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Legal Analysis of the Implementation of Article 1 of the World Declaration on Higher Education

This article attempts to examine the legal application of Article 1 of the World Declaration on Higher Education for the Twenty-First Century. Article 1 of the World Declaration is an introductory, general article that helps the reader and professionals in the educational and pedagogical, legal spheres to understand the entire document as a whole. This article generally describes approaches and methods in the educational sphere, through which it is possible to achieve training and preparation of highly qualified personnel. The paragraphs of Article 1 of the World Declaration establish general methods and approaches to organizing and conducting the educational process. The essence of the educational process at universities is linked with the scientific activity of both students and teachers, who can engage in science independently from each other, as well as together. Engagement in scientific activity contributes to the educational process in various forms and types. Science contributes to the student's pursuit of higher education and shapes the students' inclinations to fundamental and applied science, which become predetermining for the rest of their lives. Science and practice involved in the process of educational activities at the university allow students to become high-quality professionals not only in the profession, but also in the ability in competent management.

Keywords: article, analysis, higher education, professional, science, team, highly qualified personnel, academic disciplines, competence.

Introduction

The World Declaration on Higher Education for the Twenty-First Century: Approaches and Practical Measures adopted in Paris on October 9, 1998, defines higher education as all types of learning, courses of study, and training for scientific research. The theoretical approaches and practical measures analyzed in this Declaration can be classified according to the following aspects.

The first aspect can be attributed to fairness of access. This means that access to higher education is possible with the ability, effort, and persistence of those who wish to obtain higher education. That is why we encourage graduates of Kazakhstani schools and university applicants to show not only ability but also a strong commitment to learning. Only through persistent effort and the demonstration of knowledge during exams and assessments they can earn their place in higher education. The second aspect can be characterized as cooperation. This means that universities and other types of higher education institutions should work in close cooperation with schools, parents, and students. Here, the ability of teachers of Kazakhstani universities to conduct career guidance work in a highly professional manner is of great importance. One of the essential elements of such work is the writing and publication of "Entertaining Chemistry", "Entertaining

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Physics", "Entertaining Mathematics", "Entertaining International Law". This allowed the authors-teachers of these and other scientific disciplines to conduct conversations with parents and students in advance during the last final years of study and convince them of the need to choose and study their profession. This aspect echoes the subsequent aspect, which can be called strengthening ties. Universities should be considered as an integral part of the education system, which begins with preschool education, primary, secondary education, and then higher education. You will need to learn throughout your life.

It makes sense to take a closer look at such an aspect as the development of the education system. Within the framework of this aspect, higher education makes a serious, necessary contribution to the development of the entire education system, including the improvement of pedagogical education, as well as the development of curricula and research in this area. The use of technology is becoming a fashionable and promising aspect. It is known that new horizons can open up for higher education with the use of the latest technologies that not only create knowledge, but also manage and distribute it, thereby providing access and monitoring of it. It is imperative to ensure equal access of all students to advanced technologies at all levels of education systems.

Methods and materials

In this article, the methods of logical analysis, legal analysis, comparative legal analysis, scientific forecasting were used, which allowed to formulate judgments regarding the points that formed the basis of Article 1 of the World Declaration on Higher Education. Owing to these methods, it was possible to substantiate recommendations and proposals that can positively affect the improvement of the quality of higher education in Kazakhstan and other countries.

Results

This article analyzes Article 1 of the World Declaration on Higher Education for the 21st Century that consist of 17 articles and 3 areas of priority development of higher education. Article number 1 of this Declaration is generalizing in relation to all articles and areas of priority development and echoes the content of Article 5 of the same Declaration. In this regard, this article has become the subject of a separate study. The meaning of Article 1 of this Declaration is as follows: "The task related to the dissemination of education, training and research We reaffirm the need to maintain, strengthen and expand the main purposes and values of higher education, in particular with regard to its contribution to sustainable development and the improvement of society as a whole." The World Declaration, paragraph "a" of Article 1 calls for "to ensure the preparation of highly qualified graduates and responsible citizens, able to meet the needs of all areas of human activity by providing the opportunity to obtain appropriate qualifications, including vocational training, combining knowledge and skills of a high level, based on the use of courses and curricula constantly adapted to the current and future needs of society."

The proposed point "a" of the Declaration for analysis reflects the general trend of development of modern society, including to a certain extent Kazakhstani society. The essence of this trend is that teaching students research and using it in the educational process of the university is becoming an integral part of the training of modern specialists in almost all areas. This is evident from the requirements of the university certification procedure for the level of development of scientific work in its various structures. The main target settings in the implementation of state standards of higher professional education, as a rule, are the so-called "competencies" that a student receives in the learning process. We need to define the concept of "competence" here. Today, in the field of higher education pedagogy, this means the ability of a trained student to successfully apply the acquired knowledge, skills, abilities, and personal qualities in a certain professional field. It should be emphasized that in the modern understanding, the "competency approach" assumes that the student has been taught to competently work with individual information, a flow of information, has been taught reflection or a "cognitive mechanism" by means of which, in any difficult professional situation, he is able to think critically, give an objective assessment of his actions and misdeeds, quickly cut off unnecessary thoughts, emotions and concentrate his thinking on solving the issue here and now, only those specific lessons from past experience that align with the current context and enable immediate resolution of the problem should be extracted. Modeling within the framework of the competency-based approach is understood as a method that allows combining both theoretical and practical components into a single unit. The competency-based approach in the course of educational and cognitive activity allows modeling almost any situation in various areas of professional activity of a graduate of a higher educational institution. In other words, a student must be able to creatively manage the information received, be able to think independently and be ready

for creative solutions to life and professional situations. This is quite possible if the university professors and teachers were able to provide a highly qualified competency-based format of education [1; 902].

In developing the general idea of the competency-based approach, it is necessary to take a closer look at the term "professional competencies". This means that if a university graduate, an employee in a particular field, is trained at his or her university in the context of obtaining the appropriate "professional competencies", then such an employee becomes highly in demand in the current realities of the labor market, "as competition among manufacturing organizations is increasing every day, and employers are interested in highly qualified personnel who are ready, through the implementation of theoretical knowledge and practical skills, to achieve effective production results and contribute to the prosperity of companies as a whole" [2; 50-51]. The process of developing the professional competencies of future company employees begins with university teachers paying special attention to the analysis of important competencies and understanding what skills and abilities are necessary for employees to ensure the "full functioning of labor relations in the production process" [2]. The teacher must delve into the essence and details of the production process at the enterprise: only in this case will he be able to provide practice-oriented training for students in his classes, which will allow him to prepare potential employees who will be able not only to adapt to the latest digital, intellectual, robotic technologies, but also to develop them, to successfully compete both at the enterprise and in the industry as a whole. A study of the experience of Western universities in implementing a competency-based approach in their textbooks, through consultations with professors from a number of universities (Villanova, Indiana, St. Joseph (USA), Paris-12 — Sorbonne (France) showed that this method is quite productive, since it allows training highly qualified personnel who possess not only solid theoretical knowledge, but are also able to implement the practical skills acquired at universities to solve production problems of various purposes.

Teachers from the Kazakh Agrotechnical University named after S. Seifullin conducted a scientific study involving 126 master' s students studying in the specialty "Professional education". Using empirical, theoretical, statistical research methods, they attempted to find ways to improve the efficiency of the educational process. It should be noted that they managed to formulate the basic principles of professional training of students: 1) the principle of ensuring systemic approaches to the formation of professional competence in conjunction with the organization and implementation of the entire educational process; 2) the principle of general program formation of an approximate basis for the upcoming professional activity of graduates; 3) the principle of creating a model of competence of a particular specialist for inclusion in the general system of professional competence of a student, master' s student [3; 163].

Discussion

It is necessary to take a closer look at our educational legislation, consisting of 148 laws and other regulatory legal acts, to what extent it correlates with the concepts of the World Declaration on Higher Education. Thus, the term "competence approach" is absent from the educational legislation of Kazakhstan. In a number of cases, the Law of the Republic of Kazakhstan dated July 27, 2007 "On Education" uses the word "competence", but for some reason the Law does not define this term-concept. In all normative and legal educational acts, the word "competence" is used in the meaning of "the range of rights and responsibilities of a particular state body". Meanwhile, these acts must include this term as the acquisition of skills and abilities by students through the theory of learning and practice. This is how this term is interpreted in the World Declaration.

In paragraph "b" of Article 1, the participants in the development of the text of the World Declaration proceed from the need to "ensure opportunities (espace ouvert) for obtaining higher education and lifelong learning, providing students with an optimal range of choice and giving a flexible nature to the beginning and end of receiving higher education within the framework of this system, along with the opportunity for individual development and social mobility, with the aim of educating in the spirit of citizenship and preparing for active participation in the life of society, adhering to a global worldview; and also with the aim of fostering inner motivation and long-term capability and strengthening human rights, sustainable development, democracy and peace in the spirit of justice." Open space (this is how the French term "espace ouvert" given in this paragraph is translated) in relation to higher education means: creating conditions that allow each student to make a free choice regarding both the content and the form of education. This increases the opportunities for students to demonstrate initiative in determining the profession they need. This open space includes the dissemination of educational and training activities that go beyond the known (traditional) forms of providing a particular type of education. This approach makes the educational process more flexible and more dynamic.

In the open space there is also a place for an environment on issues of personality-oriented learning. The focus of such an environment is the holistic and unique personality of a student, master' s student, doctoral student, which is based on full mutual understanding and interaction between a teacher (professor) and a student at the university. Thanks to the open space, a student at the university prepares him/herself for life in an open society. It should be emphasized that it is open education that forms and improves their ability to make their own decisions, which allows them to develop personal competence. We agree with the authors of this paragraph and the Declaration as a whole that open space provides an opportunity for students to receive individual development within the framework of social mobility. This is what allows them to receive education "in the spirit of citizenship" (or commitment to the moral and ethical position of a given citizen to all forms of civil community accepted in this society and state) and preparation for conscious, active participation in the life of their society within a globally conscious framework, a benevolent attitude towards all peoples of the world; as well as strengthening dozens of types of fundamental and other civil, political, economic, social, cultural rights enshrined in 60 universal, as well as in a number of regional international legal documents, in 17 global interrelated goals for sustainable development adopted by the UN General Assembly in 2015.

These international legal acts are supported in one way or another by the Republic of Kazakhstan. Unfortunately, neither the laws nor other regulatory legal acts of the Republic of Kazakhstan on educational activities pay any attention to such an important concept as "open space". Meanwhile, this internationally recognized term should find its place in the Laws "On Education", "On the Status of a Teacher", the Labor Code, "On Permits and Entitlements" legality, law and order within states, in relations between states is possible primarily due to the education of university students in this spirit, since presidents, parliamentarians, ministers, as a rule, are people with a higher education, and who determine the domestic and foreign policies of their states and governments [4].

Clause "b" of Article 1 of the Universal Declaration prescribes "to promote, create and disseminate knowledge through research" and, as one of the services rendered to society, to provide it with the necessary knowledge in order to assist in the field of cultural, social and economic development, encouraging and developing natural scientific and technological research, as well as research in the social and human sciences and creative activity in the arts." The attention of students should be drawn to research activities, based on the need to achieve at least three goals. The meaning of the first goal is that, while simultaneously teaching students the basics of science and scientific work, teachers and professors during the 4 years of the bachelor' s degree achieve a clearer understanding of the approximately 40 academic disciplines taught to them, since almost every academic discipline is a science presented to students in a brief volume in a more simplified, understandable language. The second goal about the need to instill in students the skills of scientific work is that the mass of students who, upon graduation from the university, will mainly become practitioners in their specialty, their profession, must be taught the methods and means of scientific and analytical work within the framework of the profession they are studying so that they can apply the skills of scientific approaches in their practical work, so that if problems and difficulties arise in practical work, they can solve them and eliminate them with the help of creative scientific approaches, by means of analytical and creative methods. For the advanced part of students-practitioners, training in science is also necessary because almost every industrial enterprise has an R & D department, the name of which, when decoded, means: "research and development work". The better students are trained in research methods of work, the easier, more interesting and useful their work in these departments will be and the more competitive the corresponding goods, products, machines, equipment produced by specific plants and factories will be. Another, smaller in quantitative terms, part of students, inclined to theoretical and scientific work, should be trained in all the intricacies of research work. It is this part of students who, upon graduation, will become teachers, researchers in the departments of higher educational institutions of the country, as well as researchers of research institutes and academies.

It is important for all graduates of higher education institutions in the Republic of Kazakhstan to be informed about the current state of research activity in the country and the extent of its public funding. Currently, science funding in the country, according to the Bureau of Statistics of the Republic of Kazakhstan, is 0.16 percent of GDP, while science funding in Israel is 6 percent, in Japan it is 3.4 percent, in the Netherlands it is 2.3 percent of GDP [5; 5]. All graduates need to know this, since a considerable number of them will become ministers, heads of enterprises, members of Parliament, maslikhats at all levels, who will have to strive to increase funding for Kazakhstani science, which will bring considerable practical benefits for the growth of all spheres of the economy and life of the republic.

The authors of the analyzed World Declaration have established that, within the framework of general research, the teaching staff of university faculties is obliged to pay attention to technological research, use

the fruits of the scientific and technological revolution in the educational process, introduce digital technologies into the lecture process, use the capabilities of artificial intelligence in conducting trainings and practical classes [6]. A specialist or professional becomes one not only through studying natural science and technical academic disciplines, but also through engagement with the social sciences and humanities, which play a crucial role in forming a student's worldview. (even in Western universities they are studied on an alternative or optional basis). One can agree with the point of view of the scientist and philosopher A. Amrebaev, who claims that we are in such conditions "when a person's worldview and self-awareness, his or her cognitive capabilities are changing", therefore it is extremely important to study "questions of the philosophy of technology, anthropological philosophy" [7].

A variety of significant motives should be encouraged that would encourage students to engage in scientific research activities. At the same time, it is important to emphasize the need for self-realization, achieving success, and receiving public tasks, the opportunity to travel to scientific conferences in order to deepen their knowledge, acquire new knowledge, and achieve professional self-development. It is necessary to instill in students' minds that their research activities should be considered as one of the main forms of training. In this regard, favorable conditions for effective research work at universities should be created. Therefore, it is necessary to strengthen collaboration between students and faculty through academic societies and joint research initiatives is essential for advancing scholarly engagement. It would be advisable to involve students in the process of participating in international and Kazakhstani competitions, Olympiads to improve the qualities of a leader, manager. It is necessary to draw students' attention to the scientific solution of interdisciplinary problems, to the study and use of high technologies in order to solve specific professional problem tasks [8; 30, 33]. The legislator represented by the Parliament of the Republic of Kazakhstan, the relevant Ministry of Science and Higher Education of the country should pay special attention to the legislative and normative-regulatory regulation of issues of education and training of graduates of our universities with high leadership qualities.

In paragraph "g" of Article 1 of the World Declaration, its authors, addressing the world community of higher education institutions, propose "to help understand, interpret, preserve, expand, develop and disseminate national and regional, international and historical cultures in the context of cultural pluralism and diversity." It should be noted that the European Union and its members strive to treat representatives of other peoples from the position of introducing the ideology of multiculturalism, to provide them with assistance when they find themselves in difficult life situations as migrants. We, in Kazakhstan, where along with the Kazakhs, representatives of 130 ethnic groups live, act in approximately the same way. In 116 public and private higher educational institutions of the republic, where young people of almost all ethnic groups study, educational work is carried out through social sciences and social practice in the spirit of the state policy of ensuring the unity of the people of Kazakhstan, based on the principles of ethnic, religious, cultural and linguistic diversity (at least 1,000 ethno cultural associations and their branches operate in the republic — here and further in this paragraph one source: [9] creation of appropriate conditions ensuring the development of the culture and languages of ethnic groups living in the territory of Kazakhstan (more than 50 ethnic mass media outlets published in 15 languages have been registered in the country); implementation of a policy of tolerance towards ethnic groups and their beliefs (at least 3,900 religious associations of different ethnic groups profess 18 confessions on the territory of Kazakhstan); implementation of the consolidating role of the Kazakh people. It should be said that in universities and other higher education institutions of the republic it is necessary to carry out work taking into account the provisions of paragraph "d" of Article 1 of the 1998 World Declaration on Higher Education to promote "the protection and strengthening of social values" [10; 14-15], to ensure the education of "young people in the spirit of the values that form the basis of democratic citizenship" and "the prospects of humanism".

Conclusion

Article 1 of the World Declaration on Higher Education underscores the imperative that the dissemination of education and the cultivation of qualified personnel be intrinsically connected to the advancement of scientific research. By accustoming a student to conducting scientific activity from the first years of his stay at the university, we thereby teach him to understand the taught academic disciplines, which represent a particular science, presented briefly and in simplified language. Science is needed by university graduates so that they can enter the work of departments called "research and development work". By preserving, strengthening, expanding the main tasks and basic values of higher education, we thereby contribute to the sustainable development and improvement of modern society, including Kazakhstani society. The importance of the points of Article 1 of the World Declaration is that on their basis it is possible and necessary to solve the problems of training highly qualified graduates and responsible citizens who would be able to

meet almost all the needs of society in all areas of human activity. In addition, we need to take a closer look at the competence approach in the educational system of Kazakhstan in order to teach our students practical skills and abilities that would allow them to get involved in solving practical production problems almost immediately upon arrival at the enterprise. A graduate of a higher educational institution of any country, including Kazakhstan, must be trained and educated so that he is not only a technical and technological professional, but also a citizen of his country, who has absorbed the values of humanism, the culture of his people and respects the traditions of humanism and the culture of other peoples, a skilled leader of almost any rank, who educates his subordinates in the spirit of honesty, integrity, hard work, a creative approach to solving production problems, and resolving conflict situations within the team.

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Жоғары білім туралы Дүниежүзілік декларацияның 1-бабын іске асыруды құқықтық талдау

Мақалада XXI ғасырға арналған Жоғары білім туралы Дүниежүзілік декларацияның 1-бабының қолданылу мазмұнын заң тұрғысынан зерттеуге әрекет жасалды. Дүниежүзілік декларацияның 1-бабы оқырманға және білім беру, құқықтану мамандарына құжатты тұтастай түсінуге көмектесетін кіріспе, жалпы мақала. Сонымен қатар мақала білім беру саласындағы тәсілдер мен әдістерді жалпы түрде ашып көрсетеді, олардың көмегімен жоғары білікті кадрларды дайындауға қол жеткізуге болады. Осы Дүниежүзілік декларацияның 1-бабының тармақтары оқу процесін ұйымдастыру мен жүзеге асырудың жалпы әдістері мен тәсілдерін анықтайды. Жоғары оқу орындарындағы оқу-тәрбие процесінің мәні студенттердің де, оқытушылардың да ғылыммен бір-бірінен тәуелсіз, сонымен бірге айналыса алатын ғылыми қызметімен байланысты. Ғылыми қызметпен айналысу оқу процесіне әртүрлі формалар мен

түрлерде ықпал етеді. Бұл студенттерге жоғары білім алуға көмектесетін ғылым. Осы ғылым студенттердің өмір бойы шешуші болатын іргелі және қолданбалы ғылымға бейімділігін айқындайды. Жоғары оқу орындарындағы оқу іс-әрекеті процесіне тартылған ғылым мен тәжірибе студенттерге тек өз мамандығы бойынша ғана емес, сонымен бірге адамдарды, ұжымды сауатты басқара алатын жоғары сапалы маман болуға мүмкіндік береді.

Кілт сөздер: мақала, талдау, жоғары білім, кәсіптік, ғылым, ұжым, жоғары білікті кадрлар, оқу пәндері, құзыреттілік.

М.А. Сарсембаев

Юридический анализ реализации статьи 1 Всемирной декларации о высшем образовании

В данной статье предпринята попытка исследовать с юридической точки зрения содержание применения статьи 1 Всемирной декларации о высшем образовании для XXI века. Статья 1 Всемирной декларации является вводной, общей статьей, которая оказывает содействие читателю и профессионалам учебно-педагогической, правовой сфер в понимании всего документа в целом. Эта статья раскрывает в общем виде подходы и методы в образовательной сфере, посредством которых можно добиваться обучения, подготовки кадров высокой квалификации. В пунктах данной статьи 1 Всемирной декларации закрепляется общие методы и подходы по организации и проведению образовательного процесса. Суть образовательного процесса в университетах заключается в том, что он смыкается с научной деятельностью как студентов, так и преподавателей, которые могут заниматься наукой автономно друг от друга, а также вместе. Занятие научной деятельностью содействует образовательному процессу в разных формах и видах. Именно наука способствует получению студентом высшего образования, именно она предопределяет склонности студентов к фундаментальной и прикладной науке, которые становятся предопределяющими на всю оставшуюся жизнь. Наука и практика, задействованные в процессе учебно-образовательной деятельности в вузе, позволяют студентам стать специалистами, профессионалами высокой категории качества не только в профессии, но и в умении грамотно руководить людьми, коллективами.

Ключевые слова: статья, анализ, высшее образование, профессионал, наука, коллектив, кадры высшей квалификации, учебные дисциплины, компетентность.

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Legal foundations of cooperation between the Republic of Kazakhstan and foreign states in the military sphere: issues military policy and service

This article examines the current state of cooperation between the Republic of Kazakhstan and various foreign nations in the military domain. According to the authors, in recent years, amid global military-political instability, the primary condition for mitigating adverse consequences is the continued collaboration in the military sector. The study analyzes measures taken to ensure military security, as well as the distinctive features of military activity directions. The objective of this research is to explore the legal foundations of the Republic of Kazakhstan's military cooperation with international organizations, the Republic of Turkey, and the Russian Federation. During the research, a legal analysis of agreements in the military domain was conducted, and comparative-legal methods were applied. The research is grounded in a range of normative sources, including the Constitution of the Republic of Kazakhstan, the country's military doctrines, agreements on military cooperation with the Republic of Turkey, military cooperation plans, and various other legal instruments that govern military collaboration. The authors conclude that the establishment of military cooperation with neighboring countries to ensure peaceful coexistence is one of the most crucial functions of any state in guaranteeing military security.

Keywords: Republic of Kazakhstan, Republic of Turkey, military security, Constitution, military doctrine, military policy, military service, agreement, cooperation, legal framework.

Introduction

Following the collapse of the Union of Soviet Socialist Republics, a superpower that had endured for 70 years, the Republic of Kazakhstan emerged as an independent sovereign state, granting it the freedom to shape its own governance and policies. For any young state, which had for a long time operated within a system where decisions were made by a central authority, starting a new in a radically different environment and taking bold steps to define the future of the country was undoubtedly a challenging task.

Since gaining independence in 1991, the Republic of Kazakhstan, having full sovereignty over its territory, like other newly independent states, acquired the right to independently conduct its domestic and foreign policies [1]. In this context, Kazakhstan, adhering to the norms and principles of international law, enshrined as key tenets a policy of fostering mutual cooperation and friendly relations with neighboring countries, peaceful settlement of disputes, and the renunciation of the first use of armed force [2]. In other words, it is clear that the state opposes the use of military force as a primary response in the event of any conflict. In the current global environment, the mere presence of military formations and military-technological capabilities is insufficient for ensuring national security. A state's security is primarily and directly linked to the policy it pursues, the political resolve of its leadership, and the presence of mutual assistance, cooperation, and concluded agreements.

Later military doctrines of the Republic of Kazakhstan emphasize the creation of an international relations framework that progressively reduces the reliance on military force. These doctrines assert that conflicts between nations and peoples should be resolved primarily through political, diplomatic, legal, economic, informational, and other peaceful means, rather than military action. The fundamental goals for ensuring national security in the military sphere include pursuing policies that promote cooperation and friendly relations with neighboring countries, bolstering the nation's military structure, respecting the sovereignty of other states by avoiding interference in their internal matters, and proactively preventing any military threats to the Republic [3].

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In this context, Kazakhstan pursues international military cooperation on two fronts: globally, through its engagement with the United Nations, and regionally, within military-political frameworks such as the Collective Security Treaty Organization (CSTO) of the Commonwealth of Independent States (CIS), the Shanghai Cooperation Organization (SCO), the Conference on Interaction and Confidence-Building Measures in Asia (CICA), and the Organization for Security and Cooperation in Europe (OSCE). Additionally, Kazakhstan has forged bilateral agreements with several foreign nations, focusing on military cooperation, mutual support, and fostering friendly relations.

The aim of this research is to conduct a comprehensive legal analysis of the foundational framework for the Republic of Kazakhstan's international military cooperation. This includes examining the legal regulation of such cooperation, as well as assessing the effectiveness of the measures undertaken within the scope of military collaboration to ensure national security.

Research objectives:

-To analyze the development of military cooperation between the Republic of Kazakhstan and other countries;

-To examine the legal and regulatory framework governing international cooperation in the military sphere;

-To explore the specific features of activities in the field of international military cooperation.

The research methodology is rooted in the analysis of international legal documents, agreements, and priorities enshrined in national legislation that pertain to military cooperation. Furthermore, the research examines the methods of their implementation.

In academic literature, there is no unified or universally accepted perspective on the issue of international cooperation among states in the military sphere. Some scholars argue that, when establishing such cooperation, states should focus on developing in-depth relationships in specific areas of military security. Others, however, contend that each state selects an expanded format for cooperation based on its own foreign policy.

Given the regional significance of the Republic of Kazakhstan, its military security policy should place special emphasis on the development of comprehensive, multidimensional, and multifaceted cooperation in areas such as defense, mutual military assistance, professional development, and the formation of a strong military force. First, this approach ensures security. Second, the presence of a jointly developed military, founded on mutual trust, strengthens the country's defense capabilities. Third, it guarantees social and legal protection for military personnel. These processes should be carried out on the basis of mutually agreed decisions between states and international organizations, rooted in shared interests. The agreements reached must be enshrined in national legislation and implemented through the appropriate mechanisms.

