with the requirements of the country’s civil legislation. The Swiss Law on Distributed Registries (DLT Act) creates a favorable climate for their integration, particularly

in the financial sector [24]. In the United Kingdom, if digital contracts meet the fundamental principles of contract law-namely, the presence of offer, acceptance, and consideration-the Law Commission of England and Wales acknowledges the possibility of treating them as legally binding agreements [25].

Impact of regulation on the Financial Sector. Switzerland actively employs smart contracts in the banking sector and among fintech startups, as evidenced by the high concentration of blockchain companies in the canton of Zug ("Crypto Valley") (Schär, 2022) [26]. The United Kingdom, for its part, regulates smart contracts in financial services through the Financial Conduct Authority (FCA), ensuring compliance with the Financial Services and Markets Act (FSMA) (Jones, 2022) [27].

Taxation prospects. Patel and Williams (2023) note that Switzerland offers more flexible tax conditions, including exemptions from value-added tax (VAT) for certain digital asset transactions [28]. In contrast, the United Kingdom applies stricter tax regulations, though it offers tax incentives for innovative blockchain companies and startups (Johnson & Smith, 2023) [29].

Data Protection and Privacy. Data protection is a key issue for both countries. Switzerland has enacted the Federal Act on Data Protection (FADP), adapted to the particularities of blockchain technologies (Müller, 2023) [30]. In the United Kingdom, GDPR standards are applied, imposing strict requirements on the processing of personal data within smart contracts (Brown, 2022) [31].

Several authors suggest possible **directions for further improvement of smart contract regulation**: Taylor (2022) advocates for the introduction of audit and certification mechanisms for smart contract code [32]; White & Green (2023) argue for the development of international regulatory standards for smart contracts [33].

As for scholars from Kazakhstan, G.A. Ilyassova and B.Zh. Aitimov argue that a national regulation on personal data protection should be adopted based on blockchain technology [34]. M.M. Bazarov and R.A. Tokatov assert that the legal validity of smart contracts, including their definitional regulation, must be comprehensively examined by legal experts. It is believed that the experiences of these two countries may help address such challenges [35].

Based on this research, we further suggest the following additional areas for improvement: creation of legal mechanisms for user protection in the event of disputes; expanded use of regulatory sandboxes to test new smart contract models.

Overall, the comparative analysis of smart contract regulation in the United Kingdom and Switzerland demonstrates that both countries are striving to create and implement favorable conditions for the application of blockchain technologies. It should also be emphasized that the continued development of regulatory frameworks and the harmonization of international norms will contribute to building trust in smart contracts and promoting their widespread adoption.

Conclusions

The United Kingdom and Switzerland demonstrate different approaches to the regulation of smart contracts, reflecting the specific features of their respective legal systems. While Switzerland focuses on the development of specialized legal norms governing smart contracts and blockchain, the United Kingdom relies on the general principles of common law. Despite the divergence in regulatory models, both jurisdictions support the growth of the digital economy and ensure protection for contracting parties.

Based on the analysis and research, the following conclusions can be drawn:

1. Both countries demonstrate progressive and peculiar approaches to regulating smart contracts and their legal systems are different and have their own peculiarities;

2. The main issues that both countries need to address are technical risks, cross-border regulation and the need to harmonize global standards.

In the future, research can be directed to the study of cross-border aspects of the use of smart contracts, as well as their implementation in international law, which is especially relevant in our time of global economy, trade and the growing number of digital transactions. In addition, it is important to take into account the problems of data security and the prevention of cyber threats associated with the use of smart contracts.

In conclusion, the further development of smart contracts will require enhanced cooperation between jurisdictions and the establishment of universal international standards.

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С.С. Боранбай, Г.А. Ильясова

Швейцария мен Ұлыбританияда смарт келісім-шартын құқықтық реттеу: салыстырмалы-құқықтық талдау

Мақалада Ұлыбритания мен Швейцарияда смарт келісім-шарттарды құқықтық реттеу ерекшеліктері талданған. Бұл екі мемлекет цифрлық технологиялар саласында көшбасшы болып саналады. Мәселен, смарт келісім-шартты пайдалану кезіндегі қатынастарды реттеудің басты проблемасы, оның құқықтық мәнінің анықталмауында, заңнамада, атап айтқанда, Қазақстан Республикасының Азаматтық кодексінде реттелмеуінде болып отыр. Екі елдің заңнамалық бастамаларына ерекше назар аударылды. Смарт келісім-шарттарды жасау, орындау тәсілдері, олардың құқық жүйелеріндегі орны және цифрлық экономиканың дамуына әсері қарастырылған. Зерттеу барысында Швейцарияда блокчейн технологияларды ұлттық заңнамаға белсенді түрде енгізіп, арнайы құқықтық негіздер ұсынатынын, ал Ұлыбританияның цифрлік дәуірдің талаптарына жалпы құқықты бейімдеуге баса назар аударып жатқанын байқай аламыз. Екі елдің смарт келісім-шарттарды анықтау және қолдану тәсілдері, құқықтық мәртебесі, салық салу және деректерді қорғау сұрақтары талданды. Ұлыбританиядағы «Англия мен Уэльс заң комиссияның ұсыныстары» мен Швейцариядағы «Таратылған тізілімдер туралы» Заңы (DLT Act) сияқты заңнамалық бастамаларға салыстырмалы-құқықтық талдауға ерекше назар аударылды. Смарт келісім-шарттардың шекарааралық қолданылуы, қаржы технологияларындағы рөлі және деректерді қорғау, киберқауіптерге байланысты тәуекелдер мәселелеріне ерекше көңіл бөлінген. Бұл зерттеуде, сондай-ақ екі юрисдикцияның тәсілдерін салыстырмалы талдау және әрі қарайғы даму перспективалары, соның ішінде стандартқа келтіру бойынша жаһандық бастамаларға қатысу сұрақтары ұсынылған. Авторлар смарт келісім-шартты қауіпсіз және тиімді пайдалану үшін халықаралық стандарттарды құру қажеттілігі туралы қорытындыға келді.

Кілт сөздер: смарт келісім-шарттар, блокчейн, заңнама, құқықтық реттеу, Швейцария, Ұлыбритания, цифрлық экономика, трансшекаралық мәмілелер, сот практикасы, ағылшын-саксондық құқықтық жүйе, континенттік құқық жүйесі.

С.С. Боранбай, Г.А. Ильясова

Правовое регулирование смарт-контракта в Швейцарии и Великобритании: сравнительно-правовой анализ

В данной работе был произведен анализ особенностей правового регулирования смарт-контрактов в Швейцарии и Великобритании, в двух ведущих странах в области цифровых технологий. Были рассмотрены ключевые подходы заключения и исполнения смарт-контрактов, их место в праве и в законодательстве, влияние на развитие IT-технологии. Так как, главной проблемой регулирования отношений по использованию смарт-контракта становится неясность его юридической сущности, отсутствие регламентации в законодательстве, в частности в Гражданском кодексе РК. Особенное внимание было уделено законодательным инициативам двух стран. Исследование показало, что Швейцария успешно интегрирует блокчейн-технологии в свое законодательство, путем внедрения специализированных правовых рамок. В свою очередь, Великобритания делает упор на адаптацию общего права к вызовам новой эпохи цифровой экономики. Было проведено сравнение подходов двух стран в определении и применении смарт-контрактов, правового статуса, вопросы налогообложения и защиты данных. В Швейцарии это закон о распределенных реестрах (DLT Act), а в Великобритании рекомендации Юридической комиссии Англии и Уэльса. Также было уделено особое внимание вопросам безопасности (киберугрозы и защита данных), потенциальным рискам, трансграничному использованию смарт-контрактов. Был представлен сравнительный анализ подходов двух юрисдикций и возможности их дальнейшего развития, в том числе участие в глобальных инициативах по стандартизации. Авторы, подводя итоги, отметили о необходимости создания международных правовых стандартов для эффективного и безопасного использования смарт-контрактов.

Ключевые слова: смарт-контракты, блокчейн, законодательство, правовое регулирование, Швейцария, Великобритания, цифровая экономика, трансграничные сделки, судебная практика, англо-саксонская правовая система, континентальная система права.

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On the need to define the concept of "public order" in the context of recognition and enforcement of foreign judicial and arbitration decisions in the Republic of Kazakhstan

The article is devoted to the current problem of the lack of a clear definition of the concept of "public order" in the context of private law relations and the ensuing issues of recognition and enforcement of foreign judicial and arbitration decisions in the Republic of Kazakhstan. The aim of the research is to substantiate the need to define and clarify the concept of public order. As a result of the comparative legal analysis, it was revealed that the clause on public order is enshrined in the national legislation of different countries and in international documents, and is also applied by courts, but is absolutely vague and does not have clear criteria for application. In this regard, the authors came to the conclusion that the uncertainty of this term can negatively affect law enforcement practice, creating legal uncertainty and the possibility of arbitrary decisions. The article provides an analysis of existing points of view on the content of public order and considers two opposing approaches: on the need to clarify the concept of public order and the position that its definition should remain flexible and undetermined. Considering the importance of ensuring legal predictability in the area of recognition and enforcement of foreign court and arbitration decisions, the authors concluded that it is necessary to define the conditions for the application of public order by developing its concept, which will ensure uniform judicial practice in the Republic of Kazakhstan and its further improvement.

Keywords: public policy (public order), foreign decisions, recognition and enforcement of foreign court and arbitration decisions, refusal to recognize and enforce foreign court and arbitration decisions, enforcement proceedings.

Introduction

Globalization develops and encourages international cooperation for the purpose of economic development of states, and it has not lost its value even in such a turbulent period. One of the types of such international cooperation is foreign investment, as well as commodity and money turnover. In the course of such cooperation, civil and commercial disputes inevitably arise between entities, considered and resolved in courts and arbitrations of different countries. At the same time, the restoration of subjective rights is assumed under the condition that the decisions made by these courts and arbitrations are enforced. However, not all decisions can reach the execution stage, since legislation and a number of international documents establish a rule according to which recognition and enforcement of foreign decisions can be refused if it contradicts the public policy of the country where enforcement is sought. With the existence of such norm, the concept of public order itself does not have a clear content, is purely subjective in nature and has only general outlines.