International cooperation in the military sphere is governed by both international and national legal norms, giving it a multifaceted nature. Despite the contributions of domestic and foreign scholars, such as M.V. Danilovich, O.P. Chazov, A.F. Klimenko, O.N. Zenchukova and V.M. Kulagin, their works do not address the issue comprehensively. Instead, they focus on isolated aspects of the problem.

Throughout the study, the authors aim to identify the specific features by analyzing key aspects of Kazakhstan's military cooperation with Turkey and Russia — countries with which Kazakhstan has recently established close military ties. This is accomplished through a comparative legal analysis of the military strategies of these countries, emphasizing the innovative aspects and significance of the research. By examining the directions of military activity in this context, the study underscores its relevance and contribution to the field. The ongoing research fills in the gaps in legal science, as it is complex in nature.

Methods and materials

A thorough examination of the Republic of Kazakhstan's international military-political cooperation was carried out using a combination of comparative-legal, formal-legal, and historical analytical methods. These approaches were applied to scrutinize international military agreements and legal frameworks associated with international organizations. Specifically, the analysis involved reviewing key documents such as the Constitution and Declaration of Independence of Kazakhstan, laws pertaining to military security, international treaties with countries like the USA, Russia, and Turkey, as well as the Military Doctrine of Kazakhstan. The analytical method was employed to assess these texts, while the historical and comparative-legal methods were used to explore the legal dimensions of Kazakhstan's international military partnerships. This approach allowed for an examination of the goals, tasks, and primary areas of activity of international organizations that Kazakhstan has joined since gaining independence. The formal-legal method enabled the

identification of the distinctive features of Kazakhstan's Armed Forces and allowed for an analysis of the regulatory and legal framework of Kazakhstan's international military cooperation.

Furthermore, during the research, laws concerning military policy and key directions of the country's military activity were analyzed, along with agreements, acts from international organizations, and scholarly works from both domestic and foreign researchers.

Results

The examination of international treaties and domestic legal norms revealed that military cooperation evolves based on international agreements that are firmly established within the legal framework. These agreements are directly linked to the stability of a state's military policy, aimed at ensuring its national security. In this context, the implementation of each cooperation agreement into the national legislation of the Republic of Kazakhstan determines the future trajectory of such cooperation.

Summarizing the tasks within the realm of military cooperation, the analysis indicates that without addressing the issues of mutual legal regulation, it is impossible to ensure the effective collaborative functioning of the parties at the legislative level. In our view, such coordination can only be achieved through systematic joint efforts by states in developing national legislation, taking into account the obligations enshrined in cooperation agreements.

Considering contemporary realities, geopolitical factors, the international environment, as well as national mentality and traditions, the Republic of Kazakhstan is shaping its own system of military cooperation with foreign countries. In the field of international military cooperation, key issues for the Republic of Kazakhstan, in the context of its national interests, include the development of negotiations aimed at strengthening regional security, enhancing measures of mutual trust, joint training of military personnel, and establishing military training levels across various areas. Additionally, coordinated monitoring of the military situation, joint scientific research, the social and legal protection of military personnel, and other areas of collaborative activity are also key priorities.

To comprehensively regulate the aforementioned issues, it is essential to have an intergovernmental document in the form of a mutually agreed decision. The current Concept of Military Cooperation among the member states of the Commonwealth of Independent States, adopted in 2020, is effective until 2025. This year marks the expiration of its term. However, in our view, it is crucial for the states to adopt a similar document that takes into account the new, critical military threats facing the world.

Furthermore, the Military Doctrine of the Republic of Kazakhstan, which serves as the legal foundation for military cooperation, outlines various areas of activity within the realm of military policy.

However, it lacks a clear and detailed definition of the concept of military cooperation itself. In our view, in order to avoid discrepancies in intergovernmental relations regarding military security issues, it is essential to first establish a legislative definition of military cooperation.

It is proposed to include a clearly defined concept of international military cooperation in the list of key terms in Article 1 of the Law of the Republic of Kazakhstan "On Defense and the Armed Forces of the Republic of Kazakhstan". Furthermore, it is recommended to amend Article 32, the final section of this Law, by adding a subparagraph outlining the main areas of international military cooperation.

As a result, this article emphasizes the importance of thoroughly addressing the legal regulation of military cooperation amid its rapid development. The need for a unified legal document in this field is highlighted, and the necessity of legislatively defining the concept of military cooperation and enshrining it in the Military Doctrine of the Republic of Kazakhstan is substantiated. This represents the scientific novelty of the research.

Today, numerous international organizations have been established and are operational worldwide. Among the international organizations in which the Republic of Kazakhstan is an active member, fostering mutual cooperation, are the United Nations (UN), the World Trade Organization (WTO), the Organization of Turkic States (OTS), the Commonwealth of Independent States (CIS), the Collective Security Treaty Organization (CSTO), the Shanghai Cooperation Organization (SCO), the Conference on Interaction and Confidence-Building Measures in Asia (CICA), the Organization for Security and Cooperation in Europe (OSCE), the Eurasian Economic Union (EAEU), and TURKSOY.

In the military domain, Kazakhstan participates in several key regional military-political organizations, particularly within the Commonwealth of Independent States framework. These include the CSTO, SCO, CICA, and OSCE. Notably, in 2024, Kazakhstan assumed the chairmanship of both the CSTO and SCO, granting the country valuable opportunities to enhance its role in international security and defense coopera-

tion. This demonstrates Kazakhstan's readiness, along with other states, to implement the most effective measures in the field of security.

The importance of global military security necessitates a reassessment of the directions and priorities of the Republic of Kazakhstan's military policy. It also calls for concrete steps and amendments to be made in the relevant legal documents in this sphere. In this context, in 2022, President Kassym-Jomart Kemelovich Tokayev introduced a series of amendments to Kazakhstan's Military Doctrine, focusing particularly on aspects of international cooperation. These revisions started with modifications to the Presidential Decree of the Republic of Kazakhstan, dated September 29, 2017, No. 554, titled "On Approving the Military Doctrine of the Republic of Kazakhstan." The amendments highlight the particular emphasis on strengthening international cooperation and partnerships with other states and international organizations as a key element of ensuring Kazakhstan's military security. This demonstrates the ongoing development and enhancement of Kazakhstan's international military cooperation [4].

In the field of military cooperation, since gaining independence, the Republic of Kazakhstan has established military cooperation with over 50 countries worldwide. The emphasis is placed on nations with significant military defense capabilities and expertise, including the United States, Russia, China, Turkey, countries within the CIS, European nations, as well as regions in South Asia and the Middle East [5]. Within the context of bilateral relations, several key priorities have been outlined: peacekeeping efforts, the improvement of military training through the organization of diverse drills and exercises, military education, and military-technical cooperation.

In accordance with the directions of military policy, the military cooperation organized on this basis aims to accomplish the following tasks in the organization of military service in each country: the identification of key opportunities for ensuring military security; the development and justification of military-political decisions; the development of the country's military system; the organization of informational work; the accomplishment of tasks related to building the country's military potential (regulating military service, improving the qualifications of military personnel, etc.).

The activities of military personnel, both in individual states and in countries participating in any form of cooperation, are directly linked to the resolution of these tasks. For their effective and real implementation, relations between states are realized through the organization of various planned and regular joint training exercises, mutual exchange of experience among military personnel, training sessions, and other essential measures.

Kazakhstan's international military cooperation, as well as its accession to international documents in the field of security, reflects the commonality of military policies and political positions between states, as well as alignment with the ongoing military reforms [6; 30].

Discussion

Recent global events suggest that maintaining diplomatic relations with neighboring countries and upholding the rule of law and democratic governance within national borders — while vital for preserving sovereignty — do not alone suffice to ensure comprehensive security. To obtain guarantees for the comprehensive provision of military security, countries join or become part of regional or global international organizations, seeking mutual friendship, assistance, and peaceful coexistence. In this regard, the position of states requiring security, their policies, and the demonstrated political will are of paramount importance.

Considering the nation's long-term strategic priorities, Kazakhstan's key objectives in international cooperation encompass a wide range of areas, including politics, trade and economic ties, humanitarian efforts, as well as security and addressing new and emerging threats. These objectives focus not only on deepening connections with neighboring border states but also on broadening engagements with distant nations, including the United States, the European Union, and the member states of the Commonwealth of Independent States. Additionally, the development of bilateral and multilateral alliance relations forms the key priorities of Kazakhstan's foreign policy [7].

To date, the Republic of Kazakhstan has established diplomatic relations with many countries, joined a number of international agreements in various fields, and continues its efforts to gain membership in specialized international organizations in the areas of human rights, culture, education, economy, and defense. The legal basis for such membership in international organizations and cooperation with states in the field of military security stems from the Constitution of the Republic of Kazakhstan [2], the Military Doctrine of the Republic of Kazakhstan [3], and the Law of the Republic of Kazakhstan "On defense and the armed forces" [8].

The Military Doctrine outlines Kazakhstan's approach to military security, which is centered on three key priorities: first, ensuring internal stability within the state; second, preventing military threats while increasing participation in global security efforts; and third, maintaining a high state of readiness for the defense of Kazakhstan and its allied nations with which cooperative relations have been established [3].

This vision is based on the principle of respecting international legal norms and principles, enshrined in the country's Constitution as a rule-of-law state, as well as the importance of establishing relationships between states based on cooperation and good-neighborliness. Thus, it is clear that addressing any politically important issues in Kazakhstan, and translating them into practical action, must primarily be grounded in a strong legal foundation, ensuring that these efforts safeguard the nation's sovereignty and promote the well-being of its citizens. Any subsequent international cooperation must primarily serve the interests of the state — a peaceful existence. Additionally, this stance is grounded in the obligation specified in paragraph 3 of Article 2 of the UN Charter, which asserts that "All Members shall resolve their international disputes through peaceful means in such a way that international peace and security, and justice, are not put at risk" [9]. However, this does not suggest that states should avoid collaborating with one another in military security matters to protect against external threats.

Every cooperation agreement between the parties outlines specific issues and commitments, detailing the structure, the goals to be achieved, the challenges to be addressed, and the responsibilities each party is obligated to uphold. On one hand, military security encompasses content aimed at preventing potential future threats, conducting joint military exercises, and providing assistance in defense matters. On the other hand, it manifests in the ability of states to withdraw from fulfilling certain commitments under other agreements if such commitments contradict the sovereignty of the country, its security, internal policy, or interests. This principle was reflected in the Cooperation Agreement between the Republic of Kazakhstan and the European Communities and their member states, signed in 1995 [10]. Thus, military security is manifested not only through tangible measures but also through acts of protest — specifically, the deliberate non-fulfillment of obligations that run counter to national interests.

To confirm the above, Article 2 of the Law of the Republic of Kazakhstan "On International Treaties of the Republic of Kazakhstan" can be referenced. According to this provision, the conclusion of any international treaty that does not align with the national interests of the Republic of Kazakhstan or that threatens its national security is deemed unacceptable at the legislative level [11].

The data presented above confirm the voluntary nature of Kazakhstan's or other states' decisions based on their sovereignty and independence. Therefore, in Kazakhstan's international relations, first, the protection of the country's interests is ensured, and second, it is legally established that such actions do not violate any agreements in terms of prioritizing national interests.

The Republic of Kazakhstan established considerable influence in global politics and is recognized as a key player in maintaining international security. In the military realm, Kazakhstan is an active member of several regional military-political organizations, including the Collective Security Treaty Organization (CSTO) within the Commonwealth of Independent States (CIS), the Shanghai Cooperation Organization (SCO), the Conference on Interaction and Confidence-Building Measures in Asia (CICA), and the Organization for Security and Cooperation in Europe (OSCE).

Researchers' views on the multifaceted nature of Kazakhstan's military cooperation with countries around the world vary considerably.

According to M.V. Danilovich, military cooperation among states within the Shanghai Cooperation Organization (SCO) has become a crucial tool in ensuring the territorial integrity of states, as well as in combating illegal occupation, terrorism, and extremism [12; 56].

Another Russian analyst, A.F. Klimenko, suggests enhancing "consultative mechanisms to promote conflict resolution in the territories of the member states" within the framework of the SCO [13; 27].

We believe that the opinions outlined above are not exclusive to regional organizations of international cooperation, such as the SCO. These approaches should be characteristic of all organizations engaged in military cooperation. This is due to the fact that the military policies of states, military-scientific technologies, and the forms and nature of threats are constantly evolving. Therefore, participation in such alliances should be grounded in a shared interest — even if partial — in harmonizing the military policies of member states.

The military doctrines adopted in the post-Soviet states reflect priority areas of military policy, which differ significantly in scope and strategic orientation. This is a natural phenomenon. However, we maintain the view that the effectiveness of state cooperation in the military sphere, aimed at achieving a common objective, is directly contingent on the degree of similarity between these areas.

The authors argue that effective coordination and unification of the various directions in military policy require mutual cooperation between states, as well as the establishment of a consultative and coordinating body within international organizations.

In the military relations between states, the primary focus and subject of agreements should center on concepts such as “security”, “military cooperation”, and “joint military training”. Despite each state forming its own military policy, none can independently ensure its security or develop without cooperation with other nations.

The core concept here is security, which V.M. Kulagin defines as follows: in a broad sense, security is the state of being protected from threats, meaning it is determined depending on the scale of the emerging danger. To ensure security, countries achieve this through cooperation with their partners [14; 8]. This definition is well-received as it aligns with the views of the authors and widely accepted principles of the security concept. The state of protection is maintained by states at the national, regional, and global levels, depending on the scale of the threat. Since security in the modern world has acquired new characteristics that did not previously exist, various preventive measures are adopted depending on their scope, nature, and type.

According to Russian researcher O.P. Chazov, Kazakhstan is interested in military-political integration with Russia to ensure its national security [15]. Russia, in turn, benefits from this cooperation by receiving a “security belt” against threats originating from the southern borders, as he notes.

Nevertheless, it is important to note that the successful implementation of cooperation in this area is hindered by obstacles such as differences in national legislations and the uneven level of military-technical capabilities across countries. A similar viewpoint is expressed by Russian scholar O.N. Zenchukova. According to her, military-technical cooperation is not merely a process, but a historical reality. She identifies key issues such as the lag in the defense industry, insufficient funding, and the annual obsolescence of military equipment [16].

Russian scholar I.V. Ignatyeva holds the view that the security of one state is directly linked to the security of the global community. This is due to the multifaceted nature of security. The increasing interdependence gives rise to security issues at both the regional and international levels. In her opinion, the alignment of national interests among states should become the core of the concept of regional and international security [17; 86].

Military security and international cooperation must remain ongoing priorities on the agenda. To ensure their effectiveness, proper coordination of state actions and harmonization of national legislation are essential. These measures are crucial for aligning military activities with contemporary requirements and ensuring their high effectiveness. Therefore, a necessary first step is the harmonization of national legislation. Additionally, when drafting agreements and concepts that include shared rights and obligations, all potential factors must be taken into account. Such provisions should be enshrined starting from the Constitution of the respective state, as well as in military doctrines and laws that regulate military service.

In recent years, Kazakhstan’s military cooperation has seen significant growth, extending beyond the CIS member states to include stronger ties with the Republic of Turkey. Each cooperation agreement is designed to collaboratively address security concerns, align on shared objectives, and foster coordination and advancement of military services between the countries involved. Kazakhstan’s international military cooperation is focused on several key priority areas. With the Russian Federation, the emphasis is on military training, education, and enhancing the bilateral legal framework, among other aspects [18]. In collaboration with the United States, the priorities include training military personnel and engaging in peacekeeping operations to bolster regional security [19]. With Turkey, the scope of cooperation covers military personnel training, advisory support, reciprocal visits for training purposes, experience-sharing, joint exercises, the development of military legislation, participation in peacekeeping missions, military-scientific research, human rights exchanges, and social assistance for military personnel, among other initiatives [20]. Although this agreement was concluded relatively recently, the broad range of tasks outlined in its text today is reflected in the annually approved military cooperation plan between Kazakhstan and Turkey [21]. In accordance with this annual plan, measures are implemented to enhance the military service’s potential through military education, peacekeeping missions, and military training activities.

Conclusions

Managing relations with other nations is a central aspect of every state’s foreign policy. In ensuring cooperation, a normative and legal framework is formed and developed. In the military sphere, an extensive

treaty and legal framework has been created for cooperation with foreign states and international organizations.

To ensure effective and result-oriented international cooperation in the military domain, particularly in securing the military defense of the Republic of Kazakhstan, it is essential to pursue a coordinated integration of efforts under shared strategic objectives. This requires the alignment of specific actions among participating states and the comprehensive development of a legal framework that governs military collaboration. Such a framework must be oriented toward establishing a robust and reliable defense infrastructure.

The conducted research revealed several systemic challenges in the legal regulation of the international military cooperation related to national security. Based on these findings, the study presents the following conclusions:

- To establish an effective system of collective security, it is essential to adopt a legally binding concept of military cooperation. In the absence of such a framework, the practical capacities of states to engage in military collaboration remain significantly constrained. A clearly defined concept, once institutionalized as a foundational element of national defense policy, would serve to deepen and expand the substantive dimensions of interstate military cooperation.

- National legal systems governing military affairs differ substantially in both scope and structure, as they reflect distinct domestic policy priorities and strategic traditions. To overcome these disparities, it is essential to activate an efficient consultative mechanism. This mechanism must be capable of coordinating the legal frameworks of member states within a military alliance. Furthermore, it is imperative to introduce regular revisions to the legal instruments and agreements that regulate legislative harmonization, ensuring that they evolve in accordance with current geopolitical and security demands.

- The analysis of legal frameworks governing military cooperation has underscored the urgent need for a unified terminological reference system. Clearly defined and legally codified terms, comprehensible and consistent across jurisdictions, are essential to eliminating ambiguities in the interpretation and application of regulatory standards.

- The Military Doctrine reflects the state's position on defense policy, but it does not have the force of law. Therefore, it is important to include a clear definition of international military cooperation in Article 1 of the Law of the Republic of Kazakhstan "On Defense and the Armed Forces of the Republic of Kazakhstan". In addition, Article 32 should be supplemented with provisions that set out the main areas of such cooperation.

The findings obtained through this research confirm its scholarly significance. They provide a conceptual basis for further in-depth theoretical inquiry into the legal dimensions of interstate cooperation in the military domain. These results not only reflect the current state of regulatory challenges but also outline key vectors for advancing the normative development of international defense partnerships.

The scientific conclusions and propositions formulated throughout this research possess clear practical relevance. They may be employed by policymakers and legislators in shaping national defense strategies, enhancing military security, and advancing the development of international military cooperation. Moreover, these findings are applicable in the legal regulation of service-related activities of military personnel, thereby contributing to the refinement of institutional and normative mechanisms in the defense sector.

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Р.Б. Ботагарин, К.С. Мусин

Қазақстан Республикасының шет мемлекеттермен әскери саладағы ынтымақтастығының құқықтық негіздері: әскери саясат және қызмет сұрақтары

Мақалада Қазақстан Республикасының кейбір шет елдермен қазіргі таңдағы әскери саласының ынтымақтастығы, әскери саясатының бағыттары, әскери қауіпсіздікті қамтамасыз етудегі әскери қызметті құқықтық қамтамасыз ету сұрақтары қарастырылған. Авторлардың пікірінше, кейінгі уақыттары әлемдегі әскери-саяси тұрақсыздық салдарынан туындайтын жағымсыз салдарлардың алдын алудың басты шарты — әскери саладағы ынтымақтастықты жалғастыру. Зерттеу барысында еліміздің тәуелсіздігі жылдарынан бергі әскери қауіпсіздікті қамтамасыз етудегі атқарылған шаралар, жасалған келісімшарттар, мемлекеттің әскери саясатының негізін құрайтын құқықтық құжаттар, әскери қызмет бағыттарының ерекшеліктері зерделенген. Зерттеудің мақсаты Қазақстан

Республикасының әскери саладағы халықаралық ұйымдармен және Түркия Республикасы мен Ресей Федерациясымен ынтымақтастығының құқықтық негізін және құқықтық реттеу сұрақтарын, сонымен қатар басқа да әскери ынтымақтастық аясында атқарылып келген шаралардың ел қауіпсіздігін қамтамасыз етудегі тиімділігі дәрежесін анықтаудан тұрады. Зерттеу жұмыстары кезінде әскери салада жасалған келісім шарттарға құқықтық талдау жүргізу, салыстырмалы-құқықтық әдістері қолданылды. Зерттеудің нормативтік негізін Қазақстан Республикасының Конституциясы, Қазақстан Республикасының әскери доктриналары, Қазақстан мен Түркия республикаларының арасындағы әскери ынтымақтастық туралы келісімдер, әскери ынтымақтастық жоспарлар мен өзге де әскери ынтымақтастыққа аясындағы құқықтық құжаттар құрайды. Авторлар көрші елдермен бейбіт өмір сүруді қамтамасыз ету үшін әскери ынтымақтастық орнату елдің әскери қауіпсіздігін қамтамасыз етудегі кез келген мемлекеттің аса маңызды қызметтерінің бірі деген қорытындыға келді. Сонымен қатар, әскери салада тәжірибе алмасу үшін әскери қызмет саласындағы құқықтық базаны жетілдіру бойынша ұсыныстар жасалады.

Кілт сөздер: Қазақстан Республикасы, Түркия Республикасы, әскери қауіпсіздік, Конституция, әскери докторина, әскери саясат, әскери қызмет, келісім шарт, ынтымақтастық, құқықтық қамтамасыз ету.

Р.Б. Ботагарин, К.С. Мусин

Правовые основы сотрудничества Республики Казахстан с зарубежными странами в военной сфере: вопросы военной политики и службы

В статье рассмотрены вопросы сотрудничества Республики Казахстан с некоторыми зарубежными странами в современной военной сфере, направления военной политики, правового обеспечения воинской службы в обеспечении военной безопасности. По мнению авторов, главным условием предотвращения негативных последствий, возникающих в результате военно-политической нестабильности в мире, является продолжение сотрудничества в военной сфере. В ходе исследования будут рассмотрены предпринятые меры по обеспечению военной безопасности за годы независимости страны, заключенные договоры, правовые документы, составляющие основу военной политики государства, особенности направлений военной службы. Цель исследования состоит в определении правовой основы и вопросов правового регулирования сотрудничества Республики Казахстан с международными организациями военной сферы и Турецкой Республикой и Российской Федерацией, а также степени эффективности мероприятий, проводимых в рамках других видов военного сотрудничества, в обеспечении безопасности страны. В ходе исследовательской работы применялись сравнительно-правовые методы проведения правового анализа договоров, заключенных в военной сфере. Нормативную основу исследования составили Конституция Республики Казахстан, военные доктрины Республики Казахстан, соглашения о военном сотрудничестве между казахстанскими и турецкими республиками, планы военного сотрудничества и иные правовые документы в рамках военного сотрудничества. Авторы пришли к выводу, что установление военного сотрудничества с соседними странами для обеспечения мирного сосуществования является одной из важнейших функций любого государства в обеспечении военной безопасности страны. Кроме того, будут даны рекомендации по совершенствованию правовой базы в сфере воинской службы для обмена опытом в военной сфере.

Ключевые слова: Республика Казахстан, Турецкая Республика, военная безопасность, Конституция, военная доктрина, военная политика, военная служба, соглашение, сотрудничество, правовое обеспечение.

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Certain issues of legislative regulation of digitalization of healthcare in Kazakhstan

The aim of the work is to identify the imperfections of legal regulation that hinder the realization of the right to health care through the digital format of receiving medical services. To consider this topic, the authors studied the norms of national legislation affecting the processes of informatization of all spheres of the economy and digitalization of health care, in particular, through system analysis, comparative-legal and formal-legal methods. As a theoretical basis, the authors studied legal scientific literature, documents of international organizations devoted to the subject of the study. In conclusion, the authors highlight the significant role of protection of personal medical data and principles of ethical application of artificial intelligence in the regulation of social relations in the field of digitalization of health care and the need to revise and harmoniously combine the norms of different legal acts regulating the digital development of health care.

Keywords: right to health care, digitalization of healthcare, regulation of healthcare digitalization, protection of medical data, artificial intelligence, ethical principles of AI, law on AI, digital code.

Introduction

Intensive introduction and use of informatization products based on digital technologies are aimed at providing a positive effect on the quality of medical services and expanding ways for Kazakhs to exercise their constitutional right to health care. Development and use of digital technologies in this area both in the Republic of Kazakhstan and in the world are ahead of their legal regulation, restricting citizens' access to health care. In any case, such technological advances require the updating of legal support for this area. Revision of those parts of the legislation that directly regulate public relations in the field of digitalization of health is needed.

The aim of this work is to establish the inadequacy of legal regulation of digital health development based on scientific research. To achieve this goal, it is necessary to explore the imperfections of the legislation that hinder further regulation of the development of digital health and to identify ways of eliminating such imperfections.

The stated research goal is achievable if the following tasks are completed:

– establishing new areas of legal regulation arising from the introduction of the latest technological tools for digitalization in the field of medical services;

– studying foreign experience in regulating new areas of digital healthcare by analyzing the legislation of foreign countries and international regional organizations;

– identifying specific problems that lead to incomplete national legal regulation of digital transformation in healthcare.

In Kazakh jurisprudence, the legal regulation of the health care digitalization and the role of such regulation in ensuring the right to health care were not the subject of a comprehensive scientific-theoretical study. At present, only some legal issues of digitalization of health care are considered: protection of personal medical data (S. Arynova, S. Nuragliev); violation of patients' rights caused by automation of processes and introduction of artificial intelligence in medicine (M.U. Bayeshova); legal issues arising from the introduction of telemedicine (R.S. Makacheva); the problems of methodology of integration of legal requirements into development and processes of e-health technologies (H. Purtova.).

Among foreign authors the problems of legal regulation and ensuring digitalization of health care have been studied by such scholars as Caroline Ball, Silven A.V., J.G. Hodge Jr., Vincent Liu, Adil Hussain Seh, Katarina Jonev-Ćiraković, João V. Cordeiro.

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In the Russian legal science, there is also a fragmentation of studies and a lack of complete scientific-theoretical development. Significant contribution to the study of issues of legal regulation of medical services was made by S.M. Grishin; issues of legal and information support are considered by V.S. Bulanova; Attempts to comprehend the existence of uncertainty in the legal framework of telemedicine implementation made by N. Makareko and M. Davydova; consideration of risks such as data theft and the likelihood of medical errors caused by the process of digitalization of the medical sphere was carried out by M. Vlasova.

Thus, the lack of solid scientific insights in the field of legislative regulation of healthcare digitalization in Kazakhstan and the exceptional relevance of improving the provisions of this legislation to ensure the health care rights and successful healthcare reform are the main reasons for studying the chosen topic.

Materials and methods

As part of the study, the norms of foreign and international legislation were analyzed and systematized. The study also examined leading jurists' works on the legal regulation of digital technologies.

The study's methodological basis included general philosophical methods, such as the dialectical method, which was employed to reveal the interrelationships between digital processes and legal norms. The method of comparison was used to contrast different legislative approaches, while logical analysis was employed to examine legal constructs.

Specialized legal methods were also employed, including the formal-legal method for analyzing normative legal acts, the comparative method to identify peculiarities in the regulation of different legal systems and the method of legal modeling to theoretically reconstruct possible legislative developments.

This theoretical study is based on the analysis of secondary data and did not involve conducting empirical experiments or collecting statistical information.

In order to establish new areas of legal regulation arising from the introduction of the latest technological tools for digitalization in the field of healthcare services, the latest international documents adopted by the international community within the framework of the UN, UNESCO and WHO were studied. Thanks to the study of international provisions, new issues related to the further development of national legislation have been identified in view of the emergence of new areas of legal regulation.

An understanding of foreign experience in regulating new areas of digital healthcare was achieved by reviewing the legislation of foreign countries and international regional organizations. To understand the theoretical background of the foreign approach to regulatory measures for the introduction of AI in healthcare and the problems of personal medical data protection, the authors also relied on the work of foreign and domestic legal scholars.

Identifying specific problems that lead to weaknesses in national legal regulation of digital transformation in healthcare has been achieved by studying the provisions of current national legislation and draft regulatory legal acts proposed by legislators for discussion and public review.

Results

With the intensification of healthcare digitalization, there is a need to develop a regulatory framework aimed at regulating public relations associated with the introduction of digital technologies in various areas of public health. Kazakhstan has been working on the adoption of a Digital Code for the past few years. The adoption of such an act could give new impetus to the development of rules and principles of digital legislation. The draft Digital Code of the Republic of Kazakhstan, proposed in 2024, although it contains rules regarding the protection of personal data and rules governing the safe use of artificial intelligence, which have become major technological trends, it does not contain separate provisions dedicated to digital healthcare. In short, the provisions of the Code are generalized and cannot directly regulate the healthcare digitalization. This, in turn, may hinder the use and legal support of high-tech approaches in medicine, such as diagnosing diseases using artificial intelligence, providing services through telemedicine, introducing a unified medical information system and the transition of medical documents to digital format under the principle of conversion to paperless medicine, which means storing medical data of individuals in electronic databases.

In order to develop such a regulatory legal act and the establishment of the regulatory framework as a whole, it is important to understand global trends in the field of protection and ensuring rights when using digital technologies for the relevant and harmonious evolution of national legislation in this area. Inventing national legislation, it is decisive to take into account its compliance with international standards in digitalization, as this helps to apply generally accepted approaches, strengthening international coordination around the problem and enhancing the country's image in the international arena, turning it into a reliable partner for

further cooperation. In order to build a global digital governance architecture, the UN calls for regulatory initiatives to focus on areas such as the use of artificial intelligence, protection of children's rights, data protection, cyber security, the digital economy, digital inclusion, and others [1]. In 2024, the UN adopted the Pact for the Future, which included the Global Digital Compact as an annex, which represents a roadmap for global digital cooperation in the use of digital technologies and the elimination of digital inequality in the world. One of the objectives of the Compact is to build an inclusive, open, safe and secure digital space in which human rights are respected, protected and promoted. To this end, States have committed to developing national laws on digital technologies in accordance with international law and the Sustainable Development Goals. Taking measures to govern artificial intelligence in accordance with public interests and strengthening international cooperation is also one of the tasks that the international community sets for itself on the path to establishing a comprehensive framework for digital governance. Developing appropriate approaches to data management and protection is another task aimed at eliminating risks in the collection, exchange and processing of data, which is only possible with the adoption of effective standards for the protection of personal data and privacy [2]. Particular attention should be paid to the compliance of future national regulations governing the healthcare digitalization with the Recommendation on the Ethics of Artificial Intelligence adopted by UNESCO in 2021. Documents contains provisions on the ethical implementation of technologies created on the basis of artificial intelligence in many areas of public life, including healthcare, emphasizing the ethical and legal responsibility of the state for building an effective strategy for the use of these technologies [3]. As one of the leading principles of the Global Strategy for Digital Health, WHO proposes the use of digital technologies in the interests of health, ensuring patient safety, observing professional ethics, taking into account such aspects of digitalization as interoperability, intellectual property, data security [4]. Thus, the international community, represented by the main international institutions, recognizes the importance of ensuring rights in the digital healthcare, focusing the attention of governments on creating a safe digital space, protecting personal medical data and the ethical use of artificial intelligence technologies in medicine.

In terms of legal regulation of the collection, use and processing of personal medical data, along with international standards, it is important to pay attention to the experience of states where regulation of the issue has been adopted to date in order to understand innovative approaches and best practices for possible further adaptation in national legislation. In 2018, the General Data Protection Regulation came into force in the European Union [5]. According to these Rules, personal information used and processed in the healthcare sector is classified as "sensitive data" requiring additional protection [6]. This category of medical personal data includes information related to the health status of the data subject, which reveals information regarding the past, present or future physical or mental health of the data subject. This category of information includes data about an individual obtained during registration and provision of health care services; information that uniquely identifies an individual; results of testing or examination of a body part or bodily substance; and any information about a disease, disability, risk of disease, medical history, clinical treatment, or physiological or biomedical condition of the data subject, regardless of its source. (Recital 35 of GDPR) [5]. Biometric and genetic data are also classified as data with a special confidential status. (Recital 34 of GDPR) [5].

The collection, recording, organization, structuring, storage, adaptation, retrieval, consultation, use, disclosure by transmission, provision or dissemination, erasure and destruction of data constitute data processing (Article 4(2) of the GDPR) [5], for which the rules clearly set out the conditions and indicate the principles that must be observed by data controllers. Data processing must be subject to the principles of lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality (Article 5 of the GDPR) [5]. Since personal medical data is classified as information with a special status, the Rules, as stated, prohibit its processing without a legal basis for doing so. If the processing is carried out without a legal basis, it is considered unlawful, and the only legal basis for processing is the express consent of the person (Article 9 of the GDPR) [5]. The rules clearly set out the rights of data subjects to data protection (Articles 12–22 of the GDPR) and the duty of the data controller to protect the data of subjects (Articles 24, 32 of the GDPR) [5]. The main feature of the Rules is that they are aimed at strengthening the rights of citizens to control the processes of collecting, storing, processing and transferring their medical data by providing consent. In strengthening the rights of data subjects, the data operator is obliged to notify the data subject, i.e. the person to whom the medical information belongs, without undue delay about a leak of his/her data if there is a possibility that the breach of personal data protection will entail a high risk to the rights and freedoms of individuals (clause 1 of Article 34 of the GDPR) [5]. According to Rebecca Ong, relevance of such a notification is that on the one hand, it promotes the individual's right to information, which allows them to mitigate the risks and consequences of unlawful disclosure of their per-

sonal information, and on the other hand, it can serve as an incentive to strengthen the security strategy for this type of information [7]. These provisions therefore reflect the principle of granting individuals the right to personal participation in the processing of their personal data as provided for by international law, in particular the provisions of the International Covenant on Civil and Political Rights, according to which every individual has the right to request the correction or deletion of personal information if it has been collected or processed violating the law [8]. The rules also regulate the process of revoking consent to data processing and the obligation of the data operator to ensure ease of revocation of consent to data processing (clause 3 of Article 7 of the GDPR) [5]. In addition, the process of transferring consent to data processing by persons under 16 years of age is regulated (clause 1 of Article 8 of the GDPR) [5].

The Code of Kazakhstan on Public Health and the Healthcare System [9] contains a legal definition of personal medical data as personal data containing information about the health of an individual and the medical services provided to him, recorded on electronic, paper or other tangible media, but according to this definition they do not constitute data with a particularly sensitive status and are not provided with additional protection measures. (clause 2 of Article 58 of the Health Code) [9]. We believe it is appropriate to give personal medical data a special sensitivity status within the framework of national legislation, since they may represent information about the mental and physical condition of a person, the results of examinations, genetic characteristics and diagnoses. Such information may reveal vulnerable aspects of a person's life, which in turn may become a reason for social pressure, discrimination, and violate the trust between the patient and the attending physician, as Ibrahim A.M. and colleagues believe [10]. Ensuring the confidentiality of personal medical data of individuals, along with ensuring their protection and security, as well as patient access to their personal data, is one of the principles of digital healthcare in Kazakhstan (clause 3 of Article 57 of the Health Code) [9]. Ensuring the confidentiality of medical data is the responsibility of medical workers and employees of healthcare entities in accordance with the laws of the Republic of Kazakhstan (clause 7 of Article 61 of the Health Code) [9], and the aggregator, which is the controller of personal medical data that collects, processes, stores, and provides data, is also indicated as being responsible for its protection (clause 3 of Article 58 of the Health Code) [9]. However, the Code does not provide for a rule that obliges any of the listed parties to notify the data subject of a leak or illegal use of his medical data for the purpose of further actions to eliminate the leak or other types of illegal violation of data confidentiality. The procedure for appropriate measures to prevent or mitigate the consequences of violations, as well as judicial recourse for moral or material harm remedy caused to the data subject by a violation of data security is not considered. The Code states that the specifics of protecting electronic information resources where personal medical data is stored are determined by the legislation of the Republic of Kazakhstan on informatization and on personal data and its protection (clause 1 of Article 62) [9], and are not directly regulated by the Code, which is why the specifics of the regulated area and the special nature of the protecting data are not taken into account. There are serious shortcomings in the legislation on personal data regarding the protection of the rights of the data subject and liability in the event of illegal use or dissemination of medical data. In particular, the Law of the Republic of Kazakhstan dated May 21, 2013 No. 94-V "On personal data and their protection" [11] does not provide for the obligation of the person responsible for organizing and processing data to notify the subject of information, which would comply with international human rights standards and foreign practice. Since the procedure for notifying the data subject has not been considered, the procedure for liability for breach of the obligation is also unclear [12].

Thus, the transition to paperless medicine in the Republic of Kazakhstan is accompanied by the risks of violation of the confidentiality of personal medical data of citizens stored in electronic information systems. Medical data of persons constitutes the secret of a medical worker (clause 1 of Article 273 of the Health Code) [9] and, in turn, may contain extremely sensitive information, the illegal dissemination of which may cause psychological discomfort, stigmatization and discrimination at the workplace. It also may create a reason for fraud if it falls into the hands of third parties whose goal is to extract benefits [13; 123]. Responsibility for the unauthorized use of individuals' medical data is also a matter of significant importance in connection with the emergence of such risks associated with the digitalization of healthcare for citizens. Unfortunately, the regulation of these problems is not reflected in domestic legislation and requires further elaboration, development and implementation in accordance with international standards.

Establishing of electronic databases has led to the introduction of artificial intelligence (AI)-based technologies for their processing. As Alowais S.A. and colleagues argue, such high technologies in healthcare are aimed at solving many problems related to the diagnosis of diseases, automation of patient care tasks, reduction of medical costs, time saving, and solving the problem of healthcare management [14]. These innova-

tions have not bypassed Kazakhstan. The use of AI has not received extensive legal regulation in Kazakhstan, although today the areas of medicine in which the achievements of the Medtech industry will be implemented have already been determined. The innovative developments representing promising niches in healthcare, according to the results of the study, were recognized as the use of a clinical decision support system in the diagnosis of oncological diseases of the mammary gland and lung using artificial intelligence and work on the Cerebra software for detecting early signs of stroke based on artificial intelligence and machine learning [15]. There are currently no generally accepted international standards in this area that could serve as a basis for national regulations. Establishing specific rules for the use of AI is complicated by the fact that the industry is still in its development stage, and when developing legislation, it is necessary to take into account all the risks and uncertainties of these technologies. Thus, legal regulation of the use of AI in various spheres of society has lagged behind technological development. According to Tlembaeva Zh.U., since healthcare is a conservative and sensitive area of life, and is directly related the health care right, the introduction of modern technologies in this area and further legal regulation requires a balanced approach, which will not result in excessively detailed regulation that will hinder the development and implementation of technologies, but will also ensure high safety standards and respect for patients' rights [16; 1124].

The introduction of AI technologies in the healthcare sector was initiated within the framework of the state program Digital Kazakhstan in 2017 [17]. One of the key results within the framework of the Concept for the Development of Electronic Healthcare for 2013–2020 [18] is the creation of a regulatory framework to stimulate the development of electronic healthcare systems in medical organizations. The Concept of Legal Policy of Kazakhstan until 2030 [19] the need to work on codifying the regulation of the introduction and use of information and communication technologies, communications, data processing, digital assets, industrial automation, information security, machine learning and artificial intelligence, and the protection of the rights of personal data subjects is mentioned. At the present stage, there is fragmentary regulation of the mentioned problems within the framework of some regulatory legal acts. Some concepts used in the sphere of regulation of digital technologies were covered by the Law of the Republic of Kazakhstan dated November 24, 2015 No. 418-V LRK. On informatization. The rules for using artificial intelligence are also partially contained in the Code of the Republic of Kazakhstan dated July 7, 2020 No. 360-VI LRK On the health of the people and the healthcare system in the context of the use of information and communication technologies. In addition to these laws, the Concept for the Development of Artificial Intelligence for 2024–2029 [20] specifies following acts as the basis for the legislative framework in the field of AI: Law of the Republic of Kazakhstan dated July 5, 2004, No. 567 "On Communications", Resolution of the Government of the Republic of Kazakhstan dated December 20, 2016 No. 832 "On approval of uniform requirements in the field of information and communication technologies and ensuring information security", Order of the Minister of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan dated October 14, 2022 No. 385/NK "On approval of the Data Management Requirements". The concept of digital transformation, development of the information and communication technology industry and cyber security for 2023–2029, approved by the Decree of the Government of the Republic of Kazakhstan dated March 28, 2023 No. 269, contains provisions aimed at developing this industry in Kazakhstan and stimulating the introduction of AI in various areas of the economy and social life of citizens. The above-mentioned AI Development Concept, among other things, shows elements of legislation that require serious revision to achieve full regulation of the industry. Thus, it has been established that the conceptual apparatus of the sphere has not been established, the rules for the ethical use of AI have not been developed based on international standards are not elaborated. The scope of regulation of artificial intelligence has not been defined, there is no regulation of the relationship between subjects of artificial intelligence, including the competencies of government agencies. The issue of the duties and responsibilities of subjects in the field of artificial intelligence has not been worked out, there are no technical requirements for technical devices and technologies based on AI. Studying the provisions of the draft Law on Artificial Intelligence submitted for public discussion, one can see that the act does not define clear boundaries for the use of AI in various areas of human life, that is, it does not define in which specific areas the use of AI is permissible in the Republic of Kazakhstan and does not indicate the boundaries of the penetration of AI into human life. The draft law contains general rules for the use of AI, without distinguishing between rules for specific areas, taking into account their characteristics and specifics.

Since two projects are presented for discussion — the draft law on AI and the Digital Code, the question of the correlation between the two acts arises. It is not yet clear in which of them it would be appropriate to place the basic principles of regulation and the necessary terminology, which would serve as the basis for

regulation for all sectors, including the healthcare sector. On the one hand, the Code has a higher legal force, and it should contain the main provisions for regulating digital transformation, of which AI is a part; on the other hand, AI-based technologies are used in many areas of the economy and public life. Therefore, the task arose to eliminate duplication of norms in these acts [21]. Since there is no general regulation of AI in Kazakhstan yet and only the outlines of future regulation have been made, and due to the fact that this technological industry is still going through a development phase, today, preparing rules for the use of AI in healthcare, it is necessary to focus on the recommendations of international organizations and the practice of foreign countries, which are mainly related to the development of rules for the ethical use of AI in healthcare. In order to fully regulate this problem and adopt clear legal rules applicable in such a sensitive area, it is necessary to develop principles for building trust in AI before delving into the development of specialized regulation [22; 45–48], which is not possible until general principles and standards for the use of AI are established for all areas. On the other hand, the development of ethical principles, as scientists argue, before the creation of laws typical for a narrow sphere, serves as a foundation that helps to determine the main values on which the rules will be based, to link generally accepted approaches and to harmonize national norms with international standards. Moreover, ethical principles are more flexible and adaptive to technological development, changes and new challenges and risks that accompany the development process, compared to laws that may become outdated and lose their functionality as technology advances [23]. The absence of codified norms in this area does not eliminate the need and does not tolerate delay in the preparation of ethical principles. According to the program documents on the development of AI, the introduction of these technologies is intended to stimulate technological and economic growth and move to a new national idea of Generative Nation [20]. It turns out that the future development of the nation is closely linked to the development of AI technologies, which requires preliminary work to prevent risks, timely adaptation, creating trust in technologies, and their fair distribution. Regarding the digitalization of health care, the UN Secretary-General in his report on the implementation of economic, social and cultural rights in all countries, with a special emphasis on the role of new technologies, confirmed that technologies developed in a responsible manner have a high potential for strengthening rights, while otherwise they can cause risks which contradict the right to health care, and stated the need to develop the necessary legal framework [24] (Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights: Report of the Secretary General. Geneva: Office of the High Commissioner for Human Rights; 2020.

At the present stage, WHO has presented guidance on the ethics and governance of AI in health care, which indicates six main ethical principles, each of which is based on human dignity and the value of a person. The organization proposes universal principles that are most appropriate for the use of AI in healthcare, and their implementation may vary depending on religious, cultural and other social characteristics. Thus, according to WHO experts in the field of health care, it is necessary:

1. maintaining a balance between human autonomy and AI autonomy, which means that when transferring some tasks to technologies, individuals should not be deprived of control over the entire healthcare system and the solution of medical problems, since there is a risk of erroneous interpretation of medical data and others, the principle of reversibility of AI decisions and ensuring data security should be observed. All AI-based medical decisions must be made with the patient's informed consent.

2. AI technologies promote the safety of the individual and the interests of society in order to avoid mental and physical harm to the individual. The design, implementation and use of AI should include measures of its safety and quality. AI solutions should not lead to stigmatization or discrimination against an individual because the individual has a condition diagnosed by the AI.

3. make AI-based solutions understandable and transparent to users, developers and government regulators. A clear and transparent explanation of the processes of AI technology engagement should be provided for oversight and proper auditing, and for those who may make enquiries about the role of AI in medical decision-making and the mechanism for making such decisions.

4. Ensuring responsibility and accountability of those using AI to make medical decisions. Mechanisms should be developed to ensure that individuals and groups harmed by algorithmically informed decisions are heard and redressed. Institutions should be held legally accountable for AI decisions and a mechanism for redress for those affected should be developed. It is important to build a model where all parties involved in the development and implementation of AI are held equally accountable, which obliges all parties to act in good faith and minimize the risks of harm.

5. Ensuring inclusiveness and equity in the use of AI. Advances in AI should be distributed equitably regardless of income, gender, age and other attributes. Fairness and inclusiveness must be seen everywhere. For example, when developing AI, companies should attract workers from different cultures and backgrounds. When AI is implemented, it should not only be available in high-income countries, but also be adaptable in low- and middle-income countries as well. Developers need to take into account the diversity of languages. Governments need to ensure equal distribution of technology across different ethnicities, and so on.

6. The use of responsive and resilient AI. AI developers need to design AI to meet the demands placed on it in a particular situation. Governments should allow the use of AI that is consistent with health promotion and protection. Sustainability is about AI being designed to reduce its ecological footprint and human impacts on the environment. Governments should consider the need to train workers in the use of AI and think through the challenges associated with job losses with the introduction of AI [25].

These ethical principles serve as a basis for each society to develop its own principles and standards, taking into account cultural specificities, the level of economic and technological development, and other factors that determine the process of implementing and regulating AI in healthcare. Another feature of the development of national guidelines for the AI implementation is the involvement of representatives of the medical community, who will have direct interaction with AI, scientists, authorities, and technology developers in their development. For example, in the Russian Federation, the Technical Committee for Standardization TC 164 “Artificial Intelligence” was specially established to develop standards. The committee consists of users of AI technologies, representatives of technology companies, relevant universities, scientific organizations, and representatives of federal executive authorities. Currently, most states use national standards and principles specific to each state, and these vary depending on the type of AI technology used. In India, for example, the Central Drug Standards Control Organization is responsible for regulating AI-based medical devices. The agency has adopted guidelines for the use of AI in medical devices that are designed to ensure the safety and effectiveness of AI-based medical devices. In Brazil, the National Health Surveillance Agency is responsible for regulating AI-based medical devices. The agency has published guidelines for the use of AI in medical devices, which serve to ensure the safety and effectiveness of AI-based medical devices. In South Africa, the South African Health Products Regulatory Authority is responsible for regulating AI-based medical devices. The Authority has developed guidelines for the use of AI in medical devices, which focuses on ensuring the safety and effectiveness of AI-based medical devices. In Singapore, the Health Sciences Authority is responsible for regulating AI-based medical devices. The guidance adopted by the Authority is also aimed at regulatory support for the use of AI in medicine to ensure safety. In South Korea, the Ministry of Food and Drug Safety is responsible for regulating AI-based medical devices. MFDS has published similar principles for the application of AI for medical purposes [26; 33–38].

Returning to the experience of the Russian Federation, where a special committee was created to develop principles for the use of AI, it is important to note the work of the subcommittee PC 01 “Artificial Intelligence in Healthcare,” which was created as part of it. According to the results of the work of PC 01, GOST 59921 “Artificial Intelligence Systems in Clinical Medicine” was adopted, which deals with the procedure of technical and clinical trials of medical systems based on AI and GOST 59276 “Artificial Intelligence Systems” and a large number of other industry standards [27; 7–8].

The question of adopting such principles, rules and standards in Kazakhstan remains unresolved. Of course, it is necessary to rely on universal ethical principles, which are based on the value of human life and health. But also, of course, in our opinion, country specifics should be taken into account when preparing domestic principles for the use of AI in healthcare. It is critical for Kazakhstan’s AI standards in medicine to reflect the need to ensure equity in the distribution of high-tech medical care because evidence shows that there is a gap in access to high-tech medical services for urban and rural populations [28; 10–15]. Another ethical consideration is the development and implementation of AI that could adapt to different cultures and languages, given the cultural diversity of Kazakhstan society and the use of multiple communication languages.

Thus, this work systematizes the norms of international, foreign and national legislation and analyses scientific works by scholars in the field of regulating certain social relations in the area of digitalization of healthcare. Unlike other works that emphasize the existence of certain new areas of regulation that have emerged with the onset of digital transformation in the healthcare sector, the authors have comprehensively examined the legal and theoretical basis for proposing a framework for a national approach to resolving the aforementioned problem.

The novelty of the study lies in the combination of data from international documents (UN, UNESCO, WHO), foreign legislation and scientific works of lawyers, which allows for the development of a comprehensive picture of the legal regulation of digitalization and the identification of directions for the further development of the legal system.

Based on the study of international norms and foreign experience, specific issues have been identified that require new approaches to legal regulation in line with international standards and taking into account national specificities and the specifics of the regulated sphere as a whole. In particular, it has been established that personal medical data is recognized as particularly sensitive data requiring special protection measures, and that there is no established procedure in Kazakhstan for applying to the courts to protect the right to personal data protection. The study revealed the significant role of ethical approaches, which form the basis for the legal regulation of AI use in healthcare. The study also identified a problem with the relationship between several acts designed to regulate the digitalization of all areas, including healthcare.

Discussion

The results of this work have shown that although the world has not yet adopted specific legal standards establishing clear rules of conduct regulating social relations related to the digitalization of various spheres, the digitalization of such a special sphere as health care requires special regulation, as it is characterized by special sensitivity, because it is related to the well-being, health and life of people. The transition to a paperless format of medicine and the formation of voluminous databases of electronic data with medical information that belongs to individuals, gives personal medical information a special status requiring additional protection measures, without the application of which there is a vulnerability of individuals to unlawful use of personal medical data, associated with violation of the right to protection of personal data and personal inviolability and confidentiality. The expediency of raising the status of personal medical information and taking additional protection measures and strengthening the right of the subject of information to personally participate in the process of collection, processing, transfer, storage and destruction of personal medical data, having the opportunity to be notified of its illegal use in order to recover the damage caused.

Building databases with personal health records containing diverse and complex medical data requires the implementation of emerging technologies such as AI to facilitate the process of data management and data interpretation and processing. And the introduction of AI into the medical field aims to simplify diagnosis, create treatment plans, monitor health conditions and generally optimize healthcare operations. There are many risks and uncertainties associated with the introduction of AI-based technologies in healthcare, as AI is undergoing rapid development and its applications are constantly expanding, which in turn prevents the adoption of strict codified regulation in the form of laws and codes of practice. Therefore, international trends of AI control in healthcare are expressed by the development of ethical principles, which are applied in many foreign countries based on the standards of WHO and other international organizations. Ethical standards for Kazakhstan should contain provisions that take into account linguistic and cultural diversity and the existing inequalities in the high-tech equipment of medical facilities in urban and rural areas, which creates inequalities in access to high-tech medical services among urban and rural residents.