Thus, the main scientific problem is the lack of a general understanding of public policy in theory, legislation and judicial practice; accordingly, this cannot but affect the activities of judges deciding the issue of recognition and enforcement of foreign decisions on the territory of the Republic of Kazakhstan, and has an impact to protect the subjective rights of individuals and legal entities.

If we specify the concept of public policy and identify the general characteristic conditions for the application of the public policy, this will make it possible to develop uniform rules for the application of public policy for judges of the Republic of Kazakhstan, which will improve law enforcement practice by eliminating the further possibility of an overly subjective approach to the concept of public policy, accordingly, will lay the foundation for the proper restoration of the subjective rights of participants in civil transactions.

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Methods and materials

Research is based on general scientific and special methods as analysis, synthesis, historical method, analogy as the ground of comparative legal research, modeling and the formal legal method.

Comparative legal and formal legal methods was predominantly used which made it possible to present a comparative description of the concept of public policy across countries, based on the study of doctrine, legislation and judicial practice of different jurisdictions. Historical method mainly was used in terms of defining the concept of "public policy", which has a long history and is subject to change over time. Modeling method allowed to develop the conceptual framework of public policy and make a propose of a necessity in uniform approach to its application. The combination of these methods facilitated the identification of a need for well-defined criteria and conditions for the use of public policy as a basis for refusal to recognize and enforce foreign court and arbitration decisions.

Results

Enforcement of foreign decisions is an indicator not only of the level of the state in the international arena, but also of the effectiveness of legal regulation of the issue of protection and restoration of violated rights of subjects in a particular country. After all, the mechanism for protecting violated rights and legitimate interests lies not only in the issuance of a judicial act and its entry into force, but also in its timely execution. Only after the execution of judicial acts the violated or contested rights, freedoms and legally protected interests of citizens, legal entities and the state are restored. Thus, the property rights and interests of subjects are restored not as a result of a decision, but rather as a result of the execution of foreign decisions.

At the same time, it is not always possible to enforce decisions of foreign courts and arbitrations. Decisions of foreign courts and arbitrations must undergo a recognition procedure in the territory where enforcement is sought. One of the grounds for refusal to recognize and enforce foreign decisions is the public policy.

The concept of public policy, although enshrined in the legislation of different countries and international documents, is considered in theory and has taken place in judicial practice for a long time. Nowadays there has not been a clear understanding of when cases should be classified as contradicting to public policy and when the courts apply the public policy too broadly. Accordingly, the party that seeks recognition of a foreign decision may, in such cases, lose this instrument of protection and restoration of its subjective rights. If we take into account that foreign investor companies can also apply for the execution of decisions, accordingly, the unreasonable application or broad interpretation of public policy can lead to an outflow of investment, because a state that does not have a clear legal framework and practice on restrictions (in this case, regarding the possibility of enforcing decisions) and which cannot fully ensure the restoration of subjective rights will not be attractive in terms of investment. Additionally, in general, if a foreign counterparty does not feel confident that he can find legal protection in a particular territory, it will not contract with the entities of this territory, and accordingly, this will affect the commodity and monetary turnover of the state. At the same time, in paragraph 2 of Article 1 of the Constitution of the Republic of Kazakhstan, one of the fundamental principles of the Republic's activity is outlined as economic development for the benefit of the entire people [1]. Economic development, among other things, involves attracting foreign investment and developing civil turnover through interaction between the constituent entities of the Republic of Kazakhstan and the constituent entities of other states. Consequently, in order to ensure the restoration of the subjective rights of participants in civil transactions, it seems important to determine the criteria of public policy and the conditions for its application in order to avoid an overly subjective approach or broad interpretation of its content by each individual judge who is considering a foreign decision for its recognition for the possibility of its further execution on the territory of the Republic of Kazakhstan.

Also, public policy has another side — it is a mechanism for protection of the state where the execution of a foreign decision is sought from the influence and introduction into its legal system of foreign norms or decisions that can cause significant damage to its public policy. Accordingly, the institute of public policy must be enshrined and applied, but the current practice of too broad an interpretation and a subjective approach plays a negative role. Therefore, it seems extremely important, leaving the concept of public policy itself, to determine its criteria and conditions for application in practice. In the Republic of Kazakhstan, such uniform conditions do not exist; there is no regulatory resolution or other act that would provide instructions for judges who are considering the issue of applying public policy.

Since this concept directly affects the restoration of the subjective rights of participants in civil transactions, as well as the investment attractiveness of Kazakhstan, and, accordingly, further economic develop-

ment and, in general, the country's reputation in the international arena, the expanded application of the clause on public order is unjustified.

This problem can be solved by developing the concept of public policy and uniform rules on the conditions for applying the public policy, embodied in the form of a Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan. In Concept of legal policy of the Republic of Kazakhstan until 2030, approved Decree of the President of the Republic of Kazakhstan dated October 15, 2021 No. 674 states that regulatory resolutions are designed to ensure uniform and correct application of laws and by-laws by courts. They eliminate discrepancies and problematic issues, while at the same time giving the correct direction for application of the law. It is also noted that State regulation of business activities should be limited to the need to eliminate risks that affect national security, human life and health, ecology, law and order, morality [2], which suggests that in private legal relations there are key points that should be taken into account (including in relation to the category of public order).

The problem of improving the quality of judicial decisions and uniformity in them was raised in the Message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan dated September 2, 2019, "Constructive public dialogue is the basis of stability and prosperity of Kazakhstan", in which it was noted the significance in ensuring uniformity of judicial practice [3]. Thus, a consistent judicial approach to such a crucial concept for ensuring a state's attractiveness on the international stage undeniably plays a key role.

Discussion

The doctrine of public order is considered one of the oldest and most important. It expresses the desire of theorists to determine the boundaries of the competence of foreign legislative jurisdiction. At the same time, it is noted that the main purpose of the doctrine of Ordre Public is to develop such a necessary amendment to the principles of determining competent laws, which protects against damage to the legal system of the court when applying foreign law [4; 90-91] or enforcing foreign judgements. Over the years since the introduction of the clause on public order into theory and practice, its content has been interpreted in different ways. It should be noted that of all the issues studied, the issue of public order is most often considered in the literature. In the theory of private international law, the combination of words "public policy" has not yet found a single definition that reflects its meaning [5; 116, 6; 54] and scientists from different countries still continue to attempt to consider various aspects of the concept of public order, including as grounds for refusal to recognize and enforce foreign court and arbitration decisions, largely from the standpoint of determining the content of this concept [7, 8, 9]. Thus, Yu.G. Morozova associates the emergence of the public order clause with the state's ensuring its public interests both at the international level and in the domestic sphere [10]. According to R.Sh. Khasyanov, the term-concept "public order" began to enter into active legal circulation as one of the political and legal instruments for protecting particularly significant, general "public" interests of society and the state within the country by public authorities [11; 9–14]. It was also spoken of as: "the rights of sovereignty and political independence", as well as the highest principles of individual and social morality, respect for natural human rights, and the principles of economic order, a set of legal norms that a given state considers to be related to its "essential interests" [5; 116]; "public law"; "social law", i.e. laws concerning the rights of society; "laws designed to preserve the state"; "a set of laws that ensure social equilibrium", which included the norms of criminal and administrative law, laws on property rights, on monetary circulation and rules of morality [6; 54] and etc.

When enshrining a public policy clause in its legislation, almost no state specifies its content [12]. The clause on public order is contained in the laws of all countries, the difference is only in how states define its public order. In legislation, public order is equated with the basic principles, good morals, moral rules, fundamental principles, the foundations of Sharia, etc. According to the results of comparative analysis we have conducted, the legislative approach does not differ, as well as the doctrinal one, in specification in establishing the scope of public order.

This concept is also included in the legislation of the Republic of Kazakhstan. Thus, Article 1090 of the Civil Code mentions public order as a case of limitation in the application of foreign law, without providing a definition, but equating public order to the foundations of legal order [13]. Saying about public order as one of the grounds for refusing to recognize and (or) enforce an arbitration award in subparagraph 2) of paragraph 1 of Article 57, the Law of the Republic of Kazakhstan "On Arbitration" defines it as the foundations of legal order in subparagraph 1) of Article 2 [14]. A reference to public order without disclosing its definition is also contained in the Civil Procedure Code of the Republic of Kazakhstan, which in subparagraph 2)

of paragraph 1 of Article 255 lists the grounds for issuing a ruling on the refusal to issue a writ of execution for the compulsory execution of an arbitration award [15]. Subparagraph b) of paragraph 2 of Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the Republic of Kazakhstan acceded by Decree of the President of the Republic of Kazakhstan No. 2485 of October 4, 1995, states that recognition and enforcement of an arbitral award may be refused if the competent authority of the country in which recognition and enforcement is sought finds that recognition and enforcement of this award are contrary to public policy of that country [16]. It should be noted that the legislation of Kazakhstan emphasizes the exclusivity of the public order clause and the rules of law stipulate that the court's determination that an arbitral award is contrary to the public order of the Republic of Kazakhstan is an unconditional basis for the annulment of the arbitral award. And the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated November 2, 2023 No. 3 "On Certain Issues of the Application of Arbitration Legislation by Courts" in paragraph 34 emphasizes that when annulling an arbitral award on this basis, the court should justify which fundamental rules that form the basis of the legal order were violated, how the arbitral award and its further execution will be contrary to public order [17]. Despite the inclusion of such rules in the legislation of Kazakhstan, it can be stated that the concept of public order is contained as one of the key ones in matters of refusal to apply foreign law or refusal to recognize and enforce foreign decisions, but it is not specified and the mechanism for determining its content is not disclosed.

However, the problem with public order is not so much the lack of specification, but rather the fact that the issues of clarifying this category in each specific case remain at the discretion of the court. By subsuming various legal, political and moral categories under "public order", the judge can expand his powers to limit the application of foreign law or refuse to recognize and enforce foreign decisions.

This problem, according to some authors [18], entails the unjustifiably frequent issuance by courts of decisions to refuse to enforce arbitration awards of foreign states precisely with reference to public policy. When the law provides a sufficiently broad field for judicial discretion, there is a danger of arbitrariness, where a significant role is played by the subjective inclination towards a particular interest. Such legal risk is reduced if there is a generally accepted definition of the concept, i.e., the most accurate clarification of the meaning [19; 99]. In the event of a clash of public and private interests, the negative role of the legal certainty of the rule of law regulating controversial social relations increases significantly. Unfortunately, as practice shows, any opportunity to expand discretion in the process of law enforcement, laid down in the law, becomes the right of the strong and creates additional problems for the protection of the rights of the weaker party in the legal relationship [20].