The results of the study revealed the problem of correlation between the norms of the Digital Code and the Law on AI, in case of entry into force of both acts, in the context of priority of application of their rules in the field of use of AI and protection of personal data. At the current stage, there is no certainty about the inclusion of rules on the regulation of digitalization of healthcare in the Law on AI and the Digital Code, just as it is not clear how the norms of the two new acts will interact with the rules of the sectoral code in the field of healthcare — the Code on Public Health and Healthcare System. Such legal ambiguity requires the development of a clear system of interaction between different items of legislation. The work on the selected problem has shown the importance of the development of domestic legal and regulatory framework for the process of digitalization of healthcare in accordance with international standards, as they set the directions for further development of activities to build a secure digital environment in the states, where ensuring the consistency of national legal policies facilitates the process of cooperation in combating the challenges and risks associated with digital transformation around the world.

Comparison of the obtained results with the works of other authors (Yelegen A. Ye., 2023; Tlembaeva J.U., 2022; Konusova V.T., 2023) in the framework of scientific discussion shows that having studied the approaches in regulation established by universal and regional international organizations and having considered the peculiarities of foreign and current state of domestic regulation, specific approaches were proposed for the protection of personal medical data and development of ethical principles for the introduction

of AI in health care, taking into account cultural diversity and eliminating the imbalance in the health care system. The results of this paper confirm the relevance of the problems highlighted in earlier studies and suggest logical ways to address them by distinguishing the regulation of healthcare AI from other areas of social life and taking a specific approach in ensuring the protection and privacy of personal health data.

The results of this study are limited by the lack of empirical data in the field of legal regulation of digitalization of health care, which is due to the fact that the problem of regulation of digitalization of health care in domestic science is in its initial stage, which complicates the collection of empirical data and requires a preliminary theoretical understanding that would create a basis for further collection of empirical data.

The findings can be used to develop legal regulation of the process of digital health development in Kazakhstan, which would help to distinguish the regulation of this process from the development of regulatory measures of digitalization in other areas of the economy and society. The proposed results could contribute to more effective control over the protection of citizens' personal health data and the representation of the capabilities of AI systems in medicine and health care, which could increase users' trust in high technology and enhance the enforcement of the right to health protection.

A promising direction for further research could be to examine inconsistencies and gaps in domestic legislation and its compliance with international standards and approaches with the adoption of the AI Law and the Digital Code. Exploring cyber security in healthcare, assessing the risks of medical data breaches and breaches of the right to security of personal data, and issues of liability for unlawful use of data are also of research interest. The legal personality of AI in medicine and healthcare, as well as issues of liability for harms caused by AI and related liability issues could be the subject of future research endeavors.

The study used systematic, comparative legal, and formal legal methods, which allowed for a comprehensive analysis of legislation in the field of digitalization of healthcare. The use of these methods meets the requirements of scientific rigor and ensures the internal consistency of the results.

The study examined the relevant regulatory and legal acts of the Republic of Kazakhstan, including the draft Digital Code, the draft Law on Artificial Intelligence, and the Code on Public Health. This allowed the author to rely on existing and promising sources of law, which increases the relevance and reliability of the conclusions.

Taking into account international standards (WHO, etc.) and foreign experience, it can be argued that the conclusions of the study are comparable with global trends. This increases the validity of proposals related to the development of a national model of ethical standards and medical data protection.

A comparison of the results with the works of other researchers (Yelegen A. Ye., Tlembaeva Zh.U., Konusova V.T.) demonstrates the continuity of the scientific approach and confirms the relevance of the identified problems. This also contributes to the verification of the proposals made in the article.

The authors honestly point out the limitations of the empirical base due to the early stage of research on this topic in Kazakh science. Recognition of these limitations and an emphasis on theoretical elaboration confirm the scientific integrity and objectivity of the study.

The proposed measures to differentiate AI regulation in healthcare and other areas, protect medical data, and develop ethical standards that take into account the cultural context of Kazakhstan can be used in the formation of public policy. This demonstrates the practical value and reliability of the conclusions made.

Conclusions

On the basis of the analysis we can say that digitalization of various spheres of the economy and public life, including health care, has not yet received a detailed international regulation, because the digital industry and its various sectors are still at the stage of active development, which prompted the international community to adopt several documents of a recommendatory nature, which in turn does not yet provide an opportunity to establish strict regulation over the process of digitalization in all areas of the economy and public life, including health care.

Domestic legislation provides the legal basis for regulating digitalization of all spheres in general and healthcare in particular. The introduction of digital innovation has given rise to new areas of legal regulation related to the protection of personal health data and the ethical use of AI in medicine and healthcare. This gives an active impetus to the further development of digital legislation, in the process of which, it is necessary to resolve the issue of distribution of relevant rules and regulations in the legislative acts prepared for adoption and already existing regulations governing the health sector.

The alignment of national standards and regulatory tools for digitalization of health with international recommendations promotes fruitful international cooperation and recognition of shared values in the area of health digitalization.

Thus, timely and appropriate regulation of digital health is a critical step towards building an affordable, high-tech and equitable health care system that is resilient to the modern challenges that have followed technological development.

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Қазақстандағы денсаулық сақтау саласын цифрландыруды заңнамалық реттеудің кейбір мәселелері

Мақалада Конституцияда бекітілген азаматтардың денсаулығын қорғау құқығын жүзеге асырумен байланысты Қазақстандағы денсаулық сақтау саласын цифрландыруды заңнамалық қамтамасыз етудің кейбір мәселелері қарастырылған. Мақаланың мақсаты — медициналық қызметтерді алудың цифрлық форматы арқылы денсаулықты қорғау құқығын жүзеге асыруға кедергі келтіретін құқықтық реттеудегі кемшіліктерді анықтау. Бұл тақырыпты қарастыру үшін экономиканың барлық салаларын ақпараттандыру және денсаулық сақтау саласын цифрландыру процестеріне әсер ететін ұлттық заңнама нормалары, атап айтқанда, жүйелі талдау, салыстырмалы құқықтық және формальды құқықтық әдістер арқылы зерделенді. Теориялық негіз ретінде авторлар зерттеу тақырыбына арналған құқықтық ғылыми әдебиеттер мен халықаралық ұйымдардың құжаттарын зерттеді. Қорытындылай келе, авторлар денсаулық сақтауды цифрландыру саласындағы қоғамдық қатынастарды реттеуде жеке медициналық деректерді қорғаудың маңызды рөлі және жасанды интеллекті этикалық пайдалану қағидаттары туралы және денсаулық сақтау саласының цифрлық дамуын реттейтін әртүрлі нормативтік құқықтық актілердің нормаларын қайта қарау және үйлесімді біріктіру қажеттілігі туралы тұжырымдама жасаған.

Кілт сөздер: денсаулықты қорғау құқығы, денсаулық сақтауды цифрландыру, денсаулық сақтауды цифрландыруды реттеу, медициналық деректерді қорғау, жасанды интеллект, ЖИ этикалық принциптері, ЖИ туралы заң, цифрлық кодекс.

М.Н. Тажиева, А.Ш. Муталяпова

Отдельные вопросы законодательного регулирования цифровизации здравоохранения в Казахстане

В предложенной статье рассматриваются некоторые вопросы законодательного обеспечения цифровизации здравоохранения Казахстана, сопряженные с реализацией закрепленного в Конституции права граждан на охрану здоровья. Целью работы является выявление несовершенств правового регулирования, препятствующих реализации права на охрану здоровья посредствам цифрового формата получения медицинских услуг. Для рассмотрения данной темы были изучены нормы национального за-

конодательства, затрагивающие процессы информатизации всех сфер экономики и цифровизации сферы здравоохранения, в частности, путем системного анализа, сравнительно-правового и формально-юридического методов. В качестве теоретической базы авторами была изучена юридическая научная литература, документы международных организаций, посвященные предмету исследования. В заключении авторы пришли к выводу о значимой роли защиты личных медицинских данных и принципов этического применения искусственного интеллекта при регулировании общественных отношений в области цифровизации здравоохранения и о необходимости пересмотра и гармоничного сочетания норм разных нормативно-правовых актов, регулирующих цифровое развитие здравоохранения.

Ключевые слова: право на охрану здоровья, цифровизация здравоохранения, регулирование цифровизации здравоохранения, защита медицинских данных, искусственный интеллект, этические принципы ИИ, закон об ИИ, цифровой кодекс.

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Protection of medical data in the provision of consumer services: a comparative analysis of some aspects of medical ethics in Kazakhstan and the European Union

The ethics of medical research and the confidentiality inherent in doctor-patient relationships and the proper handling of medical data are critically important issues in contemporary medical law across the globe, including Kazakhstan and the European Union. The provision of medical services is inevitably associated with the processing of a large amount of personal data, which is especially "sensitive" than in other areas of consumer services. At the same time, regulation of this issue only by norms on the provision of consumer services is unacceptable. The issue of privacy makes these services a special area that requires more subtle and "smart" regulation. The core tension in this domain arises from conflicting interests: patients seek absolute confidentiality to safeguard their dignity rights, while the broader public interest often necessitates the disclosure of this information for the collective benefit of humanity. Medical data is inherently sensitive and demands a meticulous approach, along with thoughtfully designed legislative frameworks. The European Union has achieved substantial advancements in this area, having developed a robust legal framework and foundational principles, which are explored in this article. Kazakhstan can draw upon this progress in personal data protection within consumer medical services as a valuable model. Medical ethics and confidentiality are multifaceted concepts that can be examined from various perspectives, ranging from philosophical viewpoints to their significant economic implications within the healthcare market. This article examines medical ethics and confidentiality through the lens of Kazakh and European law, highlighting their primary trajectories and evolving trends. The article concludes that the European perspective on medical privacy is among the most highly developed and sound approaches, offering a reliable framework for other legal systems worldwide.

Keywords: medical privacy, European law, Kazakh legislation, provision of consumer services, doctor-patient ethics, medical confidentiality, medical data, personal data, sensitive data, medical services.

Introduction

The provision of consumer services is often more or less related to the receipt, processing, and transfer of personal consumer data. At the same time, the legislation of most countries of the world has legislative acts on personal data or the like. However, there is a service sector that is fundamentally different from the rest — it is the field of medical services. Confidentiality stands as a paramount condition and fundamental principle within doctor-patient interactions. This principle is safeguarded by professional codes of conduct and the legal frameworks of nations globally. As articulated, "Without the assurance that a doctor or other health professional will not disclose confidential information given by a patient, some people may withhold important information about their medical conditions which they find embarrassing" [1]. The issue of personal data protection is currently a pressing global concern, and the Republic of Kazakhstan is no exception to this trend. Medical data, in particular, represents an exceptionally vital category of personal data, containing information that necessitates rigorous protection. The relevance of this research topic is underscored by the urgency of the problem, the widespread embrace of digitalization, and the persistent threat of data breaches.

The primary objective of this article is to conduct a comparative analysis of legislative provisions and practical measures employed to protect medical information in Kazakhstan and the European Union. The article meticulously analyzes the advancements made by European Union countries in this field, insights from which Kazakhstan may eventually integrate into its own legislation. Furthermore, the current measures and regulations in force within Kazakhstan have been presented and thoroughly examined. The salience of this research topic is also amplified by the relatively limited scope and comparative scarcity of existing re-

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search in this specific domain. Few researchers have delved into this problem, primarily due to the restricted availability of materials and the inherent sensitivity of the subject matter. This article endeavors to engage the scientific community, as well as all individuals invested in this crucial issue.

Methods and materials

To conduct a comprehensive study of issues pertaining to medical data protection in the European Union and Kazakhstan, an extensive literature review was undertaken. This review focused on challenges associated with providing consumer medical services and methods of server protection, including those related to the lawful collection, preservation, and accessibility of medical data. The research involved a thorough examination of e-books, scholarly articles, and online resources. We performed an in-depth theoretical analysis of academic sources, as well as national and European legislation. A comparative legal method was employed to contrast the norms of national legislation with international agreements concerning medical services and treatment. Additionally, a system-structural method was utilized to identify the interconnections between the achievements of scientific doctrine and the degree to which these are reflected in legislation.

Results

In this study, we concluded that medical data should be subjected to anonymization and pseudonymization techniques (discussed in the subsequent session). In our opinion, one potential strategy for managing medical data involves a judicious combination of cutting-edge technical solutions and refined national legislation, thereby implementing robust legal safeguards. As the quality and adoption of digital medical data technologies, devices, smartwatches, and other wearables, mobile applications, and telemedicine continue to expand, the scope for resolving contentious issues in medical privacy will correspondingly broaden. Each situation involving medical data is distinct and demands a specific and balanced approach. Generally, handling sensitive data constitutes a specialized category, intrinsically linked with ethical considerations and moral implications. No country globally has yet arrived at a definitive and universally applicable solution, emphasizing the need for extreme sensitivity in this area.

The study analyzed foreign literature and legislation of the European Union to compare it with Kazakh legislation on medical ethics in the provision of consumer services. Most of the foreign sources were investigated, since this topic has not yet been widely discussed in Kazakhstan. The article clearly separates the mechanism of providing consumer medical services from other areas, pointing out the need for delicate regulation of this service sector, especially in Kazakh legislation. Many of the measures are successfully used today in Kazakhstan to protect confidentiality in the interaction between a patient and a doctor; however, they are not clearly reflected in legislative acts. It is necessary to develop laws on amendments and additions to some legislative acts on the provision of medical consumer services. Such laws should affect and supplement all legislative acts that in one way or another relate to the provision of medical services, people's interaction with public and private clinics, the delivery of tests, the storage of medical data, and the use of such data for research purposes.

Discussion

European regulatory frameworks exhibit a particularly meticulous and comprehensive approach to the safeguarding of patient confidentiality. A pivotal reference point in this context is the Principles of European Medical Ethics, formally adopted in 1987. This foundational document outlines "the most important principles aimed at inspiring the professional conduct of doctors, in whatever branch of practice, their contacts with patients, with society and between themselves. It also refers to the specific situation of doctors, upon which good medical practice depends" [2].

These principles—adopted during a dedicated European conference—serve as ethical cornerstones of medical professionalism. Among them are a physician's unwavering commitment to patient care, the necessity of obtaining explicit informed consent, autonomy in both moral and technical aspects of care, the duty of confidentiality, professional competence, ethical obligations in end-of-life decisions, considerations in organ transplantation, reproductive ethics, collegial solidarity, and continuity of care. While each of these topics warrants an independent and extensive academic investigation, it is evident that the European approach reflects a highly integrated and intentional concern for the preservation and implementation of patients' rights at every stage of medical interaction.

A domain that has garnered increasing legal and ethical focus in Europe is that of genetic services, which have undergone rapid expansion in recent decades. These developments have necessitated a more ro-

bust ethical infrastructure, especially given the sensitive nature of genetic information. The primacy of human dignity, autonomy, and individual rights remains central. As one expert source highlights, “Harmonization of the technical aspects of genetic services in Europe requires a legal and ethical framework that respects cultural, religious, philosophical and other domestic characteristics of a given country and its population, but at the same time conforms to basic and universally accepted human rights. To continuously supervise the legal and ethical developments regarding the promotion and protection of the rights of patients and users of health services and to make the results of our research publicly available is a permanent challenge [3]”.

Thus, confidentiality is not only a key determinant in fostering trust between the patient and physician; it is also an essential prerequisite for obtaining accurate and complete clinical information. The absence of adequate safeguards often leads patients to withhold or misrepresent critical health details — especially when those details pertain to private or sensitive matters. This behavior can significantly hinder the diagnostic process and compromise therapeutic outcomes. Confidentiality becomes even more relevant when the healthcare provider possesses medical data concerning multiple family members, for instance, in cases involving hereditary diseases or familial screenings.

It must be emphasized that medical confidentiality, although fundamental, is not considered absolute. Circumstances exist under which the disclosure of patient data may be legally or ethically warranted. Such exceptions include cases involving criminal investigations, situations where nondisclosure may result in harm to others, requirements mandated by public health regulations, technical malfunctions that compromise data security, and patient consent. Most national legislations, however, treat these deviations with the extreme caution and only permit them under narrowly defined conditions. As reflected in legal commentaries: “exceptions to this must be taken very seriously. They may include where there is a serious risk to the patient or another person, where required by law, where part of approved research, or where there are overwhelming societal interests [4]”.

While the rationale behind disclosing patient data in the context of solving or preventing a crime is typically self-explanatory and ethically justified, the invocation of the “public interest” as grounds for disclosure remains far more nuanced and contentious. There exists a persistent ethical dilemma between an individual’s inherent right to medical privacy and the collective needs of society, particularly when public health concerns are at stake. On the surface, it may appear that absolute confidentiality serves the individual best; however, broader ethical analyses reveal that disclosure — under tightly controlled circumstances—may enhance public safety and contribute to population-level health outcomes. As one scholarly viewpoint suggests, “the obligation to disclose medical or medical-related information can protect the public from potential threats from individual patients and ensure that accurate data is provided both about individuals and about the population as a whole” [3; 18].

One particularly sensitive and legally complex aspect of medical confidentiality pertains to a patient’s written authorization for the secondary use of their personal health data for scientific or clinical research. This dimension of consent is not only an ethical imperative, but also a cornerstone for biomedical progress. The systematic reuse of anonymized or pseudonymized medical data holds considerable potential in addressing global health challenges and advancing evidence-based medicine. However, the process of obtaining granular, case-by-case consent poses logistical barriers and often clashes with research scalability. As noted in scholarly literature, “the most common adaptations of consent are models that shift away from specific consent, such as ‘broad consent’, covering a broad range of future data uses” [5]. This shift underscores the ethical balancing act between individual autonomy and the collective scientific benefit derived from large-scale data reuse.

“There is however an ongoing debate on the legal validity and ethical acceptability of broad consent” [6]. And what first of all worried the policy makers and lawyers was the possibility of the violation of the principles of the General Data Protection Regulation by such a broad consent. “In the draft GDPR texts, the current conflicting positions of the Parliament and Council on this topic appear to be reflected. Some indicate that broad consent may not meet the conditions on consent as defined in the Parliament’s draft GDPR, regarding the information that must be given to the individual” [7]. At the same time, the patient has the right to refuse consent to the use of his data, which happens quite often, because of the patient’s fear of becoming disclosed.

However, extensive research in favor of public interest, apparently, still inclined the council to adhere to broad consent. “The position of the Council seems to be that broad consent should be possible for medical research” [8]. At the same time, dealing with this, it is absolutely impossible to forget about the principle of proportionality and necessity. Data for reuse should be disclosed exactly as much as it is necessary for re-

search. Thus, one of the main principles of the EU approach to data "as open as possible, as close as necessary" is observed.

Another measure to respect the confidentiality of medical data is anonymization and pseudonymization. These measures can, to some extent, free the medical staff and the patient from the need to fill out a consent form, because the data is protected in this way. Nevertheless, this does not always help to maintain real confidentiality when re-examining data. In addition, some medical data themselves contain genetic and other material that allows identifying a person even without specifying real data.

Attention is now turned to the consideration of how the EU legal framework interprets these concepts. The term anonymization is defined in current EU legal documents as a "technique, which irreversibly prevents identification, taking into account all the means 'likely reasonably' to be used" [9]. Pseudonymization is also considered as a useful security measure. "When it comes to anonymized statistics, GDPR is seen as an enabler as it actively defines, enables and encourages sharing of anonymized statistics. This can be attributed to the fact that the GDPR makes sharing identifiable data a bit more difficult, while it does not pose any obstacles towards sharing anonymized data. There are much more concerns about data protection, partly due to implementation of the GDPR, which makes it more difficult to share data for scientific purposes. GDPR limits some projects to only share the aggregated data as a way to avoid sharing individual level data and the GDPR challenges that come with that" [10]. But even here there are pitfalls. Anonymization is becoming an increasingly difficult task when it comes to a large volume of medical research. Some scientists and IT specialists consider it impossible from a technical point of view to anonymize large amounts of data.

In contrast to the European Union's comprehensive and well-established legal framework on medical ethics and data protection, the Republic of Kazakhstan has only relatively recently begun to develop structured approaches to these issues. Kazakhstan's key legislative instruments in this area include the Code of the Republic of Kazakhstan "On People's Health and the Healthcare System" (adopted July 7, 2020), which regulates the rights and obligations of patients and healthcare providers, including provisions on the confidentiality of personal medical data.

Article 77 of the Code explicitly enshrines the principle of medical secrecy, stipulating that medical workers, as well as other persons who have access to medical information in the course of their professional activities, are obliged not to disclose medical secrets without the consent of the patient, except in strictly defined cases. These include threats to public health, judicial requests, or when required for epidemiological control. This mirrors similar exceptions recognized in the European Union, such as those based on public interest or legal obligations. However, the mechanisms for enforcing these standards in Kazakhstan remain less robust than in the EU, particularly in terms of regulatory oversight and patient recourse.

In terms of digital health data, Kazakhstan has made steps toward electronic health systems integration through the development of the Unified National Electronic Health System (UNEHS), aiming to digitize medical records and services nationwide. However, the country still faces challenges related to secure infrastructure, staff training, and standardization of data handling protocols. Unlike the GDPR in the EU, Kazakhstan lacks a specialized, enforceable framework solely dedicated to personal data protection in healthcare, although general provisions exist under the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" (2013). This law sets out the obligations for obtaining consent and protecting personal data but does not fully reflect the scope or enforcement strength of the GDPR, especially regarding concepts, such as "pseudonymization" or the "right to be forgotten".

Ethically, Kazakhstan aligns with internationally accepted norms, including the principles of informed consent, autonomy, and the patient's right to participate in treatment decisions. However, the implementation of these principles is inconsistent due to socio-cultural factors, limited legal literacy among patients, and hierarchical structures within the healthcare system. Studies in Kazakhstan indicate a relatively lower rate of patient involvement in decision-making processes compared to the EU countries, suggesting the need for further education of both medical professionals and the public on patients' rights and medical ethics.

A significant comparative distinction lies in the research context. While the EU strongly emphasizes formal consent mechanisms — especially in the reuse of personal data for scientific research — Kazakhstan is only beginning to introduce such frameworks. National legislation does not yet clearly delineate between types of consent (e.g., specific, broad, dynamic), and ethical review boards are not uniformly equipped to assess the proportionality of data usage in research. This presents a gap in the protection of patients' data when reused for scientific purposes. For instance, without clear guidelines on broad consent, researchers in Kazakhstan might face challenges in obtaining valid consent for long-term or future research projects, potentially hindering valuable scientific endeavors while also raising privacy concerns. Developing a nuanced

framework for research consent that balances scientific progress with patient rights is a crucial area for legislative reform.

Another point of divergence is the institutional framework: the European Data Protection Board (EDPB) coordinates cross-border data protection issues and supervises consistent application of the GDPR across the EU member states. Kazakhstan currently lacks such a centralized and specialized authority focused solely on health data, which limits the consistency and effectiveness of enforcement.

In addition, Kazakhstan could benefit from increased international cooperation and knowledge sharing with the EU countries in order to learn from their experience in implementing reliable data protection systems in the provision of medical consumer services. This could include joint training programs for lawyers and medical professionals, technicians, as well as the development of pilot projects for secure data exchange in scientific research while maintaining strict ethical standards. A strong and effective symbiosis of both technical protection measures and legal norms is needed, which together will give the strongest result.

Conclusions

The challenge confronting medical privacy, particularly in recent decades, is the escalating use of devices and medical applications for health monitoring, which accumulate vast amounts of personal data, markers, and indicators. Often, individuals do not fully consider what information is being tracked beyond general data like location or contact details; even heart rate and physical activity levels are collected. Today, as medicine undergoes active digitalization in many countries, solutions must be found for the secure handling of digital content as well. It is imperative to ensure that each patient can independently manage their medical data through secure digital identification, keys, and passwords, allowing them to track their sensitive information. The medical record must be strictly confidential and protected by all available technical measures.

Medical ethics and privacy are intrinsically linked to the patient's active participation in health-related decision-making and their control over and manipulation of their own body. The doctor should facilitate such opportunities to the extent that is reasonable and feasible. This is because medical ethics is not a unilateral process but a well-established system of interconnected relationships. Therefore, in summary, we have identified the primary areas of medical privacy today, strategies for its protection, as well as existing disadvantages and potential risks. What solutions can be proposed to address these shortcomings? And what path should Kazakhstan pursue for the most rapid and effective development in this sphere?

First, patient health data should only be shared for legitimate public health purposes, and only to the precise extent necessary for the research being conducted. This data must be stored in a highly encrypted form for digital medical data, and in a secure, inaccessible location for physical data carriers. Additionally, the number of individuals to whom data may be legally disclosed should be minimized. There should be clear accountability for the mishandling of medical data. Consistent adherence to ethical data privacy principles can foster public confidence in medicine generally and encourage many patients to be more open and truthful with medical staff. The issue of trust plays a significant role, thus strict adherence to all rules for completing consent forms and reusing data for scientific research is essential.

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А.Е. Абдрасулова, Ю.С. Костяная

Тұтыну қызметтерін көрсету кезінде медициналық деректерді қорғау: Қазақстан мен Еуропалық одақтағы медициналық этиканың кейбір аспектілерін салыстырмалы талдау

Медициналық зерттеулердің этикасы, дәрігер мен пациент арасындағы қарым-қатынасқа тән құпиялылық және медициналық деректерді дұрыс өңдеу — бүкіл әлем бойынша, соның ішінде Қазақстан мен Еуропалық одақтағы заманауи медициналық заңнаманың маңызды мәселелері. Медициналық қызмет көрсету тұтынушылық қызметтердің басқа салаларына қарағанда дербес деректердің, әсіресе «сезімтал» деректердің үлкен көлемін өңдеумен байланысты. Бұл ретте, бұл мәселені тек тұтыну қызметтерін көрсету туралы нормалармен реттеуге жол берілмейді. Құпиялылық мәселесі бұл қызметтерді неғұрлым нәзік және «ақылды» реттеуді қажет ететін ерекше салаға айналдырады. Бұл саладағы негізгі шиеленіс қарама-қайшы мүдделерден туындайды: пациенттер өздерінің қадір-қасиет құқықтарын қорғау үшін абсолютті құпиялылықты іздейді, ал кеңірек қоғамдық мүдделер көбінесе адамзаттың ұжымдық игілігі үшін бұл ақпаратты ашуды талап етеді. Медициналық деректер бастапқыда құпия және тиянақты ойластырылған заңнамалық базамен бірге мұқият тәсілді қажет етеді. Еуропалық одақ осы мақалада қарастырылған сенімді құқықтық база мен іргелі принциптерді әзірлеу арқылы осы салада айтарлықтай жетістіктерге жетті. Қазақстан тұтынушылық медициналық қызметтер шеңберінде дербес деректерді қорғаудағы осы прогресті құнды үлгі ретінде пайдалана алады. Медициналық этика және құпиялылық — бұл философиялық көзқарастардан бастап олардың денсаулық сақтау нарығындағы маңызды экономикалық салдарына дейінгі әртүрлі көзқарастардан зерттеуге болатын көп қырлы ұғымдар. Мақалада медициналық этика мен құпиялылық қазақстандық және еуропалық заңнаманың призмасы арқылы қарастырылған. Олардың дамуының негізгі бағыттары мен тенденциялары талданған. Қорытындылай келе, авторлар медициналық құпияны қорғаудың еуропалық тәсілі әлемдегі басқа құқықтық жүйелер үшін сенімді негіз ұсына отырып, ең дамыған және негізделген тәсілдердің бірі деген тұжырымдама жасаған.

Кілт сөздер: медициналық құпиялылық, еуропалық құқық, қазақстандық заңнама, тұтынушыларға қызмет көрсету, дәрігер-пациенттің этикасы, медициналық құпиялылық, медициналық деректер, жеке деректер, құпия деректер, медициналық қызметтер.

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Защита медицинских данных при оказании потребительских услуг: сравнительный анализ некоторых аспектов медицинской этики в Казахстане и Европейском союзе

Этика медицинских исследований, конфиденциальность, присущая отношениям между врачом и пациентом, и надлежащее обращение с медицинскими данными являются критически важными вопросами современного медицинского права во всем мире, включая Казахстан и Европейский союз. Оказание медицинских услуг неизбежно связано с обработкой большого объема персональных данных, особенно «чувствительных» нежели в других сферах потребительских услуг. При этом, регулирование этого вопроса только лишь нормами об оказании потребительских услуг недопустимо. Вопрос конфиденциальности делает эти услуги особой сферой, требующей более тонкого и «умного» регулирования. Основная напряженность в этой области возникает из-за конфликта интересов: пациенты стремятся к абсолютной конфиденциальности, чтобы защитить свои права на достоинство, в то время

как более широкие общественные интересы часто требуют раскрытия этой информации на благо всего человечества. Медицинские данные по своей сути являются конфиденциальными и требуют тщательного подхода, а также продуманной законодательной базы. Европейский союз добился значительных успехов в этой области, разработав надежную правовую базу и основополагающие принципы, которые рассматриваются в этой статье. Казахстан может использовать этот прогресс в области защиты персональных данных при оказании медицинских услуг потребителям в качестве ценной модели. Медицинская этика и конфиденциальность — это многогранные понятия, которые можно рассматривать с разных точек зрения, начиная от философских воззрений и заканчивая их значительными экономическими последствиями для рынка здравоохранения. В статье медицинская этика и конфиденциальность рассматриваются через призму казахстанского и европейского законодательства. Анализируются основные направления и тенденции их развития. В заключении авторы делают вывод о том, что европейский подход к защите медицинской тайны является одним из наиболее развитых и обоснованных, предлагая надежную основу для других правовых систем по всему миру.

Ключевые слова: медицинская тайна, Европейское право, казахстанское законодательство, предоставление потребительских услуг, этика взаимоотношений врача и пациента, врачебная тайна, медицинские данные, персональные данные, конфиденциальные данные, медицинские услуги.

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Kazakhstan's engagement in international climate agreements: legal dimensions and domestic implementation

Majority of states, including the Republic of Kazakhstan, face the need to transform their economic and legal models in response to the growing climate and environmental challenges. The endorsement of key strategic frameworks, the Strategy for Achieving Carbon Neutrality by 2060 and the updated Nationally Determined Contribution (UNDC) under the Paris agreement underscores the importance of legal analysis of climate policy and evaluation of the effectiveness of implemented mechanisms. The purpose of this study is to conduct a comprehensive analysis of national and international legislation in the field of climate change, as well as to examine the positions and materials of leading international organizations, including the Conferences of the Parties (COP) to the UNFCCC and the Climate Ambition Summit. The methodological framework includes systematic, comparative and formal legal methods, as well as political and legal analysis, which made it possible to assess the state of the legislative framework and identify key legal challenges. The study identified the main institutional and regulatory barriers hindering the implementation of the climate agenda: the lack of clear mechanisms for implementing strategies, fragmented legal regulation, weak coordination between government agencies, and the conflict between climate policy and current economic priorities, in particular in the field of hydrocarbon production. It is concluded that it is necessary to improve national legislation and strengthen the institutional foundations of climate governance.

Keywords: climate change, Paris Agreement, updated National Determined Contribution, global response, carbon neutrality, greenhouse gas emissions, sustainable development, climate legislation, international commitment, UN Framework Convention.

Introduction

Global climate change is one of the key threats to the modern world, affecting the environmental stability, economic sustainability and legal systems of states. The international community has responded to these challenges by creating a legal architecture for climate policy, the core of which is the United Nations Framework Convention on Climate Change (1992) [1], the Kyoto Protocol (1997) [2] and the Paris Agreement (2015) [3]. These foundational documents define the legal mechanisms for global cooperation in reducing greenhouse gas emissions, adapting to climate-related risks, and achieving sustainable development.

The Republic of Kazakhstan, as a party to the aforementioned agreements, has declared its commitment to international climate obligations and is implementing relevant policies at the national level through strategic documents and legislative reform. The Nationally Determined Contribution adopted in recent years (hereinafter referred to as the NDC) [4], the Strategy for Achieving Carbon Neutrality by 2060 [5], as well as the updated Environmental Code (2021) [6] reflect the desire to reduce the carbon intensity of the economy, develop renewable energy sources, implement emissions trading systems and adaptation mechanisms. However, practice shows that the availability of policy documents does not always lead to the effective implementation of climate commitments. Challenges, such as the coordination between government agencies, the lack of a single body on renewable energy sources (hereinafter referred to as RES), gaps in the regulation of hydrogen energy and insufficient financial incentives, reduce the effectiveness of the measures undertaken.

The significance of this study stems from Kazakhstan's obligation to meet the international commitments outlined in the Paris Agreement, necessitating a thorough analysis of national legislation to ensure its alignment with international standards. Special emphasis is placed on the legal mechanisms for integrating international norms into national law, alongside evaluating the practical implementation of climate commitments amid ongoing reliance on carbon-intensive industries.

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Although international climate law and sustainable development have been extensively covered in scholarly literature, there remains a notable lack of comparative studies focused on the legal frameworks for implementing agreements in transition economy countries. Existing work often focuses either on international regulation or on general strategic approaches, without affecting the deeply legal instruments of national implementation. In this context, the present article suggests conducting a comparative legal analysis, in particular, with the experience of the Republic of Korea, which demonstrates effective legislative support for the climate agenda and the development of mechanisms for accountability, monitoring and financing.

The purpose of this study is to analyze the participation of the Republic of Kazakhstan in international climate agreements and to identify the specifics of their implementation in national legislation, taking into account international approaches and the comparative legal context.

Within the framework of achieving this goal, the following tasks are addressed, corresponding to the structure and content of the study:

– to analyze the international climate agreements in which Kazakhstan participates, and to assess the commitments undertaken;

– to explore national legal and strategic measures to implement these commitments, including the development of renewable energy, hydrogen energy, emissions trading and climate finance;

– to conduct a comparative legal analysis with the legislative model of the Republic of Korea, identifying strengths and borrowed practices;

– to summarize the results of the legal analysis and formulate recommendations for improving national climate legislation, taking into account international standards.

The authors' position is based on the approach that successful implementation of international climate agreements is possible only if there is a clear and consistent legal implementation. National law, institutional coordination and financial mechanisms should form sustainable climate policy architecture capable of effectively responding to global and local challenges.

Methods and materials

The methodological basis of this study is a combination of general scientific and specialized legal methods that provide an integrated and interdisciplinary approach to the study of the legal aspects of the Republic of Kazakhstan's participation in international climate agreements and their implementation mechanisms. The work uses a systematic analysis that makes it possible to consider Kazakhstan's climate policy as an integral part of the international legal architecture aimed the goals of sustainable development.

Particular importance in this study is the comparative legal method, which is used to compare legal mechanisms and institutions operating in Kazakhstan and abroad, specifically in the Republic of Korea. This makes it possible to identify similarities and differences in approaches to the implementation of international obligations and identify opportunities for borrowing best practices. Along with this, a formal legal method is used aimed at analyzing the content of regulatory legal acts, strategic documents and official sources regulating the field of climate change. The empirical method is also applied to summarize and interpret evidence, including reports from international organizations, information from state authorities, and analytical research results.

The materials for this research encompass a broad range of sources, including international treaties and agreements, scientific and educational literature, analytical reviews, law enforcement practices, and official documents from the UNFCCC Conferences of the Parties, particularly COP26–COP29, as well as materials from the 2023 Climate Ambition Summit. Reports from the Intergovernmental Panel on Climate Change (IPCC), the United Nations Environment Programme (UNEP), the International Energy Agency (IEA), the Organization for Economic Cooperation and Development (OECD), and reports from relevant ministries and agencies of Kazakhstan served as the empirical foundation.

The legal framework for this study is grounded in international climate change treaties, primarily the United Nations Framework Convention on Climate Change (1992) and the Paris Agreement (2015), alongside regulatory legal acts from Kazakhstan. Key documents include the Decree of the President of Kazakhstan, dated February 2, 2023, No. 121, "On Approval of the Strategy for Achieving Carbon Neutrality by 2060", and the Resolution of the Government of Kazakhstan, dated April 19, 2023, No. 313, "On Approval of the Updated National Contribution of Kazakhstan to the Global Response to Climate Change". The incorporation of these sources ensures the analysis is reliable, objective, and comprehensive.

Results

Under contemporary conditions, most states attach special importance to climate protection issues, implementing legal and institutional measures aimed at preventing the negative effects of climate change. The international foundation in this area is the United Nations Framework Convention on Climate Change of 1992 (hereinafter referred to as the UNFCCC), which established the obligations of states to reduce greenhouse gas emissions and adapt to climate change [1].

The adoption of the Convention has become an important stage in the international recognition of the threat of climate change as a global issue requiring legal regulation. One of the significant provisions of the Convention is the precautionary principle, according to which states are obliged to take measures to prevent negative impacts on the climate system, despite the presence of scientific uncertainty in risk assessment (Article 3) [1]. The goal of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that prevents dangerous anthropogenic influence on the climate system.

The Republic of Kazakhstan joined the UNFCCC in 1995 and assumed international obligations, including the development of national strategies for adaptation to climate change, the inventory of emissions and the formation of an appropriate legal framework. Kazakhstan annually collects, systematizes and reports data on emissions and uptake of greenhouse gases, including carbon dioxide (CO_2), methane (CH_4) and nitrous oxide (N_2O), in accordance with the requirements of the Convention [7].

Kazakhstan has established a Monitoring, Reporting and Verification (MRV) system in accordance with its ratified international commitments, which enables accurate tracking of greenhouse gas emissions and promotes transparency in the implementation of climate policy. Furthermore, the country has adopted a National Climate Change Action Plan that outlines legal and institutional measures focused on enhancing energy efficiency, promoting the use of renewable energy sources, and addressing energy inefficiencies within the industrial and construction sectors [8].

Additionally, Kazakhstan regularly prepares reports for the UNFCCC Secretariat, which reflect the dynamics of emissions, the measures implemented to reduce them and the results achieved. This indicates progress in the formation of mechanisms for the internal legal implementation of international climate agreements.

To fulfill its international climate policy commitments, Kazakhstan engages in active collaboration with major international organizations, such as the Global Environment Facility (GEF), the United Nations Development Programme (UNDP), and other specialized agencies. Through this cooperation, various projects are being implemented that focus on reducing the impacts of climate change and strengthening the country's capacity for adaptation [9].

Kazakhstan stands out as the first country in Central Asia to implement a greenhouse gas emissions trading system, a key market mechanism outlined by the UNFCCC, which enables the achievement of emission reduction targets through flexible economic instruments.

The adoption of the Paris Agreement on December 12, 2015, which came into force on November 4, 2016, marked a significant milestone in global climate governance. Kazakhstan became a party to the Paris Agreement in 2016, pledging to cut greenhouse gas emissions by 15 % by 2030 compared to 1990 levels, with the potential to increase this target to 25 % contingent on receiving international support.

The Paris Agreement, comprising 29 articles and a preamble, serves as an international treaty aimed at advancing the objectives of the UNFCCC. In contrast to the Kyoto Protocol, which primarily imposed binding quantitative targets on developed countries, the Paris Agreement broadened the concept of climate responsibility to include all nations, regardless of their socio-economic status.

The agreement focuses on transparency, monitoring the implementation of national commitments, financing climate initiatives and adaptation measures. The central feature of the agreement is to grant states the right to independently formulate an emission reduction strategy, taking into account national priorities, which is enshrined in the mechanism for determining the national contribution (NDC).

The ratification of the Paris Agreement contributed to the transformation of Kazakhstan's climate policy and the intensification of norm-setting activities. In line with the international commitments made, a modern regulatory framework has been established, including the Environmental Code of the Republic of Kazakhstan, adopted on January 2, 2021, the approval of the "Strategy for Achieving Carbon Neutrality by 2060" in 2023, and an updated National Policy Framework that reflects Kazakhstan's obligations to implement a long-term climate policy.

Kazakhstan presented its first Nationally Determined Contribution (NDC) in 2015, outlining a long-term strategy to reduce greenhouse gas emissions and adapt to climate change impacts. This document became a key part of the Paris Agreement implementation mechanisms and includes both quantitative targets and measures for their achievement. The NDC is subject to regular review every five years and includes emission reduction indicators, legal and economic instruments, as well as climate finance components [10].

The execution of the NDC in Kazakhstan involves translating international climate commitments into national legal, institutional, and managerial frameworks. The adopted strategic directions are incorporated into legislative acts, government programs, and investment plans. The presentation of the initial NDC in 2015, followed by its update in 2023, highlights Kazakhstan's commitment to fulfilling its international obligations and reinforces its intent for global cooperation in sustainable development [10].

The NDC also acts as a central strategic document defining the obligations of the Republic of Kazakhstan under the Paris Agreement. It sets quantitative targets for reducing greenhouse gas emissions and forms a systematic approach to the implementation of climate policy at the national level.

Kazakhstan's NDC contains two levels of climate commitments:

1. The absolute goal is to reduce emissions by 15 % by 2030 from 1990 levels, regardless of external factors;

2. The conditional goal is to reduce emissions by up to 25 %, subject to the provision of international financial and technological support, including the transfer of advanced low-carbon technologies.

The execution of the NDC provisions is supported by a combination of legal, economic, and institutional mechanisms:

- Decarbonizing the energy sector, which involves increasing the share of renewable energy sources (RES) and adopting energy-efficient technologies in industries and construction;
- Advancing the emissions trading system (ETS), including refining the quota allocation process and enhancing MRV (Monitoring, Reporting, and Verification) mechanisms;
- Encouraging businesses to adopt "green" technologies through tax and financial incentives, such as subsidies, benefits, and government support programs [10].

Kazakhstan is developing, creating sustainable climate finance mechanisms to achieve these goals. Priority areas include the creation of a National Climate Finance Fund, the mobilization of domestic resources, as well as attracting international investments, credit lines and grants from the Global Environment Facility, the World Bank, UNDP and other international institutions [11].

The NDC also provides for the implementation of a system for monitoring the fulfillment of climate commitments in order to ensure transparency and compliance with international standards. Main mechanisms include:

- Performing yearly evaluations of progress, utilizing data from governmental oversight and corporate disclosures;
- Revising strategic plans every five years to reflect evolving global climate conditions and technological advancements.

As such, the Nationally Determined Contribution (NDC) functions as a dynamic and responsive tool within Kazakhstan's climate policy framework. Its successful execution necessitates ongoing refinement of domestic legal frameworks, enhanced efficiency of market-based emission control measures, and expanded international collaboration in areas, such as green finance, technological innovation, and cross-border knowledge sharing.

Kazakhstan's Carbon Neutrality Strategy through 2060 represents a comprehensive, long-term policy initiative that aligns with international climate developments, the nation's global commitments, and the principles of sustainable development. The main purpose of the document is to transform the national economy towards decarbonization, reducing dependence on fossil energy sources and increasing its environmental sustainability [5].

Kazakhstan is guided by the following principles of Strategy implementation: purposefulness, unity and integrity; feasibility, fairness of transition; closed-loop economy; phasing; openness and interaction with society; rationality (balance). All actions should be based on a set of these principles and contribute to achieving carbon neutrality goals by 2060 [12].

A central focus of the Strategy's implementation is the diversification of the national economy, which entails a gradual reduction in reliance on the hydrocarbon sector and the promotion of innovative, resource-efficient, and competitive industries. The Strategy emphasizes the attraction of "green" investments, the expansion of renewable energy use, and the encouragement of energy-efficient technologies in both industrial

production and the construction sector. Collectively, these initiatives aim to establish Kazakhstan as a country committed to environmental responsibility and sustainable economic development.

According to the provisions of the Strategy, Kazakhstan has confirmed its unconditional commitment to reduce greenhouse gas emissions by 15 % by 2030 compared to 1990 levels, regardless of international support. At the same time, a conditional goal was set to reduce emissions by 25 % with external financing, technological assistance and access to innovative "green" technologies [5].

The increase in the concentration of greenhouse gases, such as CO_2, CH_4 and N_2O, are recognized as one of the main causes of global climate change. Kazakhstan, being a country with a high level of carbon intensity of the economy, is facing a number of structural challenges: a significant proportion of its industrial and energy complex still relies on fossil fuels, primarily coal. In response to these challenges, the state is forming a comprehensive emissions management system, including the development of a regulatory framework, the expansion of the quota trading system, and the introduction of economic incentives for the transition to a low-carbon development model [13].

An analysis of national reports shows that the structure of greenhouse gas emissions (GHG) in Kazakhstan is dominated by the following sectors:

- Energy (~80 %) — with the predominance of coal technologies in energy and industry;
- Industrial production (10–12 %) — primarily metallurgy, cement production and petrochemistry;
- Agriculture (5–7 %) — mainly methane emissions from livestock;
- Waste management (2-3 %) — emissions from municipal solid waste landfills and dumps [14].

In 1990, the total amount of greenhouse gas emissions in the country amounted to about 350 million tons of CO2 equivalent, having decreased to about 280 million tons by 2015. However, in recent years, there has been a tendency to increase emissions, which is associated with the expansion of industrial production and increased energy consumption, especially in the context of industrialization and urbanization [15].

Thus, despite the adoption of a number of policy documents and measures, the problem of reducing GHG emissions remains acute. The need to further improve legislation, strengthen coordination between sectors and attract additional financial and technological resources remains an urgent task of the state climate policy.

A major milestone in shaping Kazakhstan's climate policy was the adoption of the new Environmental Code in 2021. This legislation was formulated with regard to the recommendations of OECD member states and the regulatory approaches of the European Union. The Code has played a pivotal role in reforming the country's environmental legal framework and promoting sustainable development amid the challenges posed by climate change.

One of the conceptual innovations was the regulatory consolidation of state regulation in the field of adaptation to climate change. In accordance with the Article 313 of the Environmental Code, water, agriculture and forestry, as well as civil protection, are identified as priority areas of adaptation policy. Thus, adaptation to climate change has received a clear legal expression as an independent direction of the state environmental policy [6].

An important element of the new Code is also the improvement of the emissions trading system aimed at achieving the goals outlined in the UDC. The updated regulations on the functioning of the national quota trading system consolidate market mechanisms for reducing emissions and allow for flexibility in implementing Kazakhstan's climate commitments.

Along with these provisions, the Environmental Code includes a number of key legal instruments that contribute to the effective implementation of climate policy. These include:

1. Tightening of environmental requirements for industrial enterprises, including the mandatory introduction of the best available technologies to reduce pollutant emissions and encourage the transition to more environmentally friendly production processes.

2. Development of the national Emissions Trading System (ETS), which provides for clarifying the rules for trading quotas, strengthening the requirements for the monitoring, reporting and verification system (MRV), as well as expanding the list of regulated sectors of the economy.

3. The implementation of the "polluter pays" principle, which is expressed in an increase in the rates of environmental payments and penalties for enterprises with high emissions, while the proceeds is used to finance environmental and climate initiatives.

4. Integrated management of natural resources, including the development of legal strategies for the conservation of biodiversity, protection of ecosystems and improvement of regulation in the field of water use in the context of climate change.

5. Government support for "green" initiatives aimed at stimulating investments in renewable energy, sustainable transport and the development of "green" financing mechanisms [6].

The implementation of these mechanisms is aimed at bringing national legislation closer to international climate standards, reducing environmental risks and fulfilling obligations under the Paris Agreement.

In the context of climate adaptation policy, special attention is paid to water resources management, which reflects the current challenges associated with increasing water scarcity. Kazakhstan is one of the countries with low availability of fresh water, and climatic changes (including droughts, changes in precipitation and melting glaciers) only exacerbate existing problems.

In this regard, the adoption of the new Water Code of the Republic of Kazakhstan dated by April 9, 2025 No.178-VIII (but it has not been enacted yet), in which an entire chapter is devoted to the adaptation of the water sector of the economy to climate change, is of particular importance [16]. This regulatory act was developed on behalf of the President of the Republic of Kazakhstan, announced at an expanded government meeting on February 8, 2022, and adopted by the Mazhilis on March 5, 2025. The law is aimed at prioritizing the protection of water resources, introducing the principle of water conservation in all sectors of the economy, as well as developing an all-encompassing and integrated approach to water resources management. Among the key principles of the code are the recognition of water as the basis of vital activity, the economic value of water resources, the integrated use of groundwater and surface waters, rational water conservation and public engagement. A special emphasis is placed on adaptation measures to climate change: among other things, the code provides algorithms for government agencies to prevent the harmful effects of floods and droughts. This highlights the institutionalization of climate adaptation as an integral part of Kazakhstan's water policy [17].

The measures taken by Kazakhstan, including the adoption of a new Water Code, reflect the development of a comprehensive state policy on climate change adaptation. The integrated approach, which emphasizes sustainable water use, the prevention of natural risks, and public involvement, highlights the country's commitment not only to mitigate the impacts of climate change but also to embrace the principles of environmental sustainability. This approach signals Kazakhstan's active integration of climate considerations into its strategic planning and regulatory frameworks, which is particularly vital given the challenges posed by limited water resources and increasing climate risks.

The Strategy for Achieving Carbon Neutrality includes adaptation mechanisms in water resource management, such as the modernization of irrigation systems, reduction of water losses, and improvement of water use efficiency in the context of climate change.

In the broader context of the global energy transition, the development of renewable energy sources plays a crucial role as a key tool for reducing greenhouse gas emissions. As a signatory to the Paris Agreement, Kazakhstan has committed to increasing the share of renewable energy sources in its energy mix to 50 % by 2050 [18]. Legal and institutional frameworks are being developed to attract investment in green energy, strengthen the regulatory environment, and establish mechanisms to support and subsidize renewable energy projects to achieve this goal.

The sustainable development of renewable energy requires the modernization of the energy system, including the regulatory consolidation of the obligation of energy supply organizations to ensure priority energy intake from renewable energy sources, the development of storage systems, the introduction of smart grids, as well as the adaptation of dispatching mechanisms to seasonal and weather fluctuations [19].

A particularly intriguing example for comparative legal analysis in climate legislation is the Republic of Korea. In recent years, the country has been actively developing a legal framework for sustainable development, enacting laws focused on emission reduction, the promotion of green energy, and ensuring climate adaptation.

The Act on the Allocation and Trading of Greenhouse Gas Emission Permits, which was adopted in 2012 and came into force in 2015, was a significant structural move. The system covers the largest industrial and energy companies and is a mandatory form of quota trading with a gradual tightening of limits. The law establishes the legal obligation of companies, whose emissions exceed a certain threshold to acquire emission permits, thereby stimulating a reduction in the carbon intensity of production [20].

The next stage was the adoption of the Law on Achieving Carbon Neutrality and Green Growth in 2021 [21]. It has set a legally binding goal to achieve zero emissions by 2050, and also provides for a 40 % reduction in emissions by 2030 compared to 2018 levels. However, the law lacked interim targets for the period 2031–2049, which caused criticism from the public and the scientific community [22].

In 2020, a group of young citizens appealed to the Constitutional Court of the Republic of Korea, arguing that the lack of interim obligations violated their constitutional rights. In August 2024, the court ruled that this regulatory gap was contrary to fundamental rights, especially for future generations. The state was ordered to amend the law by February 2026 in order to include interim goals and specific mechanisms for achieving them [23].

South Korea actively uses climate finance and innovation support tools, including tax incentives, green bonds, public-private partnership mechanisms, and subsidies for renewable energy. There is a special Ministry of Environment and Climate Change in the country that coordinates the implementation of climate policy, as well as a system of mandatory climate reporting and assessment of projects on emissions [24].

The Republic of Korea plays a significant role in the international arena, acting as an organizer and mediator within the framework of the Global Green Climate Fund (GCF), based in Songdo. Korea also supports projects to reduce short-lived pollutants and actively participates in international scientific and environmental initiatives.

It is significant that both Kazakhstan and South Korea are striving to strengthen climate adaptation and decarbonization of the economy, which makes their legal experience mutually interesting and relevant to the global context.

A comparative analysis of the climate policy of the Republic of Kazakhstan and the Republic of Korea reveals significant differences in approaches to legal regulation in the field of climate protection and achieving carbon neutrality.