A unique and paradoxical situation is emerging, when conventions, legislators and courts refer to a legal norm — public order — on publicly important issues and disputes, without defining its concept, composition, features and other necessary characteristics, leaving all this to the subjective perception and discretion of judges or other authorized law enforcement officers. A way out of this could be legislative consolidation or judicial interpretation of the content of this legal category [11; 10]. On the other hand, referring the clause on public order to the categories of public law and types of imperative norms, it is also not entirely correct to talk about providing courts with the opportunity to evaluate and interpret the category of "public order", since such categories should be as predictable as possible so that through them it would be possible to regulate public relations unambiguously.

As noted, "the judicial system cannot but contradict itself when decisions are made by a large number of individuals, in no way connected or communicated with each other, on the basis of their subjective understanding of "good faith", "morality", "reasonableness", "proportionality", etc. And the inevitable contradiction of such decisions, made under similar circumstances, subjectively assessed differently, cannot have a positive effect on the formation of the legal consciousness of the citizens of the state" [21]. Thus, if the content of this concept were to be specified, judges could have guidance and reference points in the application of the public order clause. It is rightly noted that "it must seem a serious breach of international comity to assume, in relation to a state recognized as sovereign and independent, that its legislation is contrary to the essential principles of justice and morality; such an assertion can easily offend this state and it must come from the sovereign, acting through ministers, and not from a judge" [22; 198].

There is also an opposite point of view, according to which it is not possible to specify the content of public order. Opponents of specifying this category believe that the institution of public order has never been one of those that can be regulated in detail by law [18], therefore it is impossible to define public order or a list of such norms. It is considered that it is impossible to foresee cases of public order, since it is a category that changes over time and dependents on changes in behavior, morality and economic conditions [23;.85].

The range of potentially unfair actions is so wide that it can hardly be described in legislative acts at all [24; 25], in addition, the same actions can be both conscientious and unfair depending on the motive for their implementation. M.K. Suleimenov and A.E. Duisenova believe that the actual content of this evaluative concept depends on the circumstances of a particular case and, in accordance with the generally accepted world practice of developed countries, is subject to establishment exclusively by the court, and not by the legislator [25]. F.S. Karagussov also makes conclusion that an attempt to "more clearly define" the concept of "public order" in the law is not only inappropriate, but can be dangerous [26]. Of course, legal relations are acquiring a new character, and in connection with this, the idea of public order may also change. Due to the fact that it is impossible to foresee all cases in advance, this definition should be formulated in general. At the same time, it should not be so general as to allow an unjustifiably broad application of the clause, i.e., it should also contain clarifying, concretizing features of public order.

In our opinion, the most accurate assessment of this problem was given by A. Pilenko, who insisted that "the science can be systematized only if an exact definition (and not a description) of the idea of public order is given" [27; 57]. According to I.A. Pokrovsky, if the concept of "good morals" only covers up a whole series of unconscious purely legal problems, then we have the right to demand from the legislator that he, and not the judge, makes every effort to resolve them [28; 258]. And the definition of the scope and content of the concept of "public order" must be expressed in writing and must contain as exhaustive a list of cases of application of the reservation, or a list of norms of public order, or precise features of public order. And in our opinion the point of view of Yu.G. Morozova is correct that the mechanism protecting public order is subject to legislative consolidation, otherwise the solution to the issue of violation of the public interest will be illogical, subjective [10; 15]. S.V. Scriabin also comes to the conclusion that there are no obstacles to proposing a unified normative explanation of the concept of "public order" [29].

As for judicial practice, international experience shows that the concept of public order is interpreted differently in each country [30, 31]. Kazakhstani practice indicates about an already emerging unfavorable trend of misunderstanding and application of the public policy clause in the Republic of Kazakhstan [32, 33, 34]. In connection with such a difference of opinion in practice, it is considered most correct to determine uniform criteria and conditions for the application of public policy for a specific territory. After all, by subsuming various legal, political and moral concepts under "public policy," a judge can expand his powers to limit the recognition of foreign decisions, which can negatively affect the subjective rights of participants in private law relations. The need for this is confirmed by the Regulatory Resolution of the Constitutional Court of the Republic of Kazakhstan dated September 13, 2024 No. 51-NP On the consideration of paragraph 3 of Article 52 of the Law of the Republic of Kazakhstan dated April 8, 2016 "On Arbitration" for compliance with the Constitution of the Republic of Kazakhstan [35], which notes that the terminology used identifies public order and the foundations of legal order, in which a violation of the former may manifest itself in an encroachment on any elements of the foundations of legal order recognized as such in the legislative acts of the Republic of Kazakhstan, and it is proposed to adjust the category of public order to ensure its formal certainty and clarity.

Conclusions

Kazakhstan can improve its legislation and practice of the application of the public policy, which in turn will have a positive impact on the level of security and restoration of the rights and legitimate interests of subjects of civil turnover.

As a result of developing the conceptual basis of public policy a Regulatory Resolution "On the uniform application of the public policy in the case of refusal to recognize and enforce foreign court and arbitration decisions on the territory of the Republic of Kazakhstan" should be drawn up which will be submitted by the Supreme Court of the Republic of Kazakhstan and according to which it will be possible to ensure uniformity in interpretation and the application by judges of the Republic of Kazakhstan of the rule on public order when considering foreign decisions with a view to refusing their recognition and enforcement.

If these results are obtained, the level of judicial practice will improve and the courts will learn to find a "golden mean" in such matters, being able to protect national interests, and at the same time not be too radical. Such a harmonious approach will undoubtedly increase investor confidence and can turn Kazakhstan into one of the centers of international cooperation, which is also an important factor in the development of our country.

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35 Нормативное постановление Конституционного Суда Республики Казахстан от 13 сентября 2024 года № 51-НП О рассмотрении на соответствие Конституции Республики Казахстан пункта 3 статьи 52 Закона Республики Казахстан от 8 апреля 2016 года «Об арбитраже». — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=39406954.

А.Е. Нұртан, М.Н. Абилова

Қазақстан Республикасында шетелдік сот және төрелік шешімдерін тану мен орындау контексінде «жария тәртіп» ұғымын анықтаудың қажеттілігі туралы

Мақала жеке құқықтық қатынастар контексінде «жария тәртіп» түсінігінің нақты анықтамасының жоқтығының өзекті мәселесіне және одан туындайтын Қазақстан Республикасындағы шетелдік сот және төрелік шешімдерді тану және орындау мәселелеріне арналған. Зерттеудің мақсаты — жария тәртіп ұғымын анықтау және нақтылау қажеттілігін негіздеу. Жүргізілген салыстырмалы-құқықтық талдау нәтижесінде жария тәртіп туралы ескертпе әртүрлі елдердің ұлттық заңнамасында және халықаралық құжаттарда бекітілгені, сонымен қатар соттар тарапынан да қолданылатыны, бірақ табиғаты бойынша мүлдем анық емес және қолданудың нақты критерийлері жоқ екендігі анықталды. Осыған байланысты авторлар бұл терминнің белгісіздігі құқық қолдану тәжірибесіне теріс әсер етіп, құқықтық белгісіздік пен ерікті шешімдердің қабылдану мүмкіндігін тудыруы ықтимал деген қорытындыға келді. Мақалада жария тәртіптің мазмұнына қатысты қалыптасқан көзқарастар талданған, сонымен қатар жария тәртіп түсінігін нақтылау қажеттігі және оның анықтамасы икемді әрі анықталмаған болып қалуы керек деген екі қарама-қарсы көзқарас қарастырылған. Шетелдік соттар мен төрелік шешімдерді тану және орындау саласында құқықтық болжамдылықты қамтамасыз етудің маңыздылығын ескере отырып, авторлар Қазақстан Республикасында біркелкі сот тәжірибесін және оны одан әрі жетілдіруді қамтамасыз ететін жария тәртіп тұжырымдамасын әзірлеу арқылы оны қолдану шарттарын айқындау қажет деген қорытындыға келген.

Кілт сөздер: жария тәртіп, шетелдік шешімдер, сот және төрелік шешімдерін тану мен орындау, сот және төрелік шешімдерін тану мен орындаудан бас тарту, атқарушылық іс жүргізу.

А.Е. Нуртан, М.Н. Абилова

О необходимости определения понятия «публичный порядок» в контексте признания и приведения в исполнение иностранных судебных и арбитражных решений в Республике Казахстан

Статья посвящена актуальной проблеме отсутствия четкого определения понятия «публичный порядок» в контексте частноправовых отношений и вытекающих из них вопросов признания и приведения в исполнение иностранных судебных и арбитражных решений в Республике Казахстан. Целью исследования является обоснование необходимости определения и уточнения понятия публичного порядка. В результате проведенного сравнительно-правового анализа, было выявлено, что оговорка о публичном порядке закрепляется в национальном законодательстве разных стран и в международных документах, а также применяется судами, однако носит абсолютно неопределенный характер и не имеет четких критериев применения. В связи с этим, авторы пришли к выводу, что неопределенность этого термина может негативно отразиться на правоприменительной практике, создавая правовую неопределенность и возможность произвольных решений. В статье приводится анализ существующих точек зрения на содержание публичного порядка, а также рассматриваются две противоположных позиции: о необходимости уточнения понятия публичного порядка и позиция о том, что его определение должно оставаться гибким и недетерминированным. Учитывая важность обеспечения правовой предсказуемости в сфере признания и исполнения иностранных судебных и арбитражных решений, авторами сделан вывод о необходимости определения условий применения понятия публичного порядка путем разработки его концепции, которая обеспечит единообразную судебную практику в Республике Казахстан и дальнейшее ее совершенствование.

Ключевые слова: публичный порядок, иностранные решения, признание и приведение в исполнение иностранных судебных и арбитражных решений, отказ в признании и приведении в исполнение иностранных судебных и арбитражных решений, исполнительное производство.