In the Republic of Kazakhstan, climate policy is mainly formed through the provisions of the Environmental Code (2021), strategic documents (including the Carbon Neutrality Strategy by 2060) and international commitments set out in a Nationally Determined Contribution (NDC). In contrast, the Republic of Korea has developed and adopted a special framework law on achieving carbon neutrality and green growth (2021), which is legally binding and sets specific targets for reducing emissions by 40 % by 2030 compared to 2018 levels, as well as achieving full carbon neutrality by 2050.

Emissions trading systems are present in both countries. In Kazakhstan, the national Emissions Trading System (ETS) has been implemented since 2013, while in South Korea the system began operating in 2015 and covers a wider range of subjects, including the largest industrial companies. At the same time, the Korean system relies on obligations supported by penalty mechanisms, while in Kazakhstan the system continues to evolve and requires additional regulatory consolidation.

Some particular interest is the different levels of institutional and judicial control. In Kazakhstan, issues of climate responsibility do not have direct constitutional protection, and are not fixed in the form of citizens' rights. In contrast, in South Korea, in 2024, the Constitutional Court recognized the absence of interim climate targets (for the period 2031–2049) as a violation of the constitutional rights of future generations. This decision obliges the country's legislative bodies to make appropriate amendments and ensure clearer legal regulation in the long term.

From the point of view of financial mechanisms, Kazakhstan is at the stage of forming a national climate finance fund and attracting international investments. The Republic of Korea, on the other hand, has established a comprehensive support system that includes tax incentives, government subsidies, green bonds, and coordination with the Global Green Climate Fund (GCF), which is headquartered in the country.

In this way, the Republic of Korea showcases a more advanced level of legal systematization and the detailed structuring of its climate policy, with active involvement from the judiciary in its development and extensive use of financial and economic tools. At the same time, Kazakhstan's experience reflects an important process of adapting international norms within the framework of national legislation and can be supplemented and strengthened by integrating provisions on liability, judicial protection and a long-term climate strategy into a separate framework law.

The key international event of 2024 was the 29th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP29), held in November in Baku (Azerbaijan). The central theme of the event was climate finance and support for developing countries in the decarbonization process. According to the results of COP29, an agreement was reached on a threefold increase in climate finance, including through the creation of a new financial mechanism for vulnerable states [25].

One of the most important decisions was to set a target of mobilizing at least 300 billion US dollars annually by 2035 to support climate initiatives in developing countries. Due to the focus on financial instruments, the conference was informally called "Finance COP". The decisions taken are aimed at facilitating the

transition to a low-carbon economy, increasing climate resilience and compensating for losses from climate disasters.

Adaptation, emission reduction, and compensation for losses and damages were also on the agenda of COP29. Special attention was paid to:

- strategies to protect infrastructure, the agricultural sector and natural ecosystems;
- ensuring a fair transition to renewable energy;
- a mechanism for compensation to the countries most affected by climate risks.

Scientific reports presented at the conference emphasized the urgency of taking coordinated measures aimed at preventing irreversible climate change. There was a warning that delay in the implementation of the Paris Agreement could lead to severe environmental, social and economic consequences [26].

Therefore, the conducted legal analysis of the Republic of Kazakhstan's participation in international climate agreements and the mechanisms of their national implementation allows us to identify the main directions of legislative transformation in the context of global climate challenges. Kazakhstan demonstrates consistent adaptation of international obligations to the national context by implementing comprehensive legal, institutional and financial mechanisms aimed at reducing emissions and increasing resilience to climate risks.

The results obtained provide a basis for further discussion of the pressing issues of implementing climate commitments and identifying areas for improving legal policy in the field of climate change.

Discussion

The accession of the Republic of Kazakhstan to the UN Framework Convention on Climate Change has become an important step towards integrating the international climate agenda into the national legal and strategic system. However, the results of the analysis show that fulfilling the obligations under the UNFCCC and the Paris Agreement requires an integrated, cross-sectoral approach, including economic modernization, institutional strengthening and sustainable international partnership.

The Strategy for Achieving Carbon Neutrality by 2060, adopted in 2023, covers key areas of decarbonization, including energy sector reform, the development of sustainable transport, the introduction of climate technologies, adaptation to climate change and the formation of a green financing system. These directions are consistent with global trends, which confirm the relevance of the model chosen by Kazakhstan. However, compared to similar strategies, such as South Korea, where the goals and milestones are more detailed in the national law, the Kazakhstani approach is still more based on policy and strategic documents rather than strict legal obligations.

One of the positive factors is the active implementation of climate projects with the support of international financial institutions. Between 2023 and 2025, Kazakhstan has received significant financial support for energy conservation, the development of "green" infrastructure, and sustainable economic growth, including 6 million euros from the Climate Action Enhancement Fund (UNDP), 600 million dollars from the World Bank, and 3 million dollars from the Asian Development Bank [27]. This allows us to conclude that there is a high degree of trust on the part of global partners and confirms Kazakhstan's commitment to the climate agenda.

However, the successful implementation of climate strategies requires a more systematic approach. As Nicholas Stern emphasized in his fundamental study "Stern Review on the Economics of Climate Change", delay in measures to reduce emissions will lead to economic losses many times higher than the costs of preventing climate change [28; 128]. In light of this, accelerating the pace of reforms in the energy sector and industry is becoming a priority for Kazakhstan.

Modern authors also highlight the importance of internal institutional stability. For example, in the work "Sustainability and the Measurement of Wealth: Further Reflections", it is noted that in emerging economies, policy documents are often not supported by sufficient legal enforcement mechanisms [29]. This conclusion is also applicable to Kazakhstan, where, despite the existence of strategies, challenges remain in terms of monitoring, coordination and responsibility.

A significant emphasis in modern climate science is placed on issues of climate rights and justice. In the work "Citizen Preferences for Climate Policy Implementation: The Role of Multistakeholder Partnerships", raised the issue of citizens' involvement in the implementation of climate policy and the recognition of their rights to climate security by their subjects [30]. In Kazakhstan, this concept can be applied within the framework of expanding public participation mechanisms and increasing transparency. Finally, the analysis of the climate legislation of the Republic of Korea confirms that clear legal consolidation of goals, judicial control

and institutional guarantees are necessary conditions for an effective climate policy. The decision of the Constitutional Court of Korea of 2024 in the case of violation of the climate rights of future generations can be considered as an example of the inclusion of climate justice in the mechanism of legal protection. This experience can be useful to Kazakhstan in the further development of environmental and constitutional norms.

One of the key structural problems of implementing Kazakhstan's climate policy is its high dependence on the hydrocarbon sector. As one of the largest oil and gas producers in the region, Kazakhstan faces a contradiction between the need to reduce emissions and the sustainability of a budget system heavily dependent on hydrocarbon exports. This contradiction is especially acute in the context of the global energy transition, where traditional energy models are losing economic stability. As Fatih Birol, the Executive Director of the International Energy Agency (IEA), notes, "Oil and gas-oriented countries must act proactively, otherwise they risk falling behind in global transformation" [31].

An additional challenge is the insufficient harmonization of Kazakhstan's climate legislation with the provisions of the UNFCCC and the Paris Agreement. Despite formal compliance, a number of regulations lack specific mechanisms for implementing obligations, which reduces the law enforcement potential of legislation. As noted in the work "Green Governance: Ecological Survival, Human Rights, and the Law of the Commons", it necessitates not just declarations but also practical enforcement mechanisms, which include a monitoring system, sanctions, and feedback processes [32].

The analysis allows us to identify a number of structural and regulatory barriers:

- significant reliance on coal-based power generation (over 70 % of electricity is produced through coal combustion);
- inadequate economic incentives for the private sector (absence of a flexible system of tax benefits and subsidies);
- limited integration of the national emissions trading system with global carbon markets;
- the necessity for international funding to support large-scale projects in carbon capture and storage (CCS) and renewable energy.

At the same time, it is worth noting that Kazakhstan has made significant progress in creating a regulatory framework for the development of renewable energy sources. As a part of the implementation of the obligations under the Paris Agreement, auction mechanisms for the distribution of projects were introduced, tariff models were developed, tax and investment incentives are in place. Nevertheless, achieving the strategic goal of 50 % of renewable energy sources in the energy mix by 2050 requires solving a number of systemic legal problems.

Firstly, there is a lack of institutional coordination. Currently, the functions in the field of renewable energy development are distributed between the Ministry of Energy of the Republic of Kazakhstan, the Ministry of Ecology and Natural Resources of the Republic of Kazakhstan, as well as other bodies, which makes it difficult to develop a unified climate policy. Modern scientific literature emphasizes that institutional fragmentation leads to a decrease in the effectiveness of climate strategies and hinders rapid decision-making [33].

The solution may be to create a single coordination center on climate and renewable energy, ensuring interaction between ministries, the private sector and international organizations.

Secondly, the energy grid infrastructure remains a limiting factor. Insufficient network capacity and lack of energy storage make it difficult to integrate solar and wind farms. In this regard, it is necessary to improve legislation regarding the modernization of networks and the regulation of dispatching, as well as the introduction of intelligent energy systems (smart grids). These measures are justified in works that emphasize the role of decentralized and adaptive networks in the transition to 100 % renewable energy [34].

Thus, along with the achievements, Kazakhstan will have to solve a set of interrelated problems, which are regulatory, institutional, technological and financial, without which the fulfillment of climate commitments will be primarily declarative. The development of hydrogen energy, considered as a key component of the energy balance of the future, is a promising direction for the climate transformation of the economy of Kazakhstan. Although hydrogen holds significant potential as a source of "clean" energy, the current legislation of the Republic of Kazakhstan lacks specific regulations addressing the production, transportation, storage, and export of "green" hydrogen. This creates regulatory uncertainty, reduces the attractiveness of the industry to investors, and slows down integration into international hydrogen markets.

The introduction of the comprehensive law "On Hydrogen Energy", as well as the adaptation of the regulatory framework to the standards of the European Union, Japan and South Korea will allow Kazakhstan

to take a competitive position in the global market of low-carbon technologies. The lack of specialized regulation in countries with high renewable energy potential is a critical barrier to attracting investment and technology transfer.

Limited financial incentives remain a significant obstacle. Current tax incentives and subsidies do not provide adequate support for large-scale projects, especially in the early stages of their implementation. To overcome this barrier, new mechanisms are needed: the expansion of public-private partnerships, the launch of "green bonds", as well as participation in international climate funds, including the Climate Investment Funds and the Green Climate Fund. These measures comply with the recommendations of the OECD and the World Bank Group outlined in the analytical report "Financing Clean Energy Transitions in Emerging and Developing Economies" [35].

Creating conditions for the sustainable development of renewable energy requires an integrated approach. First, institutional coordination needs to be strengthened: the functions of regulating renewable energy in Kazakhstan are distributed among several ministries, which makes it difficult to make unified strategic decisions. International experience (for example, Germany, South Korea) demonstrates that the creation of a specialized state agency on renewable energy issues makes it possible to increase policy effectiveness and improve dialogue with investors.

Second, the energy grid infrastructure requires modernization: the network capacity is limited, and the lack of energy storage makes it difficult to balance the unstable generation of solar and wind farms. The development of smart grids, the introduction of flexible tariffs and the creation of technical conditions for connecting new renewable energy facilities are priorities. These measures are confirmed by the conclusions of Mark Jacobson in the monograph "100 % Clean, Renewable Energy and Storage for Everything", which emphasizes the need to integrate network solutions into the climate strategy [36; 89].

Finally, an additional challenge remains dependence on the import of renewable energy equipment. The lack of localization of production increases the cost of project implementation and reduces the potential for the development of the domestic "green" market. Supporting national production of renewable energy components will not only reduce costs, but also create additional jobs, increasing the social sustainability of the energy transition.

Therefore, despite the existence of universal international instruments of climate regulation, it is the level of development of national legislation and the effectiveness of legal mechanisms that determine Kazakhstan's readiness to fulfill its climate obligations. The analysis showed that in the context of the energy transition, issues of institutional coordination, the development of a regulatory framework for new technologies (including hydrogen energy), as well as the creation of sustainable financial incentives are of particular importance. The scientific concept underlying this research is based on the theory of sustainable development and the principle of climate justice, according to which long-term environmental safety can be achieved only with a balance between international obligations and national interests.

Conclusion

The analysis of the climate policy of the Republic of Kazakhstan testifies to the consistent efforts of the state to integrate international obligations into the sphere of national legal regulation and strategic planning. The Strategy for Achieving Carbon Neutrality by 2060, adopted in 2023, outlines key areas of decarbonization: energy transformation, the development of low-carbon transport, adaptation to climate change, and the formation of a "green" financing system. However, achieving these goals faces a number of serious barriers, including institutional inconsistencies, regulatory gaps, and limited financial resources.

The main problems of Kazakhstan's climate policy include the continued dependence of the economy on the hydrocarbon sector, a high share of coal generation in the energy mix, insufficient flexibility of the economic incentive system and weak legal regulation of promising areas such as hydrogen energy. In addition, the current model of institutional governance in the field of renewable energy is characterized by fragmentation of powers, the absence of a single coordinating body and limited integration into international carbon markets.

In order to successfully implement the commitments made under the Paris Agreement, Kazakhstan needs to adopt an integrated approach that includes the following priority measures:

1. Improving the institutional structure of climate policy management, including the creation of a specialized government body responsible for the development of renewable energy (RES) and the implementation of climate strategies.

2. Modernization of the regulatory framework regarding the regulation of hydrogen energy, the national emissions trading system and mechanisms for sustainable energy development.

3. Expansion of climate finance instruments through the development of “green” bonds, public-private partnership mechanisms, and participation in international climate funds.

4. Development of local production of renewable energy components to reduce dependence on imports and create additional jobs in the green economy sector.

Thus, despite the progress made, Kazakhstan has a lot of work to do to eliminate structural and legal obstacles to achieving carbon neutrality. The harmonization of national legislation with international climate standards, the intensification of investment policy and the strengthening of international cooperation are key conditions for ensuring the environmental and energy sustainability of the country.

In case of successful implementation of the tasks set, Kazakhstan will not only fulfill its international obligations but will also be able to demonstrate an example of effective climate transformation for other states focused on sustainable development and environmental protection.

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Қазақстанның климат туралы халықаралық келісімдерге қатысуы: құқықтық аспектілері және ұлттық жүзеге асырылуы

Қазақстан Республикасы басқа да көптеген мемлекеттер сияқты қарқынды дамып келе жатқан климаттық және экологиялық сын-тегеуріндерге жауап ретінде өздерінің экономикалық және құқықтық модельдерін трансформациялау қажеттілігіне тап болды. 2060 жылға қарай көміртегі бейтараптығына қол жеткізу стратегиясы және Париж келісімі шеңберінде жаңартылған ұлттық айқындалған үлес (ЖҰАҮ) сияқты негізгі стратегиялық құжаттарды қабылдау климаттық саясатты құқықтық талдаудың және жүзеге асырып жатқан механизмдердің тиімділігін бағалаудың маңыздылығын көрсетеді. Зерттеудің мақсаты климаттың өзгеруі саласындағы ұлттық және халықаралық заңнаманы кешенді талдау, сондай-ақ БҰҰ-ның климат жөніндегі конференциялары мен климаттық өршілдік жөніндегі саммитті қоса алғанда, жетекші халықаралық ұйымдардың ұстанымдары мен талдамалық материалдарын зерделеу. Зерттеудің әдіснамалық негізін жүйелік, салыстырмалы-құқықтық және формальды-құқықтық әдістер, сондай-ақ саяси-құқықтық талдау құрайды. Оларды қолдану климаттың өзгеруі саласындағы заңнамалық базаның ағымдағы жай-күйін жан-жақты бағалауға және неғұрлым өзекті құқықтық проблемаларды анықтауға мүмкіндік берді. Зерттеу барысында Климаттық күн тәртібін іске асыруға кедергі келтіретін негізгі институционалдық және нормативтік кедергілер анықталды: стратегияларды іске асырудың нақты тетіктерінің болмауы, құқықтық реттеудің бөлшектенуі, мемлекеттік органдар арасындағы әлсіз үйлестіру және климаттық саясат пен ағымдағы экономикалық басымдықтар арасындағы, атап айтқанда, көмірсутектер өндіру саласындағы қақтығыс. Ұлттық заңнаманы жетілдіру, климаттық басқарудың институционалдық негіздерін нығайту қажеттілігі туралы қорытынды жасалды.

Кілт сөздер: климаттың өзгеруі, тұрақты даму, климаттық заңнама, халықаралық міндеттеме, БҰҰ негізгі конвенциясы, Париж келісімі, жаңартылған ұлттық үлес, жаһандық әрекет ету, көміртегі бейтараптығы, парниктік газ.

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Участие Казахстана в международных соглашениях по климату: правовые аспекты и национальная реализация

Многие государства, включая Республику Казахстан, сталкиваются с необходимостью трансформации своих экономических и правовых моделей в ответ на нарастающие климатические и экологические вызовы. Принятие ключевых стратегических документов — таких как Стратегия достижения углеродной нейтральности к 2060 году и обновлённый Национально определяемый вклад (ОНУВ) в рамках Парижского соглашения — подчёркивает актуальность правового анализа климатической политики и необходимости оценки эффективности реализуемых механизмов. Целью настоящего исследования является комплексный анализ национального и международного законодательства в сфере изменения климата, а также изучение позиций и аналитических материалов ведущих международных организаций, включая Конференции сторон РКИК ООН и Саммит по климатической амбициозности. Методологическую базу исследования составляют системный, сравнительно-правовой, формально-юридический методы, а также политико-правовой анализ. Их применение позволило всесторонне оценить текущее состояние законодательной базы в сфере изменения климата и выявить наиболее актуальные правовые проблемы. В ходе исследования выявлены основные институциональные и нормативные барьеры, препятствующие реализации климатической повестки: отсутствие чётких механизмов реализации стратегий, фрагментарность правового регулирования, слабая координация между государственными органами и конфликт между климатической политикой и текущими экономическими приоритетами, в частности в сфере добычи углеводородов. Сделан вывод о необходимости совершенствования национального законодательства и укрепления институциональных основ климатического управления.

Ключевые слова: изменение климата, устойчивое развитие, климатическое законодательство, международное обязательство, Рамочная Конвенция ООН, Парижское соглашение, обновленный национальный вклад, глобальное реагирование, углеродная нейтральность, парниковый газ.

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Human rights to protection from torture and other cruel, inhuman or degrading treatment or punishment

The article examines issues of legal regulation of the human right implementation to protection from torture and other forms of treatment and punishment that may be cruel, inhuman and degrading to human dignity. This right is considered as a domestic and international law complex institution. The research purpose is to analyze the legal institution of "Human rights to protection from torture and other cruel, inhuman or degrading treatment or punishment", to identify problems of legal regulation and to develop ways to improve national legislation. The research is carried out using general scientific and special legal methods, using analysis and generalization of theoretical provisions and legal norms and the practice of their implementation. Based on the comparative legal method, the main trends in the development of this institution nowadays are identified. The legal institution features analysis and its connection to legal acts and international standards is carried out. The main result of the research is proposals for improving criminal law norms. The main research conclusion is the need to improve legal measures aimed at harmonizing national legislation in the area of protection from torture and cruel prevention, inhuman or degrading treatment and punishment with international standards in this area.

Keywords: Kazakhstan, human rights, torture, cruel treatment, punishment, dignity, legislation, legal norms, international standards.

Introduction

The research relevance lies in the fact that for the effective implementation of the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment, a system of legal institutions is needed that complement each other through interaction. This right is ensured by international standards, domestic legislation, law enforcement agencies, the judicial system, and through monitoring by civil society institutions.

The human right to protection from torture can be considered as an interdisciplinary legal institution that includes international, constitutional, criminal law, administrative law, and organizational legal norms. At the same time, the big problem is not only the legislative consolidation of this legal institution, but also the procedure for implementing this right in practice. The actual situation in the realization sphere of this right is reflected in the annual consolidated reports of the national preventive mechanism participants of the Republic of Kazakhstan based on the preventive visits results. By the end of 2024, 489 mandated institutions were covered by participants of the national preventive mechanism, including 33 special visits. These visits were carried out in response to reports of torture and cruel and inhuman treatment and punishment in closed

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institutions. In 2024, the institutions visited included 11 correctional institutions, 13 pre-trial detention facilities, 6 temporary detention facilities, 1 special reception facility, and 2 special services centers. Based on the results of special visits, materials concerning violations facts that contribute to the conditions creation for torture and factors of cruel and degrading treatment and punishment were sent, depending on the complaints, to the prosecutor's office and authorized bodies. Over the past three years, there has been a decrease in the number of complaints about torture 2022 — 447, 2023 — 165, 2024 — 111, while there has been an increase in the number of people convicted of torture 2022 — 17, 2023 — 47, 2024 — 30 [1].

The research purpose is to examine the legal norms governing human rights to protection from torture and other cruel, inhuman, or degrading treatment or punishment.

The main research objectives are to analyze and summarize the following provisions:

- Research of legal norms for the definition of the interdisciplinary legal institution of "the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment".

- Conducting a comparative legal institution analysis with international standards and scientific approaches in the human rights field to protection from torture.

- Proposals development for improving national legislation in the human rights area to protection from torture and other cruel, inhuman or degrading treatment or punishment.

Currently, it is necessary to highlight conflicts in legal theory, methodology and law enforcement practice. Legal theory and international standards enshrine the absolute human right to protection from torture and inhuman or degrading treatment or punishment. Public interest, the right of others, the actions of victim––no matter how dangerous or cruel—cannot justify the torture. At the same time, the legal culture of society partially determines law enforcement practices aimed at justifying torture and cruel treatment by the prevailing circumstances. In certain cases, torture and ill-treatment are considered as part of the punishment for the crimes committed, as well as a necessity to obtain important information during investigations.

As a gap in research and theoretical schools, it is necessary to highlight insufficient number of studies devoted to distinguishing torture and cruel treatment from other types of offenses directed against the individual. For example, there is a lack of clarity in the difference between torture and the following criminal offenses, such as torture, intentional cause of serious, moderate, or minor bodily harm and other crimes related to violence.

The authors' point of view in reviewing the literature and other sources is the statement of insufficient theoretical development of the "torture" concept and the "cruel, inhuman or degrading treatment or punishment" concept. It seems that the legal norms enshrined in international standards and national legislation require theoretical development. Detailed development of these concepts is necessary for their correct implementation in law enforcement practice. Currently, various relationships arise between people, which are conditioned by different approaches to understanding the essence and implementation of their rights, which do not always correspond to legal norms. In some closed social groups, relationships may arise that can be characterized as a "criminal subculture", which is, as a rule, a determining condition for the presence of torture and cruel treatment and punishment.

Methods and materials

To achieve objectivity, completeness and comprehensiveness of the research results, a set of general scientific and specialized methods of cognition was used, based on the systemic approach to the problems of improving legislation in the area under research.

The methodological basis of the study is a scientifically based approach to the research of the interdisciplinary legal institute "The human right to protection from torture and other cruel, inhuman or degrading treatment or punishment". General scientific and specific scientific methods were used in the research. The study of legal norms defining this interdisciplinary legal institution was conducted through analysis and the legal norms generalization. Using the comparative legal method, a comparison of scientific legal approaches to the similar implementation of legal norms in different countries was carried out. Through analysis and generalization, a research was carried out on the procedure for implementing the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment. On the basis of the legal hermeneutics, new approaches to the legal terminology formation in the area of defining the concept of "torture" and the concept of "cruel, inhuman or degrading treatment or punishment" were defined. Based on observation, analysis and generalization, shortcomings in legal regulation in the area of protection from torture and cruel treatment and punishment were identified.

Results

As a research result, the following provisions were identified through the author's observation. The author's observation was carried out during the activities as a participant in the national preventive mechanism for the Karaganda region in the period 2023–2025. The national preventive mechanism in Kazakhstan was established in 2013 based on the obligations arising from the Optional Protocol to the Convention Against Torture. This mechanism is a system aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. During the author's observation, shortcomings in legal regulation and the practice of applying these norms were identified. As a participant in the national preventive mechanism, in 2023–2025, visits were made to detention places, temporary detention facilities, special reception centers, reception and distribution centers, institutions providing special social services, divisions of the mental health center, children's institutions and other closed institutions. These are closed institutions; they are mandated institutions for the national preventive mechanism, in which the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment is most likely to be violated.

The torture concept and cruel treatment or punishment includes a wide range of actions and inactions, which, depending on each specific situation, can be qualified differently. Moreover, the torture concept does not include lawful actions of officials and persons acting in an official capacity that may be considered cruel, inhuman or degrading treatment, torture, as well as physical and/or mental suffering. At the same time, the definition of "legal actions" is understood in practice broadly and ambiguously. This is due to the fact that not all aspects of social relations in closed institutions and institutions where people with restricted freedom of movement are kept are sufficiently regulated. Many relationships in such institutions are based on moral and ethical standards, as well as business customs.

During the research, the following results were obtained, corresponding to the stated goal and objectives:

1) The analysis of legal norms defining the interdisciplinary legal institution of "the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment" allows us to state the formation of this interdisciplinary legal institution in the domestic legal system. This is due to existence of the established legal relations, which are based on legal norms of various law branches. First of all, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be included in the normative framework. This convention defines "torture" as any intentional act that causes severe pain or physical or mental suffering motivated by specific purposes, such as obtaining information or a confession, unlawful punishment for any action, intimidating or coercing a person for reasons based on discrimination of any kind. In this case, the determining factor is the subject — a government official, another person acting in an official capacity or at their instigation, or with their knowledge or tacit consent [2]. An important source that enshrines the human right to protection from torture, violence, and cruel or degrading treatment or punishment is the Constitution of the Republic of Kazakhstan [3]. Based on constitutional norms, the Criminal Code establishes liability for cruel, inhuman or degrading treatment and torture. In Article 146 of the Criminal Code of the Republic of Kazakhstan, responsibility for cruel, inhuman or degrading treatment and torture is divided into two parts. The first part of Article 146 provides for liability for cruel, inhuman or degrading treatment, and the second part of Article 146 provides for liability for torture [4]. An important legal act regulating the procedure for implementing the human right to protection from torture is the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan "On the application of the norms of criminal and criminal procedural legislation on respect for personal freedom issues and the human dignity inviolability, counteraction to torture, violence, other cruel or degrading forms of treatment and punishment". This resolution establishes the qualifying features that distinguish torture and cruel, inhuman or degrading treatment from other illegal actions directed against life, health, freedom, and violating constitutional human rights [5]. Thus, in our opinion, an interdisciplinary legal institution "The human right to protection from torture and other cruel, inhuman or degrading treatment or punishment" was formed. This is a group of legal norms that are objectively isolated within the system of national law, which relate to different branches of law, but regulate similar social relations. By its nature, it is an interdisciplinary institution that combines the norms of international, constitutional, criminal, penal law and other branches of law and legal institutions. Moreover, this institution is divided into two sub-institutions: "torture" and "cruel, inhuman or degrading treatment or punishment". This is due to the difference between these concepts. Based on the international convention norms, torture includes acts that cause severe pain or physical and mental suffering, which are carried out for a specific purpose, by an official or a person in an official capacity or at their insti-

gation or with their tacit consent. It is these characteristics that distinguish the concept of "torture" from other offenses against human rights.

2) In the course of conducting a comparative legal analysis of the interdisciplinary legal institute with international standards and scientific approaches in the field of human rights to protection from torture, two main approaches were identified.

The first approach is an absolute ban on torture. Torture is defined as a serious crime that has no justification—neither peacetime nor wartime circumstances, nor orders from superiors, can serve as grounds for its use. Most countries in the world are parties to the Convention Against Torture. Based on the information contained in the Report of the Committee against torture, as of 10 May, 2024, there are 174 states parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All States parties, in accordance with Article 19 of the Convention, submit initial and periodic reports. At its seventy-seventh session, the Committee considered the reports of Spain, New Zealand, Romania and Switzerland. At its seventy-eighth session, it considered the reports of Burundi, Costa Rica, Denmark, Egypt, Kiribati and Slovenia. At its seventy-ninth session, it considered the reports of Austria, Azerbaijan, Finland, Honduras, Liechtenstein and North Macedonia. At the time of submission of the report, there were 28 States parties with overdue initial reports and 49 States parties with overdue periodic reports. The Committee notes that some States parties have failed to implement decisions taken on complaints [6]. In addition to the submission of initial and periodic reports, the prohibition of torture is also ensured by the possibility of lodging a complaint under Article 22 of the Convention against Torture. Persons who claim to have been victims of torture may lodge a complaint with the Committee against torture for consideration. In this case, the determining condition is the recognition by the state party to the Convention of the competence of the Committee against torture to consider these complaints. Currently, there are 71 states party to this Convention, including the Republic of Kazakhstan. As of 10 May, 2024, the Committee had registered 1,211 complaints since 1989 against 45 States parties. Of these, 406 complaints were discontinued and 145 were declared inadmissible. The Committee took final decisions on the merits in respect of 495 complaints, finding violations of the Convention in 206 of them. Some 164 complaints are pending [6]. The complete prohibition of torture is ensured by a set of measures, such as recognition by all states of the absolute unacceptability of torture and accession to the Convention against torture. Submission of initial and periodic reports by states parties to the Convention against torture, information analysis presented in these reports and recommendations development to eliminate conditions that contribute to the torture emergence. An important mechanism at the international level is the consideration of complaints about torture of citizens of the states parties to the Convention. At the national level, protection from torture is ensured, first of all, by the norms of constitutional law, criminal, criminal-executive law and other legal norms. Also, protection from torture is ensured by the law enforcement and judicial systems, as well as by civil society institutions, which primarily include the national preventive mechanism and public monitoring commissions.

The second approach is the moral and, in some cases, legal justification of torture under certain conditions. This is associated with ensuring public safety, protecting the common good, and obtaining information to prevent more serious criminal acts. As an example can be found in the position of the United States and some other countries when after September 11, 2001 the need to adhere to international norms prohibiting torture was questioned. In March 2008, the US President vetoed a law banning certain types of psychological torture, citing the extraordinary circumstances of the fight against terrorism. The Prime Minister of Italy, justifying torture against terrorists, stated that it is impossible to influence people who are at the level of medieval concepts of good and evil with the help of civilized measures [7; 28]. At the same time, from a scholarly perspective, the harmfulness of such discussions is noted, since they to one degree or another legitimize torture as a possible tool for obtaining information in emergency cases related to the terrorist threat [8]. Thus, torture and other cruel, inhuman or degrading forms of treatment and punishment can be morally justified by part of society and part of the professional law enforcement community.

As a result of a comparative analysis of legal institutions with international standards and scientific approaches in the human rights field to protection from torture, it is necessary to state that the Republic of Kazakhstan have formed legal institutions that provide for an absolute ban on torture. The country has sufficiently effective law enforcement and judicial bodies capable of holding those responsible for such crimes accountable, as well as restoring the violated victim rights. There are also civil society institutions capable of identifying facts of torture and cruel, inhuman or degrading treatment or punishment. At the same time, there is a need to specify legal norms in this area, as well as improve law enforcement practices in collecting factual data on torture and conducting investigations.

3) Considering the need to improve national legislation in the human rights area on protection from torture and other cruel, inhuman or degrading treatment or punishment, it should be noted that the Criminal Code establishes liability for cruel, inhuman or degrading treatment and torture [4]. In Article 146 of the Criminal Code of the Republic of Kazakhstan, liability for cruel, inhuman or degrading treatment and torture is divided into two parts. The first part of Article 146 provides for liability for cruel, inhuman or degrading treatment, and the second part of Article 146 provides for liability for torture. At the same time, part three of Article 146 provides for the qualifying features of both types of crimes [4]. This approach equates the liability under Parts 1 and 2 of Article 146, which appears incorrect because of the different social harm of the acts described in these parts. It is proposed to separate out from Part 3 of Article 146 the responsibility for cruel, inhuman or degrading treatment or punishment. This study's suggested formulation of Part 3 of Article 146 as follows: "Acts provided for in Part 1 of this Article, committed: 1) by a group of persons or a group of persons by prior conspiracy; 2) repeatedly; 3) causing moderate bodily harm; 4) against a woman who is known to the perpetrator to be pregnant, or a minor, — shall be punishable by a fine of up to five thousand monthly calculation indices, or correctional labor in the same amount, or restriction of liberty for a term of up to six years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years". The liability for torture in Part 3 of Article 146 shall be designated as Part 4 of Article 146 and the first sentence of Part 4 shall be worded as follows: "Acts provided for in Part 2 of this Article, committed…". Further, the proposed Part 4 of Article 146 will preserve the current version of the text of Part 3 of Article 146. Original Part 4 of Article 146 will be renumbered as Part 5 of Article 146 of the Criminal Code.

The Convention against torture defines torture as "the intentional infliction of severe pain or physical or mental suffering". It is proposed to formulate Part 2 of Article 146 of the Criminal Code as follows: "Torture, that is, the intentional infliction of severe pain and (or) mental, moral suffering". This will bring the provisions of the Criminal Code of the Republic of Kazakhstan into line with the provisions of the Convention against torture.

The novelty of the achieved results is in the generalization and systematization of legal norms regulating human rights for protection from torture, as well as the human right to protection from cruel, inhuman or degrading treatment and punishment. These groups of legal norms are proposed to be combined into an interdisciplinary institution, which consists of two legal sub-institutions: "the right to protection from torture" and "the right to protection from cruel, inhuman or degrading treatment and punishment". Such an approach is new and is due to the need to comply with international standards and scientific approaches that try to distinguish between these two sub-institutions of law, while simultaneously combining them into a single interdisciplinary legal institution. A new result is also the proposals for improving the criminal law norms, which are due to the systemic structure of this interdisciplinary institution.

Discussion

Modern research in the human rights field on protection from torture and other cruel, inhuman or degrading treatment or punishment, as a rule, cover some phenomenon aspect under consideration. It seems important to consider the legal norms totality and legal relations arising on their basis as an interdisciplinary legal institution. This allows us to consider the problem of protecting a person from torture and cruel, inhuman or degrading treatment in the system, combining theoretical and practical aspects of these crimes prevention, their prevention, punishment for them and violated rights restoration.

Based on a sociological survey conducted by the DEMOSCOPE Express Public Opinion Monitoring Bureau on the topic "Torture in Kazakhstan against suspects and prisoners", the main causes and conditions of torture can be identified. A total of 1,560 people living in Almaty and Astana, as well as in all regional centers, were surveyed. 34 % of Kazakhstanis believe that the main reason for torture is impunity; 25 % — low professional qualifications of employees; 18 % — legal illiteracy of law enforcement officers; 15 % — psychological instability of employees; 8 % — insufficient security and social protection of law enforcement officers. At the same time, the respondents noted that the most important guarantees for protection from torture are notification of relatives and lawyer participation in all procedural actions — 31 %; interrogations video recording and other procedural actions — 19 %; punishment inevitability of the guilty — 17 %; ensuring security guarantees in detention places — 17 %; conducting an impartial investigation — 16 %. With regard to the punishment provided for by the Criminal Code, 61 % consider it adequate, 33 % — insufficient, 7 % — excessive [9]. Based on this survey, the most important reasons and conditions for torture should be

highlighted. These are impunity, low qualifications and legal illiteracy of employees. Accordingly, in scientific and theoretical research, these factors must be taken into account first and foremost.

Scientific studies examine various crime aspects of "torture" and "cruel, inhuman or degrading treatment or punishment". E.V. Mitskaya, A.M. Kosmagambetova, R.A. Alshurazova examine the new version of Criminal Code Article 146 of the Republic of Kazakhstan and its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In their study, these authors state that the criminal legislation contains sufficient provisions to hold accountable persons who commit violent crimes. It should be agreed with the authors that the understanding of torture in the new version as a less serious act (in case of causing minor harm to health) does not correspond to the understanding of torture in the UN Convention [10]. N.N. Turetsky in her study, which is devoted to the use of comprehensive measures in the fight against torture in Kazakhstan, emphasizes the positive changes that have occurred in this area. He notes that the positive role in the fight against torture is played by the activities of the national preventive mechanism, the exclusive prosecutor's office jurisdiction the in torture cases, the "blind spots" elimination through video surveillance, and the medical care in penal institutions has been completely transferred to the civilian health care jurisdiction [11]. In our opinion, the author correctly notes the problem of the shortage of highly qualified personnel: "some employees compensate for the lack of professionalism and experience by using forceful influence methods" [11]. The author proposes comprehensive measures, among which the following measures should be highlighted: the "corporate solidarity" elimination, which leads to the evidence destruction and pressure on victims, the national legislation improvement, and the human resources increase [11]. G.K. Shushikova, E.S. Kemali, M.G. Azhibayev, in their research, consider the combating torture issues in Kazakhstan [12]. In addition to scientific research, publications in the media are of interest on the problems of torture. These articles reveal the main problems in this area that lawyers and human rights defenders face. Based on the analysis results the national preventive mechanism, current issues are raised on the prevention of torture and cruel, inhuman and degrading treatment or punishment [13]. Of interest is the publication "Establishment and Purpose of national preventive mechanisms", prepared by the Association for the Prevention of torture in 2006 [14]. This publication considers various issues related to the activities of the Human Rights Commissioner and touches upon the organizing the activities issues of the national preventive mechanism and other human rights organizations and institutions. It is necessary to highlight the article by A.B. Saparali "National preventive mechanism for the Prevention of torture in Kazakhstan: Comparative Legal Analysis". This article examines the history and formation patterns and development of this institution. A conclusion is made about human rights institution optimality for the torture prevention [15]. Problems discussion in the developing process in the National preventive mechanism as the main institution for the prevention of torture was carried out at various information platforms. For example, holding seminars on the practical implementation of the national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment [16]. The result of these discussions and scientific research was the development of the draft law "On the national preventive mechanism in the Republic of Kazakhstan", which was presented in April 2024 by experts of the Coalition of Non-Governmental Organizations of Kazakhstan against torture, participants in the national preventive mechanism. The presented draft law defines the legal status and organization of the activities of this mechanism [17]. This draft law is currently of an initiative nature; it has not been submitted to the Majilis and is being discussed at various information platforms by representatives of non-governmental organizations. Issues related to the implementation of human rights in the context of the national law and human rights mechanisms development, including the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment, were considered in the publications of A.B. Ashirbekova, O. Anayurt [18; 6–14], V.S. Isabekova, Ya. Zalesny [19; 25–31]. These publications provide human rights protection mechanisms analysis in different countries and the Republic of Kazakhstan. Current issues of the organization and national preventive mechanism activities for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are considered in the article by A.V. Turlayev, A.B. Sopykhanova [20; 77–86].

In the course of reviewing and analyzing the research results in these publications, one can conclude that there is a need for further research into issues in the human rights to protection area from torture and other cruel, inhuman or degrading treatment or punishment.

The issues are considered in this research are relevant and have scientific novelty. Assessing the results of the research as new, it is necessary to note their practical significance and scientific validity. At the same time, it is necessary to explain individual results of the research. Strengthening criminal liability proposed by some authors, provided for in Part 2 of Article 146 of the Criminal Code, seems premature. This is due to the

fact that the majority of respondents expressed an opinion on the adequacy of the punishment provided at present [9]. The proposal to introduce into the criminal legislation in Article 146 Part 2 the element of torture "severe pain" is based on the torture definition in the International Convention on torture, as well as with the aim of distinguishing this composition from other, similar violent crimes. It seems that when defining severe pain, in the process of documenting the torture consequences, the norms of the Istanbul Protocol should be used [21]. This international act, which is recommended, contains practical recommendations for documenting the torture and cruel treatment consequences.

The main research result is the advancement of a scientific concept that generalizes all legal norms on torture and cruel, inhuman, degrading treatment and punishment. This group of legal norms is proposed to be considered as an interdisciplinary legal institution, which is divided into two sub-institutions. This approach is due to the structure of legal norms in the International Convention on torture, other international standards, in domestic criminal law, as well as the subject of legal regulation, which is reflected in scientific research by various authors and law enforcement practice.

The reliability of the research results is confirmed by the analysis, generalization and systematization of legal norms, international standards, scientific publications and other information from official sources and independent information platforms. The reliability of the results is also due to the author's observation during the practical powers implementation of the national preventive mechanism participant the in the Karaganda region.

Conclusion

Based on the conducted research, it is possible to systematize all approaches to the problems consideration in the human rights sphere to protection from torture and other cruel, inhuman or degrading treatment and punishment. Based on the systematization of the results, they should be presented in brief.

1) In our opinion, an interdisciplinary legal institution, "The Human Right to Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", has been formed. This is a group of legal norms that have objectively become isolated within the system of national law, which relate to different branches of law but regulate similar social relations. This institution is divided into two sub-institutions: "torture" and "cruel, inhuman or degrading treatment or punishment".

2) In the comparative legal analysis course of the interdisciplinary legal institute with international standards, scientific approaches in the sphere of human rights to protection from torture, two main approaches were identified. The first approach is an absolute ban on torture. The second approach is a moral, and in some cases, legal justification of torture under certain conditions. This is associated with ensuring public safety, the common good, obtaining information in order to prevent more serious criminal acts. In Kazakhstan, legal institutions have been formed providing for an absolute ban on torture. At the same time, the need for concretization of legal norms in this area, as well as improvement of law enforcement practices in collecting factual data on torture and conducting investigations was identified.

3) It is proposed to devote Part 3 of Article 146 of the Criminal Code of the Republic of Kazakhstan to responsibility for cruel, inhuman or degrading treatment and punishment. To set out this responsibility as follows: "shall be punished by a fine of up to five thousand monthly calculation indices, or correctional labor in the same amount, or restriction of liberty for up to six years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for up to three years". It is proposed to establish responsibility for torture in Part 4 of Article 146, and accordingly rename the existing Part 4 of Article 146 to Part 5 of Article 146 of the Criminal Code.

4) It is proposed to formulate Part 2 of Article 146 of the Criminal Code as follows: "Torture, i.e. intentional infliction of severe pain and (or) mental, moral suffering". This will bring the norms of the Criminal Code of the Republic of Kazakhstan into line with the provisions of the Convention against torture.

The research has practical value, since the results of the research are aimed at improving the legal norms of criminal legislation on torture and cruel, inhuman or degrading treatment or punishment.

The scientific value of the research lies in the research of the theoretical aspects of the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment.

The results of the conducted research can be used in subsequent scientific research devoted to the problems of protecting human rights, and can also be used in law-making activities in the field of improving criminal law norms.

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Азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғаудағы адам құқықтары

Мақалада адамның азаптаудан және басқа да қатігез, адамгершілікке жат немесе қадір-қасиетін қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғану құқығын жүзеге асыруға байланысты құқықтық регламенттеудің өзекті мәселелері қарастырылады. Бұл құқық ұлттық және халықаралық құқықтың кешенді институты ретінде зерттеледі. Зерттеудің мақсаты — «азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғаудағы адам құқықтары» құқықтық институтына талдау жасау, құқықтық регламенттеу мәселелерін анықтау және ұлттық заңнаманы жетілдіру жолдарын әзірлеу. Зерттеу жалпы ғылыми және арнайы-құқықтық әдістер арқылы жүзеге асырылады, теориялық қағидалар мен құқықтық нормаларға, сондай-ақ олардың іске асырылу тәжірибесіне талдау жасалып, қорытындыланады. Бұл құқықтық институттың ерекшеліктері, оның құқықтық актілер мен халықаралық стандарттарда бекітілуіне талдау жүргізілді. Зерттеудің негізгі нәтижесі қылмыстық-құқықтық нормаларды жетілдіру бойынша ұсыныстар беру. Зерттеудің негізгі қорытындысы — азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінің алдын алу саласындағы ұлттық заңнаманы осы саладағы халықаралық стандарттармен үйлестіруге бағытталған құқықтық шараларды жетілдіру қажеттігі туралы тұжырым.

Кілт сөздер: Қазақстан, адам құқықтары, азаптау, қатігез қарым-қатынас, жаза, қадір-қасиет, заңнама, құқықтық нормалар, халықаралық стандарттар.

А.В. Турлаев, Н.С. Ахметова

Права человека на защиту от пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания

В статье рассматривается проблемные вопросы правовой регламентации осуществления права человека на защиту от пыток и других видов обращения и наказания, которые могут быть жестокими, бесчеловечными и унижать человеческое достоинство. Это право рассматривается как комплексный институт отечественного и международного права. Цель исследования — осуществление анализа правового института «Права человека на защиту от пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания», выявление проблем правовой регламентации и выработка путей совершенствования национального законодательства. Исследование осуществляется 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 этого института в настоящее время. Проведен анализ особенностей этого правового института, его закрепление в правовых актах и международных стандартах. Основным результатом исследования являются предложения по совершенствованию уголовно-правовых норм. Основным выводом исследования является положение о необходимости совершенствования правовых мер, направленных на гармонизацию национального законодательства в сфере защиты от пыток и предупреждении жестоких, бесчеловечных или унижающих человеческое достоинство видов обращения и наказания с международными стандартами в этой сфере.

Ключевые слова: Казахстан, права человека, пытки, жестокое обращение, наказание, достоинство, законодательство, правовые нормы, международные стандарты.

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Probation control as a compulsory measure of educational influence in the criminal legislation of the Republic of Kazakhstan

In the new criminal law in the Republic of Kazakhstan adopted in 2014, the list of compulsory educational measures applied to juvenile offenders has been somewhat updated and supplemented with a new measure in the form of establishing probation control. The authors of the work attempted to give a comprehensive legal description of this compulsory measure, while paying attention to some imperfections of the provisions of the Criminal Code of the Republic of Kazakhstan, the Criminal Execution Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Probation," which negatively affect its preventive potential and application practice. In particular, the article draws attention to the not quite advantageous placement of the measure in the list of compulsory educational measures, to the imperfection of the wording of the content of the measure presented in Part 9 of Article 85 and Part 2 of Article 44 of the Criminal Code of the Republic of Kazakhstan, for the presence of substantial similarity and even identity of probation control as a compulsory measure of educational influence and some other measures provided for by the Criminal Code of the Republic of Kazakhstan, for the absence of a minimum period and criminological validity of the maximum period of application of the measure, for the lack of differentiation of the terms of application of the measure depending on the type of criminal offense and the category of severity of the crime. During the consideration of the problems, the authors expressed separate considerations. They proposed specific measures to eliminate them by improving the legal basis of probation control as a compulsory measure of educational influence.

Keywords: minors, compulsory measures of educational influence, probation control, content, responsibilities, terms of use.

Introduction

The Criminal Code of the Republic of Kazakhstan adopted in 2014 provides compulsory educational measures (hereinafter referred to as CEM) among the measures that can be applied against juvenile offenders of the criminal law. These measures are listed in Part 1 of Article 84 of the Criminal Code RK and include seven measures, many of which were adopted from the Criminal Code of the Republic of Kazakhstan of 1997 and the Criminal Code of the Kazakh SSR of 1959 with some changes in the wording of their names and/or contents. This applies to such measures as a warning, the obligation to apologize to the victim, the obligation to make amends for the harm caused, transfer under supervision of parents or persons replacing them, or a specialized government agency, restriction of leisure and enactment of special requirements to the minor's behavior, placement in an educational institution with a special detention regime. In the new Criminal Code adopted in 2014, the legislator provided a new CEM of probation control in addition to the above

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measures. The authors of one of the comments on domestic criminal law attributed this legislative decision to the number of significant innovations of Article 84 of the Criminal Code RK [1; 466]. It is worth agreeing with this statement since no similar measure was previously provided in Kazakhstan's criminal legislation. Its appearance on the CEM list is associated with introducing the probation institute into the national Criminal Code. The expansion of the CEM list with a new measure and the introduction of the probation institute into the Criminal Code deserve our support. Moreover, according to M.A. Ayubayev, "the newly formed Kazakhstani model of probation is currently an exemplary one for the post-Soviet countries" [2; 37].

At the same time, an analysis of certain provisions of the Criminal Code RK 2014 and some other acts related to probation control allows us to find several imperfections that negatively affect the preventive potential of this measure and the practice of its application. Despite seemingly being relevant, this issue still receives insufficient attention in modern legal literature. This, in turn, led the authors to research the topic to form a theoretical and legal framework on probation control as a CEM, and to develop proposals for possible solutions to existing problems related to the legal regulation and legal implementation of this measure. The choice of the topic is also important because among the post-Soviet countries that have adopted compulsory educational measures from the Soviet legislative experience, the Republic of Kazakhstan is one of the few that has provided for a completely new CEM in its criminal legislation — probation control. Such a unique experience of the Republic of Kazakhstan can be useful to the legal communities of the post-Soviet states where CEM was preserved, which, in turn, also aroused the interest of one of the authors and prompted it to be written.

Materials and methods

The methodological basis of scientific research involved in this work is represented by general and private scientific methods of cognition, among which the main place is occupied by formal legal, comparative legal and hermeneutic methods. The formal legal method was applied to analyze provisions of criminal law, penal enforcement regulations, and the Probation Act concerning probation control as a criminal-executive measure (CEM). These legal norms were examined on the basis of formal logic, intentionally abstracting from substantive characteristics of the underlying phenomenon. The comparative legal method was used in the study of previous and current editions of the relevant provisions of the Kazakh legislation. The hermeneutic method was used by the authors when referring to various methods of interpreting legal norms in order to clarify and interpret the essence contained in them. These methods made it possible to identify problems of a legislative and legal nature related to probation control as a CEM, as well as to formulate proposals for their possible resolution.

In the course of the research, the authors referred to previously published works on criminal and penal enforcement law, which highlighted the specifics of the regulation of CEM in the criminal legislation of the Republic of Kazakhstan and their practical implementation. Among them, for example, one can single out the works of N.A. Abdikanov, T.J. Atzhanov, K.J. Baltabaev, A.B. Bekmagambetov, I.S. Borchashvili, M.K. Intykbaev, L.M. Karzhaubayeva, S.R. Koshenova, Z.I. Kursabayeva, S.M. Naurzalieva, S.M. Rakhmetov, V.P. Revin, O.B. Filipets et al. At the same time, a careful study of the works of these authors and an assessment of the current state of the legal regulation of CEM under the current Criminal Code of the Republic of Kazakhstan allowed us to conclude that many issues related to probation control as a CEM have not yet been adequately addressed and resolved. This, in turn, also prompted the authors of this paper to take some steps aimed at developing the stated issues.

The materials of judicial practice of the use of probation control as a CEM were used in the work.

Discussion and results

1. About the place of probation control in the list of compulsory educational measures. This measure completes the list of CEM, set out in Part 1, Article 84 of the Criminal Code RK, and is mentioned in paragraph 7 of the mentioned part. From this, it could be concluded that probation control is the strictest of all CEM, presented in Part 1, Article 84 of the Criminal Code RK. However, this is not the case at all. A careful study of the relevant list makes it possible to notice that the first five measures presented are arranged depending on the severity of their content. Other authors also pay attention to this fact [3; 24]. However, the last two measures, which are the imposition of the obligation to apologize to the victim and the establishment of probation control, violate this logic, since they are placed after a stricter measure by the nature of the restrictions. We are talking about the measure specified in paragraph 5, Part 1, Article 84 of the Criminal Code RK that requires isolation of a teenager from society for a certain period, which is designated in the law as

placement in an educational institution with a special detention regime. The sequence of these measures corresponds with the timing of their inclusion in the CEM list. The original version of the Criminal Code of the Republic of Kazakhstan in 1997 did not contain the obligation to apologize to the victim and probation control. By the Law of the Republic of Kazakhstan dated 23.11.2010 No. 354-IV the first of these measures was included in the CEM list and located after the measure of placement of a teenager in an educational institution with a special detention regime. The Criminal Code of the Republic of Kazakhstan, adopted in 2014, inherited the list of CEM and their sequence from the previous criminal law and supplemented it with a new measure of establishing probation control, which was placed after the obligation to apologize to the victim.