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Legal regulation of construction contract for relations in the Republic of Kazakhstan: a comparative analysis with the legislation of the CIS countries

The article explores the significance of contractual (construction) relationships and their legal regulation in accordance with the legislation of the Republic of Kazakhstan. A comparative analysis is conducted of certain aspects of the regulation of contractual relations in the Republic of Kazakhstan and the Commonwealth of Independent States (CIS) countries, such as the Republic of Azerbaijan, the Republic of Moldova, Ukraine, and the Russian Federation. The article analyzes legal provisions governing contractual relations, highlighting differences in legal regulation. International agreements and regulatory legal acts governing contractual relations both in the Republic of Kazakhstan and in CIS countries are examined. In addition, during the research process, the authors analyzed scholarly works focused on the legal aspects of the studied legal relations, which allowed for a deeper understanding and a comprehensive presentation of the topic. Particular attention is given to identifying the specific features of the legal regulation of contractual legal relations.

Keywords: legal regulation, contractual obligations under a contract for work and service, civil-law relations, construction contract, contracted works for state or municipal needs.

Introduction

The contract for work and labor (contract of services) occupies a key position within the structure of civil law relations, constituting an integral part of the legal systems of both the Republic of Kazakhstan and the member states of the Commonwealth of Independent States (CIS). Its regulatory consolidation acquires particular significance against the backdrop of active economic growth, the intensification of foreign economic relations, and the deepening of transnational cooperation. Under such conditions, there arises a need to develop a stable and internally consistent legal framework that ensures reliability and legal certainty in civil transactions.

The legal relations arising within the scope of a contract for work and labor constitute a multifaceted legal institution that governs the execution of work and the provision of services on a contractual basis. Given their importance, this institution functions as a legal regulator of a broad range of issues — from compliance with quality standards to mechanisms for safeguarding the interests of the parties involved. Contemporary economic realities add further importance to the improvement of the legal regulation of such contracts, especially in the context of large-scale investment initiatives and cross-border cooperation. This necessitates a thorough legal reflection and a systematic analysis of existing norms, taking into account both doctrinal approaches and the needs of legal practice.

The relevance of studying the legal nature of contracts for work and labor is confirmed by the sustained interest of the academic community, including the works of recognized experts in civil law. Scholarly literature emphasizes their significant impact on the stability of private legal transactions and the efficiency of economic activity. Contemporary legal scholars highlight the need for further improvement of legal regulation in this field, taking into account both domestic legal traditions and international legal benchmarks. This underscores not only the theoretical importance of studying such contractual relations but also their practical value in the context of law enforcement and application.

In the context of deepening integration of economic systems, the contract for work and labor functions not merely as a mechanism of contractual regulation, but also as a tool that facilitates the implementation of strategic sustainable development goals at both the national and interstate levels. For instance, in the works of M.R. Shamshatdinov and I.V. Zakrzhevskaya, attention is drawn to the fact that the key object of a con-

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tractual obligation in this context is the performance of a specific task and the attainment of its result, with the essential characteristics of the work being determined by its nature and scope — a position confirmed by relevant judicial practice [1; 76].

Among civil law scholars, the broad applicability of the contract for work and labor is frequently noted, a reflection of its versatility and practical relevance. I.V. Ginzburg, for example, emphasizes that the subject matter of a contract for work and labor plays a central role in its legal qualification, allowing it to be distinguished from, for instance, contracts for the provision of compensated services [2; 227].

O.A. Belyaeva highlights that the object of obligations arising from a contract for work and labor is an individualized result of the contractor's activity, expressed in a specific material form. This result is created through the performance of work and its delivery in an evaluable form, which reflects the particular nature of such contractual relations [3].

According to N. Lyamina, the contract for work and labor holds a prominent position in business transactions, alongside contracts of sale, supply agreements, and other types of obligations that are actively employed in commercial practice [4; 2].

Scholarly literature highlights the broad scope of activities governed by the contract for work and labor. O.V. Zakharkiv, for instance, emphasizes the particular significance of construction contracts as one of the most thoroughly developed and traditionally established forms. These are regarded as a specific type of contractual obligation associated with the construction of various capital development projects [5; 24].

T.V. Sazonova, in turn, points to the widespread presence of contractual relations of this kind in civil law practice. In her view, a key aspect for the parties involved in such obligations is the ability to effectively exercise their rights, as well as to promptly and fully restore any infringed interests [6; 3]. Her analysis places special emphasis on the principle of unobstructed exercise of rights, according to which both the customer and the contractor are entitled to exercise their powers freely, without infringing on the lawful interests of the other party. Thus, the scope of one party's rights is defined by the boundaries of the other's, which helps to maintain a balance of interests.

A.A. Melnik also includes the contract for work and labor among the most frequently used contractual structures in civil transactions, highlighting its versatility and significant legal demand [7; 17].

According to the position of M.K. Suleimenov and Yu.G. Basin, a defining feature of the contract for work and labor lies in the contractor's obligation not only to perform specific work, but also to deliver its materialized result to the customer. This is precisely what distinguishes this type of contract from other forms of compensated obligations — particularly from the contract for compensated services [8; 380].

Methods and materials

This study employed the comparative legal method, which made it possible to conduct a comparative analysis of the regulatory provisions governing contractual relations for work and labor in the legislation of the Republic of Kazakhstan and selected CIS member states. In particular, the subject of comparative examination included civil law norms concerning contracts for work and labor as applied within the legal systems of the Republic of Azerbaijan, the Republic of Moldova, Ukraine, and the Russian Federation.

In addition, the formal legal method was applied to analyze the content of legal provisions governing contractual relations of this type. Within the framework of this method, intergovernmental agreements concluded between the member states of the Commonwealth of Independent States were examined, specifically those that regulate cooperation in the field of contract work execution.

Special attention was also given to the normative legal acts of the Republic of Kazakhstan that establish the legal regime of contractual obligations under work and labor contracts. To ensure a comprehensive approach to the subject under investigation and to enhance the analytical depth of the comparative legal analysis, both domestic and foreign scholarly publications were examined, with a focus on the theoretical and practical aspects of legal regulation in this field.

Results

According to paragraph 1 of Article 616 of the Civil Code of the Republic of Kazakhstan (hereinafter — CC RK), under a contract for work and labor, one party — the contractor — undertakes the obligation to perform a specific task commissioned by the other party — the customer — and to deliver the result within an agreed timeframe. In turn, the customer is obligated to accept the result of the completed work and to pay for it (remunerate the work performed) [9].

The civil legislation of the Republic of Kazakhstan provides for a classification of contracts for work and labor based on the nature and purpose of the work performed. In accordance with the CC RK, the following types of contracts for work and labor are distinguished:

• household (domestic) contracts;
• construction contracts;
• contracts for the performance of design and survey work;
• contracts related to research, experimental design, and technological activities.

S.K. Idrysheva emphasizes the significance of construction contracts, viewing them as a legal form mediating proprietary relations between the parties, in which compliance with established technical requirements plays a particularly important role. These requirements are aimed at ensuring the safety of real estate objects undergoing construction or reconstruction [10; 35].

In a broader sense, contractual relations of this type constitute a category of civil law obligations that arise between a customer and a contractor on the basis of a concluded agreement. Under its terms, the contractor undertakes to perform a specific task and deliver the result, while the customer, in turn, is obligated to accept the result and make payment.

On the territory of the Republic of Kazakhstan, the regulation of contractual relations for work and labor is carried out through a range of normative legal acts, among which the following hold key significance:

• the Civil Code of the Republic of Kazakhstan;
• the Land Code of the Republic of Kazakhstan;
• the Law of the Republic of Kazakhstan «On Architectural, Urban Planning, and Construction Activities in the Republic of Kazakhstan»;
• the Law of the Republic of Kazakhstan «On Public Procurement»;
• the Law of the Republic of Kazakhstan «On Permits and Notifications»;
• the Law of the Republic of Kazakhstan «On Technical Regulation»;
• Construction norms and rules (SNiPs), as well as other technical regulations and standards that establish mandatory requirements for the quality, safety, and procedure for the performance of work.

According to the observations made by O.T. Alimov in prior research, technical regulations function alongside legislative measures as key instruments in the construction sector. Their primary objective lies in unifying construction procedures and aligning them with current standards. The system of technical regulation in this field is fundamentally shaped by a set of normative documents, including State Standards (GOST), Building Codes and Regulations (SNiP), and Sanitary Rules and Norms (SanPiN), which collectively establish the regulatory framework governing construction activities [11; 148].

In the context of legal analysis of contractual relations for construction work, particular attention should be given to a number of international agreements governing this sphere. One of the most significant documents in this area is the Agreement «On the Mutual Recognition of Licenses for Construction Activities Issued by Licensing Authorities of the Member States of the Commonwealth of Independent States,» signed on March 27, 1997, in Moscow and ratified by the Republic of Kazakhstan by Resolution of the Government No. 530 dated April 7, 2000.

Furthermore, on April 24, 2000, the CIS Agreement «On Interstate Expert Review of Construction Projects of Mutual Interest to the Member States of the Commonwealth of Independent States,» signed on January 13, 1999, entered into force in the Republic of Kazakhstan. An additional source of legal regulation in this area is the Agreement «On Cooperation in Construction Activities» dated September 9, 1994, signed in Moscow.

According to Y.A. Anosov, the aforementioned agreements hold the greatest practical significance for business entities operating within the CIS, as they reflect the intention of the member states to harmonize national legislation and mechanisms of state regulation in the field of investment and construction activities [12; 221].

S.K. Idrysheva notes that the provisions of the Civil Codes of the Republic of Kazakhstan and other CIS countries concerning construction contracts are largely harmonized. This is due to the fact that their formation was based on the provisions of the Model Civil Code for CIS countries, developed with the aim of bringing legal systems closer together [10; 148].

At the same time, the comparative legal analysis reveals significant differences in the regulation of contractual relations for work and labor between the Republic of Kazakhstan and several other CIS states. For example, in the Republic of Azerbaijan, the legal regulation of contractual obligations is concentrated in

Chapter 39 of the Civil Code of the Republic of Azerbaijan (hereinafter — CC AR), which reflects the national approach to this category of contracts.

According to Article 752 of the Civil Code of the Republic of Azerbaijan (CC AR), the contractor under a contract for work and labor undertakes to perform the work agreed upon in the contract, while the customer assumes the obligation to pay the agreed remuneration [13].

Unlike the legal regulation set forth in the Civil Code of the Republic of Kazakhstan (CC RK), the CC AR does not contain provisions specifically dedicated to individual types of contracts for work and labor — such as construction contracts, contracts for design and survey work, or contracts for research and development. The absence of differentiation by contract type in the Azerbaijani Code indicates a more generalized approach to the regulation of such contractual relations.

A notable difference also lies in the limitation periods for claims arising from work contracts. According to Article 776 of the CC AR, the customer is entitled to submit claims related to defects in the completed work within one year from the date of acceptance. However, in the case of building construction, this limitation period is extended to five years [13].

The Civil Code of the Republic of Kazakhstan contains similar provisions in Article 636, which stipulates that the limitation period for claims related to the improper quality of work begins from the moment the defects are discovered, provided that the customer reports them within the period defined by Article 630 of the CC RK.

According to paragraph 5 of Article 630 of the CC RK, the maximum allowable period for notifying the contractor of discovered hidden defects is one year from the date of acceptance of the work. Exceptions are made for capital construction projects and cases where the contractor has deliberately concealed the defects — in such cases, the limitation period is extended to three years.

Particular attention should be given to the provisions of Article 770–1 of the Civil Code of the Republic of Azerbaijan (CC AR), which regulate the procedure for payment of remuneration within the framework of contractual relations arising from the transfer of shares associated with integral parts located on land plots where construction is incomplete. This provision establishes that payment for the work performed shall be made only if the following conditions are met simultaneously:

• the contract referred to in Article 144–1 of the CC AR must be notarized;

• a security record in favor of the acquirer must be entered in the real estate register, concerning the shares associated with the relevant land plot.

If the contracts governed by Articles 770–1.1 and 770–1.2 of the Civil Code of the Republic of Azerbaijan (CC AR) do not establish alternative terms regarding the stages or portions of the work, the contractor's remuneration may be paid in stages, depending on the progress of the construction process. The legislation sets out maximum percentage limits within which payments may be made at each stage:

1. 30 % — after the commencement of excavation work;
2. 10 % — upon completion of the construction of external and internal walls and installation of the roof frame;
3. 8 % — following the installation of roofing materials and drainage systems;
4. 3 % — upon completion of the heating system installation;
5. 3 % — after the completion of water supply line installation;
6. 3 % — following the installation of electrical wiring;
7. 10 % — upon completion of window installation and glazing;
8. 6 % — following internal plastering works;
9. 3 % — in the case of buildings with complex configurations — after flooring has been installed in shared premises used by multiple sections;
10. 10 % — upon completion of façade cladding;
11. 9 % — following the construction of auxiliary facilities such as water reservoirs and support structures;
12. 5 % — after the building is fully completed and the occupancy permit has been obtained [13].

The aforementioned provisions represent a noteworthy element of national regulation of construction contracts, as they provide for a specific mechanism of payment allocation tied to the degree of project completion. This approach ensures a clearer correlation between the stages of work performance and the customer's financial obligations.

It should be noted that, unlike the more detailed and structured system of legal regulation of contractual obligations found in the Civil Code of the Republic of Kazakhstan, the provisions of the Civil Code of the

Republic of Azerbaijan (CC AR) address these legal relations mainly at a general level, without differentiating between types of work contracts or accounting for their specific features.

In the Republic of Moldova, the regulation of contractual obligations for work and labor is governed by the provisions of the Civil Code, particularly under Book Three, which is dedicated to the law of obligations. Specific rules concerning both contracts for work and labor and contracts for services are contained in Chapter XI, which outlines the general legal principles applicable to these types of agreements.

According to paragraph 1 of Article 1352 of the Civil Code of the Republic of Moldova (hereinafter — CC RM), the contractor undertakes the obligation to perform a specific task at the request of the customer and at their own risk, while the customer is obligated to accept the result of the work and pay the agreed price [14].

It is important to note that the CC RM does not differentiate between various types of contracts for work and labor — regulation is limited to general provisions that apply to all such contractual relations, without accounting for their sector-specific or functional characteristics. This distinguishes the Moldovan legal model from the more detailed approach implemented, for example, in the Civil Code of the Republic of Kazakhstan.

A comparison of the general provisions regulating contracts for work and labor in the legislation of the Republic of Kazakhstan and the Republic of Moldova reveals several significant differences. In particular, the CC RK contains an explicit requirement for defining the timeframes for the performance of work. Thus, in accordance with paragraph 1 of Article 620 of the CC RK, a contract for work and labor must specify both the starting and the completion dates of the work. Additionally, the parties may agree on intermediate stages of performance, with corresponding deadlines established [9].

The Civil Code of the Republic of Moldova (CC RM), in turn, grants the parties greater contractual freedom: as stated in paragraph 1 of Article 1360, the participants in contractual relations for work and labor may establish a general deadline for performance, and, if necessary, specify a commencement date, execution stages, and a final completion date [14].

Particular interest is drawn to the legal regulation of the periods for defect detection and limitation periods within contractual relations for work and labor under the legislation of the Republic of Moldova. According to Article 1374 of the CC RM, in cases where defects in the completed work are discovered, the provisions of Articles 1126 and 1127 — which govern sales contracts — shall apply. This means that the rules concerning the time limits for claims regarding the quality of work in contractual relations for work and labor are aligned with the provisions applicable to the sale of goods, indicating a close conceptual link between these areas of the law of obligations.

Pursuant to Article 1127 of the Civil Code of the Republic of Moldova (CC RM), the limitation period for claims related to discovered defects begins at the moment when the buyer actually discovered or should have discovered the relevant defect [14].

Article 1126 of the CC RM further specifies the deadlines within which the seller must be notified of the defects; otherwise, the rights arising from such defects are forfeited. The law provides the following time limits:

- three years — for defects of a legal nature;
- five years — for material defects concerning structures or construction materials;
- two years — for other material defects not related to construction projects [14].

These provisions apply by analogy to contracts for work and labor, since, as previously noted, Article 1374 of the CC RM explicitly refers to the rules governing sales contracts.

In the context of discussing the specifics of international regulation of construction contracts, considerable attention in scholarly literature is devoted to the standard contracts developed by FIDIC (Fédération Internationale des Ingénieurs-Conseils). For example, G. Croitoru highlights the particular role of the consulting engineer in projects implemented under FIDIC models, especially in cases involving large-scale investments. The engineer, appointed by the client, performs a wide range of functions, including:

- design or coordination of design work, including the selection of the design organization;
- organization and conduct of tenders;
- management of the construction process;
- implementation of technical and architectural supervision;
- participation in dispute resolution as a neutral arbiter [15; 32].

E.E. Adamchuk regards FIDIC standard contracts as an example of a legal phenomenon referred to by the term *lex constructionis* — a system of non-state, yet widely recognized norms and standards used in in-

ternational construction practice. In her view, these contracts represent the result of many years of accumulated experience in the legal support of transnational construction projects, which confirms their high adaptability and universality across different legal systems [16; 72].

The legal regulation of contractual relations for work and labor in Ukraine is characterized by a detailed framework governing various types of contracts and by a clear definition of the rights, duties, and liabilities of the parties involved [17]. Chapter 61 of the Civil Code of Ukraine identifies specific types of contracts for work and labor, including domestic contracts, construction contracts, and contracts for design and survey work, thereby enabling a specialized approach to the legal regulation of these relationships [18].

Particular attention should be given to the legal definition of the contract price in work and labor agreements. The Ukrainian model demonstrates a high degree of normative specificity with regard to this element, which functions not only as a form of consideration, but also plays a crucial role in the allocation of risk between the parties. Clear determination of the contract price helps eliminate uncertainty in the terms of the agreement, prevents arbitrary modifications by either party, and, as a result, ensures the stability of legal regulation in contractual obligations.

In practice, this leads to a reduction in disputes related to the scope, quality, or content of the work performed. Furthermore, a fixed contract price facilitates the determination of financial liability, as it allows for a more accurate delineation of the parties' rights and obligations, as well as the possible legal consequences in the event of a breach. N.S. Kuznetsova emphasizes that such a level of detail enhances legal certainty and reduces risks for the participants in contractual relations for work and labor [19; 208].

A comparative legal analysis of various legal systems highlights the significance of this approach, particularly when examined in relation to Russian civil law. According to paragraph 1 of Article 702 of the Civil Code of the Russian Federation (hereinafter — CC RF), the contractor undertakes to perform a specific task commissioned by the customer and to deliver the result, while the customer, in turn, assumes the obligation to accept the result and pay for it [20].

Similar to Ukrainian legislation, the CC RF provides a classification of contracts for work and labor by type, including: domestic contracts, construction contracts, contracts for design and survey work, and contracts executed to meet state or municipal needs. This system allows for flexible regulation of contractual relations for work and labor, taking into account the specific purpose and nature of the work performed.

According to paragraph 2 of Article 763 of the Civil Code of the Russian Federation (CC RF), the contractor under a state or municipal contract undertakes to perform construction, design, survey, and other works related to the erection or repair of production and non-production facilities intended to satisfy state or municipal needs. The state (or municipal) customer, in turn, undertakes to accept the completed work and to pay for it or to ensure payment [20].

R. Kulichev, in his analysis of the specific features of contracts executed for public needs, notes their distinct legal nature. He emphasizes that such work is carried out within the framework of a legal mechanism established by national legislation and is aimed exclusively at meeting public interests. The author identifies two key characteristics that define this category of contractual relations: the performance of work on the basis of a special legal act (a contract provided for under the legislation of the Russian Federation) and their strictly designated purpose — the satisfaction of state needs [21].

Contractual relations arising from the performance of contracts for state or municipal needs exhibit a number of features that distinguish them from other types of work contracts. M.S. Bogoyavlenskaya draws attention to the dual legal nature of such relations, as they combine elements of private law regulation (contractual obligations) with public law principles arising from the involvement of the state or municipality as the customer [22; 4].

This specificity necessitates the application not only of the provisions of the Civil Code of the Russian Federation (CC RF), but also of a number of special regulatory acts governing procurement procedures and the placement of public contracts. These include:

• Federal Law No. 44-FZ of April 5, 2013 «On the Contract System in the Procurement of Goods, Works, and Services for State and Municipal Needs»;

• Federal Law No. 275-FZ of December 29, 2012 «On State Defense Procurement.»

E.E. Stepanova, in her analysis of this area of law, points to the complex nature of legal regulation in contractual relations aimed at meeting public needs. In her view, the specifics of these legal relations give rise to the necessity of reconciling rules from various branches of law, as well as coordinating provisions within the same legal domain — a requirement stemming from the coexistence of both public and private interests within a single obligation [23; 203].

M.P. Shchepetinov, in his examination of contracts for work and labor aimed at satisfying state and municipal needs, highlights the wide range of entities authorized to act as customers. In particular, he includes among state customers government authorities, managing bodies of state extra-budgetary funds, state institutions, and other recipients of funds from federal and regional budgets. Municipal customers, in his view, are represented by local self-government bodies, as well as organizations and institutions financed from local budgets or through extrabudgetary sources when placing orders for contract work [24; 70].

Unlike the legal systems of several other states, Russian civil legislation treats contracts for work and labor intended for state and municipal needs as a distinct type of contract. This separation is due to the participation of the state, represented by authorized bodies, as one of the parties to the contractual obligations. This circumstance gives rise to certain legal enforcement challenges.

One of the most significant problems in this area is the lack of a uniform approach to defining the subject matter of a work contract for the needs of the state or municipality. A.A. Masalova notes that judicial practice reveals inconsistencies in the interpretation of relevant terms: while some courts insist on a precise specification of the scope and content of the work to be performed, others consider it sufficient to identify the type of work or its final result [25; 144].

Additional challenges arise in the acceptance and transfer of the results of completed work. Masalova emphasizes that the legal significance of this procedure directly depends on the proper documentation of the authority of the individuals conducting the acceptance. In the absence of a clearly defined list of powers in the contract or another official document, acceptance certificates may be deemed legally null and void, thereby creating risks for the proper performance of contractual obligations.

In legal scholarship, the subject matter of a contract for work and labor is viewed as one of the key and essential terms that ensures the legal certainty of the agreement. In this regard, many researchers identify the issue of formulating the subject matter in contracts executed for state and municipal needs as an independent and critically important matter. The absence of uniform standards and criteria for its definition often leads to legal uncertainty, complicates the judicial qualification of contract terms, and affects the stability of contractual obligations.

A number of authors call attention to the need to reconsider the existing approach to defining the subject matter of contracts in this field. A more flexible and substantive interpretation is proposed — one that is oriented toward the specific objectives and nature of the work being performed. This could contribute to resolving legal enforcement inconsistencies and improving the effectiveness of regulating contractual obligations involving public entities.

A.M. Fuks offer a critical assessment of the current legislative definition of the contract for work and labor performed for state or municipal needs, noting its excessive narrowness. In her view, the subject matter of such contracts is largely reduced to construction and repair work or similar activities, which they consider unjustified given the wide range of potential purposes such contracts may serve. The author emphasize that such a narrow definition fails to reflect the full complexity and diversity of contractual obligations in the public sphere [26; 265].

Special attention should also be given to the specifics of concluding contracts for work and labor in this category. One of the most common procedures used in selecting contractors is the electronic auction. S.A. Chernyakova notes that this method is especially widespread in the constituent entities of the Russian Federation due to its relative simplicity and efficiency [27; 199].

However, the author also highlights a number of shortcomings inherent to this procedure. In particular, she points to the issue of determining the winning bidder solely on the basis of price. Under current legislation, the winner of an auction is the participant who offers the lowest contract price. At the same time, such significant parameters as the quality of the work, the contractor's level of qualification, and the compliance of the bid with the technical specifications are not taken into account. As the researcher rightly observes, this may lead to a decline in the overall quality of performance under state and municipal contracts [27; 199].

Thus, the legislative approach to defining the subject matter of contracts for state needs, as well as the current contractor selection procedure, are the subject of well-founded academic debate. Scholars point to the need for revising these provisions in order to enhance the effectiveness and quality of public contract implementation.

Conclusions

In conclusion, it should be emphasized that the approaches to regulating contractual relations adopted in the legal systems of the Republic of Kazakhstan and certain CIS countries — specifically Azerbaijan, Mol-

dova, Ukraine, and the Russian Federation — largely demonstrate conceptual similarities. This is primarily due to the fact that the relevant legal provisions are based on the CIS Model Civil Code, which has had a significant influence on the development of unified principles in this legal domain.

Nevertheless, a more in-depth comparative analysis of the current legislation of these countries reveals substantial differences, stemming from national characteristics of legal regulation, divergences in law enforcement practices, and the adaptation of legislation to domestic realities and priorities in legal policy.

One of the most notable differences lies in the varying degrees of specificity in the legal codification of particular forms of contracts for work and services. In the legal systems of Azerbaijan and Moldova, there are no specialized provisions detailing the types of such contracts, which renders the regulation more generalized. In contrast, the legislation of Kazakhstan, Ukraine, and the Russian Federation provides a more clearly structured set of rules, distinguishing between various categories of contracts for work and services.

Russian law, in particular, is characterized by a separate regulatory framework governing contracts for work performed to meet state or municipal needs. This is due to the specific nature of the contracting party — a public customer and the necessity of ensuring transparency and predictability of obligations within the framework of the public procurement system.

Additionally, there are notable differences in the regulation of key contractual terms, such as the procedure and timing of payment, timeframes for performance of obligations, and other essential aspects. These features are especially evident when comparing the relevant provisions in the civil codes of Azerbaijan, Moldova, and Kazakhstan.

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Қазақстан Республикасында мердігерлік қатынастардың құқықтық реттелуі: ТМД елдерінің заңнамасымен салыстырмалы талдау

Мақалада мердігерлік қатынастардың маңызы мен олардың Қазақстан Республикасының заңнамасына сәйкес құқықтық реттелуі қарастырылған. Қазақстан Республикасы мен Тәуелсіз Мемлекеттер Достастығына (бұдан әрі — ТМД елдері) мүше мемлекеттердегі, атап айтқанда Әзірбайжан Республикасы, Молдова Республикасы, Украина және Ресей Федерациясындағы мердігерлік қатынастарды реттеудің жекелеген қырлары салыстырмалы түрде сарапталған. Мердігерлік қатынастарды реттейтін нормаларға талдау жасалып, құқықтық реттеудегі айырмашылықтар анықталған. Сонымен қатар, Қазақстан Республикасында және ТМД елдерінде мердігерлік қатынастарды реттейтін халықаралық келісімдер мен нормативтік құқықтық актілер зерттелген. Зерттеу барысында авторлар осы құқықтық қатынастардың құқықтық аспектілерін зерттеуге арналған ғылыми еңбектерді де талдап, бұл тақырыпты тереңірек ұғынуға және жан-жақты ашуға мүмкіндік алды. Ерекше назар мердігерлік құқықтық қатынастарды құқықтық реттеудің өзіндік ерекшеліктерін анықтауға аударылған.

Кілт сөздер: құқықтық реттеу, мердігерлік міндеттемелер, азаматтық-құқықтық қатынастар, құрылыс мердігерлігі, мемлекеттік немесе муниципалдық қажеттіліктерге арналған мердігерлік жұмыстар.

О.Т. Алимов, С.П. Мороз, Т.В. Степанова

Правовое регулирование подрядных отношений в Республике Казахстан: сравнительный анализ с законодательством стран СНГ

В статье рассматривается значение подрядных отношений и их правовое регулирование в соответствии с законодательством Республики Казахстан. Проведен сравнительный анализ некоторых аспектов регулирования подрядных отношений в Республике Казахстан и странах Содружества Независимых Государств (далее — страны СНГ), таких как Азербайджанская Республика, Республика Молдова, Украина и Российская Федерация. В статье проведен анализ норм, регулирующих подрядные отношения, с выявлением их отличий в правовом регулировании. Изучены международные соглашения и нормативно-правовые акты, регулирующие подрядные отношения как в Республике Казахстан, так и в

странах СНГ. Кроме того, в процессе исследования авторами были проанализированы научные труды, посвященные изучению правовых аспектов, рассматриваемых правоотношений, что позволило глубже осмыслить и всесторонне раскрыть данную тему. Особое внимание уделено выявлению специфики правового регулирования подрядных правоотношений.

Ключевые слова: правовое регулирование, подрядные обязательства, гражданско-правовые отношения, строительный подряд, подрядные работы для государственных или муниципальных нужд.

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Legal Protection Issues of Housing Rights of Orphans and Children Left Without Parental Care

The article examines the issues related to the implementation of housing rights guaranteed by the state for orphans and children left without parental care. The main goal of the article is to study the realization of the right to receive housing from the state housing fund by orphans and children left without parental care as subjects of housing relations, as well as to propose effective solutions to the problems arising in this process. The author analyzed practical and statistical data related to the protection of the rights of orphans and children left without parental care, including statistics on individuals in this category who were on the waiting list for housing in various regions, as presented on the Kezekte.kz website. The study identifies and analyzes issues related to the application of legislation. The article explores such problems as long waiting periods in the queue, low rates of social housing construction, and the lack of guarantees from the state. The research employed general scientific methods of cognition, including synthesis, analysis, induction, deduction, comparative legal and systematic approaches, the study of specialized articles and legislation, data analysis and generalization, and logical methods. As a solution to the problems associated with the realization of the right to receive housing from the state housing fund, the author proposed the introduction of alternative approaches into legislation.

Keywords: housing relations, housing for orphans, children left without parental care, children's rights, housing rights, social protection, housing queue, housing fund, Children's Rights Commissioner.

Introduction

In accordance with internationally recognized norms, the right to housing is regarded as a guarantee of every individual's right to a decent standard of living. The protection of the legal rights and interests of children in need of care is one of the fundamental trends of state policy.

Article 11 of the International Covenant on Economic, Social, and Cultural Rights [1] emphasizes that this right includes elements such as the legal provision of living conditions, the availability of infrastructure, materials, and opportunities, as well as the suitability of housing for residence and affordability in terms of expenses.

In September 2010, during an official visit to Kazakhstan, Raquel Rolnik, the UN Special Rapporteur on the Right to an Adequate Standard of Living, highlighted issues related to the right to adequate housing and the right to non-discrimination within this context. She noted that, according to the country's Constitution and national legislation, the right to housing is still interpreted in a limited sense — viewed merely as access to a place to live rather than as a fundamental human right. Moreover, she pointed out that housing continues to be viewed as a commodity rather than a human right [2; 2].

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In national legislation, this right is referred to as the «right to housing,» and according to constitutional norms, the state creates conditions to ensure that citizens have access to housing. The Constitution of the Republic of Kazakhstan establishes that every citizen has the right to housing. According to Article 25 of the Constitution of the Republic of Kazakhstan, "Provisions to provide citizens with housing in the Republic of Kazakhstan shall be created. Citizens in need of housing shall be categorized in a manner, to be prescribed by law and provided with housing at an affordable price from the state housing funds in accordance with the norms stipulated by law" [3]. In accordance with the Housing Legislation of the Republic of Kazakhstan, every child has the right to housing.

Furthermore, the "Law on Education" establishes guarantees for housing provision for children in this category by enshrining a norm that mandates the state to provide orphans with housing [4].

Orphans and children left without parental care face various challenges after graduating from boarding institutions, including obtaining housing, social discrimination, starting a family, and other related issues.

In accordance with international legal norms, a child who has been temporarily or permanently deprived of their family environment, or who cannot remain in such an environment in their best interests, shall receive assistance and protection from the state in accordance with national laws [5]. The guarantees for the protection of children's rights are defined in internationally recognized legal norms.

Upon analyzing the issue under consideration, it can be concluded that children in need of care belong to socially vulnerable groups [6; 2]. Due to reasons such as the incarceration of parents, their treatment in healthcare institutions due to health conditions, disappearance, or deprivation of parental rights, children are legally guaranteed the right to upbringing, protection, and support from the state and society.

In our country, the issue of providing housing for children under state care has not been adequately addressed. Moreover, due to the failure to register these children in the housing queue in a timely manner, many of them become homeless immediately after leaving the orphanage. The responsibility for registering individuals in need of housing from the state housing fund and allocating housing using local funds is directly assigned to local executive authorities.

Methods and materials

The article examines the theoretical and practical aspects related to the protection of housing rights of orphans and children left without parental care.

The study employed general scientific-theoretical, analytical, generalization, research, and logical methods. Additionally, a comparative legal analysis of normative acts regulating housing relations in the Republic of Kazakhstan and the Russian Federation has been conducted.

The methodological and material basis of the study includes the «Law on Housing Relations,» the «Law on the Rights of the Child,» as well as normative legal acts within the framework of housing legislation. Additionally, periodical publications and the works of scholars such as A.P. Leonchenko, A.K. Urazbayeva, M.T. Akimzhanova, U. Kazyken, and A.B. Ordabayeva have been analyzed.

Within the scope of the study, statistical data on individuals in the housing queue, including orphans and children left without parental care, were analyzed using the Shanyraq housing queue registration service via kezek.kz for all regions of Kazakhstan.

Results

The primary legal source regulating housing provision relations for children in need of care is the Law of the Republic of Kazakhstan «On Housing Relations» [7]. This law governs the emergence and termination of ownership and usage of rights to housing involving citizens, legal entities, and state authorities. Additionally, it sets requirements for housing and ensures the protection of citizens' rights within the housing sector and housing fund.

Additional guarantees for children's rights to property and housing are explicitly outlined in Article 14, Paragraph 2 of the Law of the Republic of Kazakhstan "On the Rights of the Child" [8]. For instance, orphans and children left without parental care who are placed in educational, medical, or other institutions, including organizations ensuring temporary isolation from society, a child placed under the care of a foster caregiver or relatives retains the right of ownership and use of housing. In the absence of such rights, the child is entitled to be placed on the waiting list for housing.

At present, the issue of safeguarding property belonging to children who have lost their parents and are in need of care is of significant importance. In this regard, a regulation was adopted on June 29, 2023 [9]. The preservation of housing for children in this category is overseen by the local executive authorities. Addi-

tional, before orphans and children left without parental care are placed in specialized institutions, the responsibility for ensuring the preservation of their housing lies with local executive authorities. However, when children are placed under guardianship, trusteeship, foster care, educational institutions, medical institutions, or other organizations, their legal representatives are responsible for ensuring the preservation of their housing until they reach adulthood.

Transactions involving the alienation of housing belonging to minors under the age of fourteen, including transactions that result in the division of their housing or the allocation of a share from it, are prohibited [10; 1].

In cases where parents have passed away, have been deprived of parental rights, or have refused to take their children back from educational, medical, or other institutions, the responsibility for protecting the rights and interests of these children is assigned to the guardianship and trusteeship authorities. According to legislation, the primary duty of guardianship and trusteeship authorities is to monitor the activities of guardians and trustees. To fulfill their assigned responsibilities, they must request reports at least twice a year on the health and upbringing of children under guardianship, compile an inventory of the property belonging to minors, and take measures to ensure the protection of the described property.

The provision of housing for orphans and children left without parental care in accordance with the queue system is established by Article 67, Paragraph 1, Subparagraph 1-1) of the «Law on Housing Relations.» To be eligible, they must be registered as citizens in need of housing at their place of residence. The responsibility for placing children on the housing queue is assigned to their legal representatives [11; 123].

According to Article 71 of the «Law on Housing Relations,» orphans and children left without parental care must be registered for housing with the local executive authority within three months from the date they are admitted to an educational, medical, or other institution, or from the date a guardian or trustee is appointed, or from the date a contract with a foster caregiver is concluded.

According to Article 68 of the Law «On Housing Relations,» children under the age of eighteen who have lost their parents and are in need of care are classified as socially vulnerable groups. Therefore, children under state care, upon reaching the age of eighteen and changing their permanent place of residence, are entitled to reapply for the housing waiting list until the age of twenty-nine. However, this may result in a significant delay in obtaining housing [7].

In 1996, Russia enacted a law establishing additional social guarantees for children who had lost their parents and were in need of guardianship [12; 1].

In the Republic of Kazakhstan, authorized bodies do not maintain separate statistics on the number of children living with relatives who are in need of housing.

Monitoring is carried out by the authorized for the protection of children's rights, along with its central and local executive agencies, and other organizations, including the Ombudsman. In practice, it has been observed that the administration of orphanages often fails to prepare and submit documents for their residents in a timely manner for registration with the housing commission, leading to delays in placing them on the housing queue.

According to data from the Karaganda Region Department for the Protection of Children in 2010, children under the care of special institutions were placed on the housing waiting list starting from the age of 16. In practice, there have also been cases where children in this category were added to the list only after reaching the age of majority. As a result, graduates of orphanages in the country often find themselves without housing.

In 2022, 49 orphans and children left without parental care Petropavlovsk were removed from the housing queue. This situation was explained as a technical error that occurred during the transfer of data from the local database to the national database. A similar incident took place in May 2024 in the North Kazakhstan region, where 43 orphans who had been on the waiting list since 2010 were illegally removed from the housing queue by local administration staff. In Akzhar district and Petropavlovsk, guardianship and trusteeship authorities failed to take any action for three months regarding the registration of six orphans on the housing waiting list. Additionally, in the Kyzylzhar, G. Musrepov, and Temiryazev districts, no measures were taken to enforce the collection of alimony from legal representatives in favor of minors. As a result of the inspection, eight officials, including two heads of education departments, were held disciplinarily liable [13; 1].

In Astana, cases have been reported where orphans were unjustifiably denied placement on the housing waiting list due to the absence of registration for children under the age of 14 or because their guardian, who is not a family member, owned registered property. These incidents indicate that authorized bodies failed to comply with housing legislation. As a result of prosecutorial oversight measures, more than 200 orphans

were placed on the housing waiting list. In Semey, two brothers who had been raised in an orphanage for ten years were registered under one housing number for an apartment from the state housing fund. Consequently, only one of them received a one-room apartment, while the other was listed as a family member.

The Housing Inspection and Housing Relations Department in Semey refused to reinstate the housing queue status for the second brother, leading him to file a lawsuit. In court, the state authority's argument that the claimant already had housing was dismissed, after it was established that no rental agreement had been signed with him. The court ruled in favor of the claimant. According to current legislation, registering two orphans under the same housing number constitutes a violation of the law by the state authority [14; 1].

Furthermore, when examining issues encountered in practice, court rulings demonstrate that the rights of citizens in this category are frequently violated by administrative authorities.

In cases where the procedure or deadlines for submitting data on children in this category for the purpose of being placed on the housing waiting list are violated, an administrative fine in the amount of 30 monthly calculation indices is imposed in accordance with the Code of Administrative Offenses [15].

For instance, in 2021, 84 claims concerning children in need of guardianship were filed with the administrative court in the city of Almaty. Among them:

- 29 cases were reviewed, and court decisions were issued (22 claims were satisfied, and 7 claims were dismissed);

- 28 claims were returned (21 under Article 138, Paragraph 6 of the Administrative Procedural Code, including 3 cases related to the actual settlement of the dispute).

In the first half of 2022, 87 claims were received, among them:

- 43 cases were reviewed, and decisions were issued (25 claims were satisfied, 18 claims were not satisfied);

- 31 claims were returned, including 8 cases settled through a mediation agreement, 4 cases related to the actual settlement of the dispute, and 8 cases reviewed in written proceedings.

Thus, in 2021, 75.6 % of claims were satisfied in favor of the plaintiff, while in the first half of 2022, this figure was 58 %.

The majority of claims were related to:

- registration and removal of children in need of housing from the state housing fund waiting list;

- privatization;

- payment of housing allowances [16; 61].

Discussion

According to Article 73, Paragraph 1 of the Law «On Housing Relations,» it is established that children in this category may not be removed from the housing waiting list.

This provision must be strictly observed to ensure the protection of the housing rights of orphans and children left without parental care. However, court practice demonstrates that authorized bodies often fail to comply with this norm. For example, in a case reviewed by the Specialized Interdistrict Administrative Court of Almaty, the claim of citizen K. against the Almaty City Department for the Development of Communal Infrastructure was satisfied. According to the case materials, the claimant had been registered as in need of housing in the state housing fund under the category of orphans by a resolution of the Almaty City Housing Commission. However, at the beginning of 2022, the claimant was removed from the waiting list, as they had been officially registered in Almaty Region since 2021.The court ruling declared the removal of the claimant from the waiting list under the orphan category was unlawful and ordered that the violation would be rectified within one month from the date the decision entered into legal force.

In practice, cases where individuals classified under the «orphans» category are denied the privatization of their housing after reaching the age of 29 are frequently encountered. This occurs due to misinterpretations of legal provisions.

Age-related requirements for children who have lost their parents and are in need of guardianship are taken into account when placing them on the housing waiting list; however, it is important to note that the legal provisions do not specify an age threshold with regard to privatization. Guardianship and custody authorities fail to take appropriate measures regarding the timely placement and removal of children in this category from the housing waiting list.

Currently, such matters can be referred to the recently established Children's Rights Commissioner. The Children's Rights Commissioner reviews applications and complaints regarding violations of children's rights and legitimate interests by state and executive authorities, organizations, and officials.

According to information from the Ministry of Education of the Republic of Kazakhstan, in 2024, there are 22,081 orphans and children left without parental care in the country.

There are 116 organizations operating in the country, including:

- 78 organizations in the field of education;
- 18 organizations in the field of healthcare;
- 20 organizations in the field of social protection.

As for the age distribution of children: 445 children are between the ages of two and four; 5,562 children are between the ages of five and eleven; 15,978 children are between the ages of twelve and seventeen [17; 1].

In the Republic of Kazakhstan, authorized bodies do not maintain separate statistics on the number of children living with relatives who are in need of housing. The Number of Orphaned and Vulnerable Children Who Received Housing from the Municipal Housing Fund in the Karaganda Region:

in 2019 — 3 individuals;

in 2020 — 4 individuals (including 1 individual under a state program);

in 2021 — 16 individuals (including 10 individuals under a state program).

2021 — 16 individuals (6 received municipal housing, 10 received housing under the «Nurly Zher» state program).

The number of orphans and children left without parental care who obtained housing through mortgage lending by accumulating 50 % of the required amount in «Otbasy Bank» JSC:

- 2019 — 45 individuals;
- 2020 — 53 individuals;
- 2021 — 48 individuals.

Currently, all individuals can check their status on the housing queue through the Shanyraq housing queue registration service on Kezekte.kz [18]. According to the data, the number of orphans and children left without parental care registered in Kazakhstan's regions and regional centers is as follows:

1. Astana — 2,607;
2. Almaty — 2,301;
3. Shymkent — 1,745;
4. Akmola Region — 4,170;
5. Aktobe Region — 3,083;
6. Almaty Region — 4,774;
7. Atyrau Region — 1,599;
8. East Kazakhstan Region — 4,227;
9. Zhambyl Region — 3,206 (Taraz — 2,166);
10. West Kazakhstan Region — 2,482;
11. Karaganda Region — 6,038;
12. Kostanay Region — 5,733;
13. Kyzylorda Region — 1,937 (Kyzylorda city — 1,336);
14. Mangystau Region — 1,145;
15. Pavlodar Region — 3,701;
16. North Kazakhstan Region — 3,537;
17. Turkistan Region — 2,053;
18. Zhetysu Region — 2,969;
19. Abai Region — 2,693;
20. Ulytau Region — 853;

Based on the indicators presented above, a total of **60,858 individuals** have been registered across the Republic of Kazakhstan.

Since 2024, the Russian Federation has introduced an alternative mechanism for orphaned children and those under state guardianship who are on the housing waiting list. In addition to receiving housing from the state fund, they are now eligible to obtain housing certificates, which can be used either to purchase housing or to repay existing mortgage loans. The average payment amount under the certificate is expected to be approximately 2.8 million rubles. Under the new mechanism, to protect orphans from fraud, the certificate funds will be transferred directly to the seller's account or to a credit organization to repay the mortgage.

According to the regional regulation, orphans and children left without parental care who have reached the age of 23 (or 21, depending on the region) must meet the following requirements:

- Proof of an official source of income for the past year, not less than the minimum wage;
- No outstanding tax liabilities or unpaid fees;
- No criminal record, addiction, or mental illness;
- The applicant must not be experiencing a crisis situation.

The housing certificate is primarily intended for individuals who have started a family and are seeking to improve their living conditions [19; 1]. Typically, the housing provided to children in this category by the executive authorities does not fully meet their needs. Therefore, the certificate offers them the opportunity to exercise their rights by acquiring housing of their own by choosing that one which better aligns with their personal and familial requirements.

The certificate amount should take into account housing prices in each region. When using this mechanism, guardianship and trusteeship authorities must supervise the process. In addition, the certificate should not be considered the only solution to the housing queue problem, but rather one of the possible ways to solve the housing problems of this category of citizens [20;1].

Conclusions

In any society and any state, children must receive special care and support. The state has an obligation to ensure the provision of housing for orphaned children and those who were deprived of parental care in order to protect their rights.

Under the social legislation of the Republic of Kazakhstan, state benefits are allocated to children who have lost their parents, whose sole parent has been declared legally incapable, or in cases where the parent is unable to provide proper care [21]. Typically, a bank account is opened in the name of such children, and the allocated benefits are transferred directly to that account. In practice, orphans and children who have lost their breadwinner can use the funds accumulated in their Otbasy Bank account to purchase housing upon turning 18 or withdraw the saved money. Additionally, the state allows them to use these funds as an initial payment under various housing programs. Many children in this category have successfully acquired housing through this opportunity. However, those who do not use the funds for housing often spend the money within two to three months and later find themselves waiting for state-provided housing for many years, facing a helpless situation.

Currently, all individuals can check their queue status through the Shanyraq housing queue registration service on Kezekte.kz. This platform allows people to see their position in the waiting list for housing across all regions of Kazakhstan, including the category of orphans and children left without parental care, as well as the queue positions of other applicants.

According to information obtained from local executive authorities, the oldest person at the top of the housing waiting list is 40 years old.

Additionally, individuals who receive housing through the waiting list have the opportunity to transfer ownership to another person or sell the property and, after having no registered housing for the past five years, they can reapply for the housing queue. This practice is not legally prohibited, as the list of individuals who have already received housing is not stored in the database. In this regard, we believe that the list of individuals who have received housing should be electronically recorded in the database with their full names to ensure transparency and prevent misuse.

Under the housing policy reform initiated by the First President, a new law has been adopted, according to which, starting from June 1, 2025, the responsibility for centralized housing queue management will be assigned to Otbasy Bank.

In the Republic of Kazakhstan, based on the housing provision practices implemented in Russia, we believe that a housing certificate system should be legally introduced as an alternative method to ensure housing for orphans and children left without parental care. Therefore, in our view, it is necessary to establish programs that accompany the housing certificate with additional support measures — such as a prohibition on the sale of the acquired property within five years and access to preferential mortgage loans at reduced interest rates (e.g., 2 % or 4 %). These measures would ensure the long-term stability and effective utilization of housing assistance provided to eligible individuals.

The main factors that hinder the realization of housing rights for children in this category include: long waiting periods, slow construction rates of social housing, lack of concrete state guarantees, corruption within local executive authorities, and other systemic issues.

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Ж.Т. Мырзалиева, Т.С. Тілеп

Жетім балалар мен ата-анасының қамқорлығынсыз қалған балалардың тұрғын үй құқықтарын құқықтық қорғау мәселелері

Мақалада жетім балалардың және ата-анасының қамқорлығынсыз қалған балалардың мемлекетпен кепілдендірілген тұрғын үйге құқықтарын іске асыру мәселелері зерделенген. Мақаланың мақсаты — тұрғын үй қатынастарының субъектісі болып табылатын жетім және ата-анасының қамқорлығынсыз қалған балалардың мемлекеттік тұрғын үй қорынан берілетін тұрғын үйді алу құқығын іске асыруды қарастыру және одан туындайтын міндеттерге қол жеткізу үшін кездесетін проблемаларды шешудің

тиімді жолдарын ұсыну. Авторлар жетім балалар және ата-анасының қамқорлығынсыз қалған балалардың құқықтарын қорғауға байланысты практикалық және статистикалық мәліметтерді, соның ішінде Kezekte.kz. сайтында кезекте тұрған осы санаттағы субъектілерге қатысты әр облыс бойынша статистикалық мәліметтерді қарастырып, заңды қолданудағы проблемаларды анықтап, талдау жүргізген. Осы санаттағы балалардың құқықтарын іске асыруда кезектің ұзақтығы, әлеуметтік тұрғын үй құрлысының баяу қарқыны, мемлекет тарапынан берілетін кепілдіктердің жоқтығы сияқты проблемалар зерттелген. Сонымен қатар мақалада ғылыми танымның жалпы әдістері: синтез, талдау, индукция, шегеру, салыстырмалы құқықтық, жүйелік, арнайы мақалаларды, заңнамаларды зерттеу, алынған мәліметтерді талдау және жалпылау, логикалық әдістер пайдаланылған. Мемлекеттік тұрғын үй қорынан берілетін тұрғын үйді алу құқығын іске асыруға байланысты мәселелерді шешу үшін заңнамаға баламалы тәсілдерді енгізуді ұсынған.

Кілт сөздер: тұрғын үй қатынастары, жетім балалардың тұрғын үйі, ата-анасының қамқорлығынсыз қалған балалар, бала құқықтары, тұрғын үй құқықтары, әлеуметтік қорғау, тұрғын үй алу кезегі, тұрғын үй қоры, бала құқықтары жөніндегі уәкіл.

Ж.Т. Мырзалиева, Т.С. Тілеп

Проблемы правовой защиты жилищных прав детей-сирот и детей, оставшихся без попечения родителей

В статье рассмотрены вопросы реализации прав детей-сирот и детей, оставшихся без попечения родителей, на гарантированное государством жилье. Основная цель статьи — проанализировать реализацию права детей-сирот и детей, оставшихся без попечения родителей, являющихся субъектами жилищных отношений, на получение жилья из государственного жилищного фонда, а также предложить эффективные пути решения возникающих проблем для достижения поставленных задач. Автор представил практические и статистические сведения, связанные с защитой прав детей-сирот и детей, оставшихся без попечения родителей, рассматривает статистические данные по каждой области в отношении детей, стоящих в очереди на сайте Kezekte.kz, выявляет и анализирует проблемы, возникающие при применении действующего законодательства. В числе основных проблем в реализации прав этой категории детей выделяются: длительность очередей, медленный темп строительства социального жилья, отсутствие гарантий со стороны государства. В статье использованы общенаучные методы познания: синтез, анализ, индукция, дедукция, сравнительно-правовое, системное, изучение специальных статей, законодательства, анализ и обобщение полученных данных, логические методы. Автор предлагает внедрение альтернативных подходов к законодательному регулированию для решения проблем, связанных с реализацией права на получение жилья из государственного жилищного фонда.

Ключевые слова: жилищные отношения, жилье для детей-сирот, дети, оставшиеся без попечения родителей, права детей, жилищные права, социальная защита, очередь на жилье, жилищный фонд, уполномоченный по правам ребенка.

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