Since the CEM list serves as a guideline for a law enforcement officer who individualizes the responsibility of juvenile offenders, it seems this list should be structured by a certain conceptual intention. The intention of Part 1, Article 84 of the Criminal Code RK, in our opinion, should be not only an exhaustive definition of all measures related to CEM, but also their arrangement in a certain sequence, depending on the severity of the measures. Considering this approach, what should be the place of probation control in the CEM list? So far, it seems difficult and premature to answer this question, since it is necessary to determine the substantive potential of this measure, which demonstrates certain regulatory shortcomings. However, before addressing the issue raised, let us study the measure, starting with its legislative formulation.

2. On the formulation of the CEM in the form of probation control. When describing the content of probation control in Part 9 of Article 85 of the Criminal Code RK, the legislator limited himself to specifying only the period of this measure's application in accordance with the rules established by Part 2 of Article 44 of the Criminal Code RK. Referring to Part 2 of Article 44 of the Criminal Code of the Republic of Kazakhstan highlights certain responsibilities that may be imposed during probation control as part of the restriction of freedom. It is important to note that the punishment in the form of freedom restriction, aside from probation control, also encompasses forced labor. But since certain categories of people, including minors, according to Part 1 of Article 44 of the Criminal Code of RK, cannot be subjected to forced labor. The punishment in the form of restriction of freedom for minors is limited to probationary control. The circumstances mentioned above allow us to draw the following conclusion. The legislator, having referred to Part 2 of Article 44 of the Criminal Code of RK in Part 9 of Article 85 of the Code, equalized the content of one of the CEM and one of the types of punishment, which is unacceptable, since with this approach, CEM transformed into a punishment. However, in contrast to punishment, as many researchers correctly note, "CEM have a different legal essence and purpose" [4; 184], "they are educational measures, since their main purpose, unlike criminal punishment, is persuasion and education. They do not present punishment for the wrong doings; they do not entail a criminal record" [5; 392]. G.B. Samatova draws attention to this problem, pointing out that "… with regard to the disclosure of the content of such a compulsory measure of educational influence as the establishment of probation control (Part 9 of Article 85 of the Criminal Code of RK), there is no need to refer to Part 2 of Article 44 of the Criminal Code of RK, but it would be more correct to provide for independent conditions for probation control as a compulsory measure of educational influence" [6; 102]. It seems possible to agree with the author's opinion regarding the need to adjust Part 9 of Article 85 of the Criminal Code of RK. However, we believe the latter should be adjusted by pointing out the essential substantive features of the corresponding CEM.

Now we will try to identify these essential substantive features of the measure, which should subsequently be reflected in Part 9 of Article 85 of the Criminal Code of the Republic of Kazakhstan.

3. On the essential substantive features of probation control as a compulsory educational measure. Firstly, under the direct indication of the criminal law, the content of the measure in question is formed by the obligations listed in Part 2 of Article 44 of the Criminal Code of RK, including, for example, not to change one's place of permanent residence, not to visit certain locations, etc. We will examine them in greater detail later. For now, it is sufficient to note that they constitute a key substantive feature of this CEM and, as such, must be referenced in Part 9 of Article 85 of the Criminal Code of the Republic of Kazakhstan.

Secondly, another essential feature of this measure should be the complex of organizational and socio-legal measures implemented in its application, provided by the legislation on probation. This conclusion is based on the analysis of the provisions of Articles 18 and 19 of the Law of the Republic of Kazakhstan No. 38-VI "On Probation" dated 30.12.2016, according to which various measures of social and legal assistance may be provided to minors during probation control (their list is given in Article 6 of the Law), such as: in support to a teacher or psychologist, additional agencies and organizations can be involved to perform guardianship functions, protect the rights of the child, as well as various public associations, legal entities and individual citizens. Along with this, housing surveys of minors are conducted quarterly.

At the same time, it should be noted that the Law of the Republic of Kazakhstan "On Probation" does not mention the people in respect of whom CEM has been applied in the form of probation control, among the subjects of probation, which drew attention of other researchers [6, 7; 102, 74-75]. For example, even within the same law, probation applies to individuals subject to another CEM—namely, the restriction of leisure activities and the imposition of specific behavioral requirements on minors. In our opinion, this does not mean that the abovementioned organizational and social-legal measures provided by the Law of the Republic of Kazakhstan "On Probation" should not be applied to persons in respect of whom probation control is established as CEM. According to S.M. Rakhmetov, "when registering a minor under probation control, the probation service determines the amount of social and legal assistance he needs and implements a set of measures under articles 69, 169 and 174 of the Criminal Executive Code of the Republic of Kazakhstan, considering the provisions of Article 18 of the Law of the Republic of Kazakhstan "On Probation". Under Article 69 of the Criminal Executive Code, probation control over minors subjected to a compulsory educational measure in the form of probation control is carried out by the probation service at their residence" [8; 382]. The reference made in Part 9 of Article 85 of the Criminal Code of RK, under which probation control as a CEM is established following the rules of Part 2 of Article 44 of the Criminal Code of RK, implies the implementation of probation control applied as a CEM according to the regulations for restriction of freedom, i.e. Article 15 of the Law of the Republic of Kazakhstan "On Probation" (taking into account Articles 18 and 19), as well as Article 69 of the Criminal Executive Code of the Republic of Kazakhstan. However, the dissemination of the rules provided for in these articles concerning probation control, which is established as CEM, does not seem to be the right solution, due to the following: 1) under the direct instruction of Article 15 of the Law of the Republic of Kazakhstan "On Probation", sentencing probation will apply only to persons sentenced to restriction of liberty or conditional conviction, and Article 69 of the Criminal Executive Code of RK applies only to convicts serving sentences of restriction of liberty; 2) Article 15 of the Law of the Republic of Kazakhstan "On Probation" addresses sentencing probation. Based on its title and content, the grounds for applying probation should be either a final and enforceable verdict or a resolution amending such a verdict, establishing the person's conviction. Under Part 1 of Article 83 of the Criminal Code of RK, probation control as a CEM can also be applied upon release from criminal liability, i.e. when there was no conviction at all; 3) the provisions of Article 15 of the Law of the Republic of Kazakhstan "On Probation" practically do not define the specifics of probation control as a CEM. In our opinion, a much more acceptable solution is the inclusion of certain provisions that disclose the specifics of probation control as a CEM into the Law of the Republic of Kazakhstan "On Probation".

The above makes it possible to conclude that probation control in CEM contains a set of responsibilities defined by the Criminal Code of RK imposed by the court, and a set of organizational and socio-legal measures provided by the legislation on probation. With that said, we believe it is possible to adjust the wording of Part 9 of Article 85 of the Criminal Code of RK by supplementing two essential features of the measure. In addition, in the Law of the Republic of Kazakhstan "On Probation", among the persons subject to probation, it is necessary to specify the persons who underwent the compulsory educational measure in the form of probation control separately, while defining the specifics of this measure's implementation.

Next, we will review the responsibilities imposed by the court when establishing probation control as a compulsory educational measure.

4. About the open list of responsibilities imposed when establishing probation control as a compulsory educational measure. To begin with, the Criminal Code of the Republic of Kazakhstan does not comprehensively define the list of responsibilities imposed by the court when establishing probation control, indicating that the court has the right to establish other responsibilities that contribute to the correction of a convicted person and the prevention of new criminal offenses. At first glance, it may seem that granting such powers to the courts makes it possible to optimally individualize the responsibility of a juvenile offender by selecting the most appropriate set of responsibilities for each specific case. However, such legal regulation, in our opinion, makes the analyzed measure's content bottomless, which, of course, prevents assessment of its real meaningful potential. In our opinion, it could become very repressive in some cases. Moreover, granting the courts with such powers allows law enforcement officers to legally establish the means of criminal legal reaction, corresponding with the list of compulsory educational measures in each specific case. For example, the court may obligate a minor to perform socially useful work, undergo a course of psychological or medical and social rehabilitation.

The above points to the following conclusion: since the legislator defines the content of compulsory educational measures in the form of probation control as a set of responsibilities imposed by the court, their list

should be exhaustively defined in criminal law. This also applies to the list of organizational and socio-legal measures, which should also be comprehensively determined by the legislation on probation, which, in general, can be observed upon careful study.

Let us attempt to figure out what responsibilities should fill the content of the measure under research.

5. About the responsibilities in probation control assignment as part of compulsory educational measures. Part 2 of Article 44 of the Criminal Code of RK explicitly mentions a relatively small number of responsibilities assigned when establishing probation control, including: a ban on changing one's place of residence, study or work without notifying the supervisory authority; a ban on visiting certain places; undergoing medical treatment; financial support for the family. Regarding the latter responsibility, we agree with some researchers' opinion that it cannot be assigned to minors [6; 102] and exclude it from the content of the measure under consideration. However, which of the responsibilities explicitly defined in Part 2 of Article 44, and those that can potentially be included in the content of probation control, should fill the content of the measure we are interested in? Unfortunately, it seems difficult to give a clear answer to this question, since probation control as a CEM duplicates a few other measures provided in the Criminal Code of the Republic of Kazakhstan, which further complicates distinguishing the measures from each other and defining the inherent set of restrictions or responsibilities for each measure. Let us illustrate this problem with the following examples.

Firstly, the legislator refers to Part 2 of Article 44 of the Criminal Code of the Republic of Kazakhstan, when describing conditional conviction, as well as probation control as a CEM. And this provision [Part 2 of Article 44 of the Criminal Code of the Republic of Kazakhstan] generally regulates the punishment in the form of restriction of freedom. Paradoxically, Part 5 of Article 63 of the Criminal Code of the Republic of Kazakhstan aggravates the situation by not limiting the list of CEM permitted to use against a minor under probation. This makes it possible to apply the compulsory educational measures regulated by the rules provided in the article, along with conditional conviction, regulated by Part 2 of Article 44 of the Criminal Code RK. It is possible that the inclusion of probation control in these measures of criminal legal impact is due to the desire of the legislator to expand the scope of its application, making it possible to apply it when exonerating from criminal liability and applying appropriate types of exemption, accompanied by compulsory educational measures; when convicted with punishment, when exempted from the actual serving of the assigned sentence, through conditional conviction. However, this approach mixes the legal nature of completely different criminal law measures.

Secondly, the measure we are considering duplicates the content of such compulsory educational measures as the restriction of leisure time and the establishment of special requirements for the minor's behavior, as noted by some authors [9; 96]. Comparing the provisions of Part 9 of Article 85, Part 2 of Article 44 and Part 5 of Article 85 of the Criminal Code of the Republic of Kazakhstan, it can be noted that these measures provide for a general requirement or obligation not to visit certain places. In addition, the list of requirements or responsibilities provided for in the above-mentioned provisions of the criminal law is not exhaustive, which makes it possible to establish the same requirements or responsibilities within their framework. The situation is aggravated by Article 19 of the Law of the Republic of Kazakhstan "On Probation", which provides probation control in relation to minors sentenced to restriction of leisure time and establishment of special behavior requirements. As we can see, an ultimate mixture of compulsory educational measures provided both in paragraph 7) of Part 1 of Article 84 and in paragraph 4) of Part 1 of Article 84 of the Criminal Code of the Republic of Kazakhstan occurred in this case, since each of them provides for the implementation of probation control over the fulfillment of responsibilities or requirements assigned to a minor. Moreover, by virtue of Part 2 of Article 84 of the Criminal Code of the Republic of Kazakhstan, several measures may be imposed on a minor at the same time. This does not exclude the possibility of combined use of probation control and restrictions on leisure time and the establishment of special requirements for the minor's behavior. The above-mentioned provisions of the Law of the Republic of Kazakhstan "On Probation," imply the implementation of probationary control over a minor twice.

Thirdly, there is a significant similarity between probation control and such CEM as the transfer of a minor under the supervision of a specialized government agency. Upon disclosing the content of the transfer under supervision, the legislator, in Part 2 of Article 85 of the Criminal Code of the Republic of Kazakhstan, indicated only that this measure consists in assigning responsibilities, including to the specified subject, for educational influence and control. The latter, in turn, due to the lack of any specification in the Criminal Code of the Republic of Kazakhstan, may be expressed in establishing the minor's responsibilities similar to those provided for in Part 2 art. 44 of the Criminal Code of the Republic of Kazakhstan. Along with this, we

note that in contrast to the Law of the Republic of Kazakhstan "On Probation", where the list of government bodies carrying out probation control is defined, the specialized state body remains unclear in the context of Part 2 of Article 85 of the Criminal Code of the Republic of Kazakhstan. The Criminal law and the provisions of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 04/11/2002 No. 6 on the criminal liability of minors do not mention anything about this. In such a situation, the same government body may be entrusted with the authority to enforce the above-mentioned CEMs, which will further unify them.

Summing up the above-mentioned arguments about the responsibilities appropriate for the content of the measure under consideration, we note the following.

1. Certain responsibilities specified in Part 2 of Article 44 of the Criminal Code of the Republic of Kazakhstan (financial support of the family) may be excluded from the content of the considered compulsory educational measure.

2. Criminal law should not contain substantially identical criminal legal measures which have a completely different legal nature. Some substantive similarities between the measures may be justified by the presence of substantive differences. So far, these (substantive differences) have not been properly objectified in the content of the measures. In this regard, the following can serve as the first steps towards distinguishing probation control as a compulsory educational measure from restriction of freedom and compulsory conviction: 1) provision of an exhaustive set of responsibilities in the content of this CEM, which, for instance, may include undergoing medical treatment, a prohibition on changing one's place of residence, study or work without notifying the supervisory authority, a ban on leaving the territory of the district or city of the minor's residence without the permission of the supervisory authority, a ban on visiting certain places, participation in certain activities, staying outside the home at certain times of the day; 2) since this measure is classified as an educational measure, the content of probation control should closely reflect the educational component represented by various methods and means of education. For example, this can be implemented by establishing mandatory passage of a special psychological and pedagogical program by the minor.

3. There should be no substantially identical measures in the criminal law among the CEM. Regarding the differentiation of meaningfully similar compulsory educational measures, several options are possible. The first is more time-consuming and involves defining a list of responsibilities and requirements imposed by the restriction of leisure and probation control, which practically should not coincide with each other. In the case of transfer to supervision, it is necessary to determine the supposed educational impact and control, which should not fully coincide with the responsibilities and requirements imposed by the above-mentioned compulsory educational measures. It is also necessary to determine which government body should be responsible for the implementation of probation control within the compulsory educational measures provided for in paragraphs 7) and paragraph 4) of Part 1 of Article 84 of the Criminal Code of the Republic of Kazakhstan, as well as for supervision within the compulsory educational measures provided for in paragraph 2) of Part 1 of Article 84 of the Criminal Code of the Republic of Kazakhstan.

The second option is related to the absorption of the restriction of leisure time and the establishment of special requirements for the minor's behavior by probation control (or vice versa), as well as determination of the authorized body assigned to execute probation control (if maintained) and supervision over the minor. In this case, it will also be necessary to determine the educational impact and control within the framework of transfer under specialized state body supervision. The resolution of the above-mentioned issues will directly determine the decision on the position of probation control in the list of compulsory educational measures. It seems that with its preservation and certain modernization in the Criminal Code of the Republic of Kazakhstan, it can take an intermediate position between transfer under supervision and placement in an educational institution with special detention regime, adjacent to the restriction of leisure time and the establishment of special requirements for the minor's behavior, if it is preserved as a compulsory educational measure, and, accordingly, it can take the place of this compulsory educational measure in case of absorption.

6. About the period of application of probation control as a compulsory educational measure. The impact of the measure under consideration is carried out within certain time limits, which are mentioned in Part 9 of Article 85 of the Criminal Code of the Republic of Kazakhstan. Studying this provision prompts us to pay attention to the following.

Firstly, Part 9 of Article 85 of the Criminal Code of the Republic of Kazakhstan determines only the upper limit of one year for the execution of the considered measure, and nothing is said about the minimum allowed period. This does not prohibit applying the measure for a short period of time (for instance, a month

or two months), which is insufficient to ensure the correction of a minor with compulsory educational measures.

At the same time, the time limits of the measure's implementation should be a guideline for the law enforcement officer, who individualizes the responsibility of the offender, and limits his discretionary powers. That is why it is necessary to determine the minimum limit for the use of this compulsory educational measure by making an appropriate indication in Part 9 of art. 85 of the Criminal Code of the Republic of Kazakhstan. It should be noted that the minimum period of probation control established within the framework of restriction of liberty and conditional conviction is defined at 6 months (see Part 1 of Article 44 and Part 3 of Article 63 of the Criminal Code of the Republic of Kazakhstan). An analysis of the few judicial practices regarding probation control as a CEM has shown that the courts also focus on a six-month period, not allocating less time in these cases [10].

Secondly, the question arises about the criminological validity of the upper time limit for probation control. Along with the repressive and educational content of the measure, does it adequately reflect the social danger of the most serious category of crime (we are talking about moderate severity) for which it can be established? We don't think so. We are guided to this conclusion by the time periods defined by criminal legislature that is significantly similar to probation control. Therefore, for a crime of moderate severity, compulsory educational measures in the form of restriction of leisure time and the establishment of special requirements for the minor's behavior can be applied for a period of one to two years (Part 10 of Article 85 of the Criminal Code of the Republic of Kazakhstan).

Thirdly, probation control can be used as a compulsory educational measure for a juvenile criminal offense, a crime of minor or moderate severity. At the same time, in Part 9 of Article 85 of the Criminal Code of the Republic of Kazakhstan, the time period is not differentiated depending on the type of criminal offense and the category of the crime severity, as, for example, it is done in Part 10 of Article 85 of the Criminal Code of the Republic of Kazakhstan in relation to the restriction of leisure and the establishment of special requirements for the minor's behavior, the transfer of the latter under supervision. In this case, the measure in question can be applied equally for both the commission of a criminal offense and for the commission of a crime of moderate severity, which is considered unacceptable.

The individual shortcomings of regulation of the probation control period, accompanied by our comments above, make it necessary to develop measures to eliminate them. In this regard, we propose to define a six-month period as the minimum allowable period for the application of the measure, and two years as the maximum period. The indicated lower and upper limits of the measure's application are seen as the most optimal from the point of view of ensuring the possibility of correcting a minor with compulsory educational measures. Taking into account the time limits mentioned above, it seems possible to differentiate the period of the measure implementation depending on the type of criminal offense and the severity of the crime, for example, as follows: from six months to one year for committing a criminal offense, from one year to one and a half years for committing a minor crime, from one and a half to two years for a medium gravity crime. The proposed innovations may subsequently be reflected in Parts 9 and 10 of Article 85 of the Criminal Code of the Republic of Kazakhstan.

Conclusions

The attempt to comprehensively research probation control as a compulsory educational measure, including certain problems of its legal regulation and implementation, clearly demonstrates the relevance of the topic, necessitating further discussion and exploration. The provisions of the legislation of the Republic of Kazakhstan devoted to compulsory educational measure in the form of probation control, having a certain uniqueness, arouse great research interest and, at the same time, require due attention from the legislator and the scientific community. The expressed considerations and proposed specific measures are aimed at improving the legal framework of this CEM, as one of the promising areas for the development of criminal law policy. Of course, these recommendations are far from indisputable, and therefore the authors of this paper hope for their further critical reflection and discussion.

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Пробациялық бақылау Қазақстан Республикасының қылмыстық заңнамасында тәрбиелік ықпал ету мақсатындағы мәжбүрлеу шарасы ретінде

2014 жылы Қазақстан Республикасында жаңа қылмыстық заңның қабылдануымен қылмыстық құқық бұзушылықтар жасаған кәмелетке толмағандарға қатысты қолданылатын тәрбиелік ықпал етудің мәжбүрлеу шараларының түрлерінің тізбесі біршама жаңартылды және пробациялық бақылауды анықтау түріндегі жаңа шарамен толықтырылды. Мақала авторлары осы мәжбүрлеу шарасына кешенді құқықтық сипаттама беруге тырысты, сонымен бірге ҚР ҚК, ҚР ҚАК және ҚР «Пробация туралы» Заңының кейбір кемшіліктеріне назар аударды, бұл оның алдын алу әлеуеті мен қолдану тәжірибесіне теріс әсер етеді. Атап айтқанда, тәрбиелік ықпал ету мақсатындағы мәжбүрлеу шараларының тізбесінде шараның дұрыс анықталмауына; ҚР ҚК 85-бабының 9-тармағында және 44-бабының 2-тармағында ұсынылған шара мазмұнының тұжырымдамаларының жетілмегендігіне; ҚР ҚК-де көзделген кейбір басқа шаралармен тәрбиелік ықпал етудің мәжбүрлеу шарасы ретінде пробациялық бақылаудың мазмұндық ұқсастығы және тіпті бірдейлігіне; шараны қолданудың ең аз мерзімі мен криминологиялық негіздемесіне; қылмыстық құқық бұзушылықтың түріне және қылмыстың ауырлық санатына байланысты шараны қолдану мерзімдерін саралаудың болмауына назар аударылды. Мәселелерді қарау барысында авторлар жекелеген ойларды білдіре отырып, тәрбиелік ықпал ету мақсатындағы мәжбүрлеу шарасы ретінде пробациялық бақылаудың құқықтық негізін жетілдіру арқылы аталған мәселелерді жоюға бағытталған нақты шараларды ұсынды.

Кілт сөздер: кәмелетке толмағандар, тәрбиелік ықпал ету мақсатындағы мәжбүрлеу шаралары, пробациялық бақылау, мазмұны, міндеттері, қолдану мерзімдері.

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Пробационный контроль как принудительная мера воспитательного воздействия в уголовном законодательстве Республики Казахстан

С принятием в Республике Казахстан в 2014 году нового уголовного закона перечень видов принудительных мер воспитательного воздействия, применяемых в отношении несовершеннолетних, учинивших уголовные правонарушения, несколько обновился и дополнился новой мерой в виде установления пробационного контроля. Авторы статьи предприняли попытку дать комплексную правовую характеристику данной принудительной меры, обратив при этом внимание и на некоторые несовершенства посвященных ей положений УК РК, УИК РК и Закона РК «О пробации», которые отрицательным образом сказываются на ее предупредительном потенциале и практике применения. В частности, было обращено внимание на не совсем удачное расположение меры в перечне принудительных мер воспитательного воздействия; несовершенство формулировок содержания меры, представленных в ч. 9 ст. 85 и ч. 2 ст. 44 УК РК; наличие содержательной схожести и даже идентичности пробационного контроля как принудительной меры воспитательного воздействия с некоторыми другими мерами, предусмотренными УК РК; отсутствие минимального срока и криминологической обоснованности максимального срока применения меры; отсутствие дифференциации сроков применения меры в зависимости от вида уголовного правонарушения и категории тяжести преступления. По ходу рассмотрения проблем авторами высказывались отдельные соображения и предлагались конкретные меры, ориентированные на их устранение путем совершенствования правовой основы пробационного контроля как принудительной меры воспитательного воздействия.

Ключевые слова: несовершеннолетние, принудительные меры воспитательного воздействия, пробационный контроль, содержание, обязанности, сроки применения.

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Доступ к правосудию в Республике Казахстан и status Quo AI

Целью настоящего исследования является анализ доступа населения к правосудию в Республике Казахстан, выявление проблем текущего момента и определение перспектив устранения барьеров и рисков в доступе к правосудию за счет использования инструментов искусственного интеллекта. В результате исследования авторы пришли к выводу о том, что в условиях цифровой трансформации основной траекторией развития правосудия в Казахстане является — Legal tech, в структуре которых сформирован новый трек инновационной модернизации — Legal AI. Данные технологические решения являются инструментом расширения доступа населения к правосудию в Казахстане, которые сформировались за период цифровизации судебной системы, однако на современном этапе актуализированы возможности использования искусственного интеллекта в решении задач доступности правосудия, а также в перспективе предсказательного правосудия. Основные результаты исследования заключаются в том, что авторами сформулированы выводы об уровне доступа населения к правосудию в современных условиях, определены факторы, препятствующие реализации права на равный доступ к правосудию, предложены направления совершенствования цифровой доступности правосудия, в числе которых внедрение инструментов искусственного интеллекта. Основной вывод по результатам проведенного исследования заключается в обосновании формирования новой цифровой платформы, на которой будут унифицированы и систематизированы вспомогательные сервисы юридической поддержки населения, позволяющей самостоятельно построить траекторию (алгоритм) участия в судебном процессе, минимизировать временные и финансовые затраты, спрогнозировать исход дела и решить проблему финансирования судебных издержек. Предлагаемая цифровая платформа — это новый инструмент обеспечения доступности правосудия, функционирующий на основе алгоритмов искусственного интеллекта.

Ключевые слова: доступ к правосудию, цифровизация, искусственный интеллект, электронный зал судебных заседаний, судебный кабинет, «Төрелік», информационно-коммуникационные технологии, судебная система, юридическая помощь, барьеры и препятствия, предсказательное правосудие, финансовые и временные издержки, алгоритм действий.

Введение

Реализация конституционного права на судебную защиту своих прав является важнейшим признаком правового государства, построение которого достигается как на уровне правовых реформ, так и посредством формирования институциональных инструментов обеспечения верховенства закона. Важнейшим инструментом является цифровая модернизация судебной системы результатом, которой стало принятие мер, направленных на расширение доступа к правосудию [1]. Эффективность проведенных преобразований в направлении цифровой трансформации обозначил К-Ж.К. Токаев на IX Съезде судей Республики Казахстан в октябре 2024 года, отметив, что цифровые технологии упростили участие граждан в судебном процессе, а также повысили прозрачность деятельности суда. Глава государства подчеркнул значимость информационных систем, содержащих решения судов, которые позволяют совершенствовать деятельность судей за счет возможности ознакомления с решениями других судей. Доступность таких ресурсов всем сторонам судебного процесса позволяет человеку оценить судебную перспективу своего спора. Перспективной и значимой задачей Президент считает упрощение судопроизводства не только за счет использования цифровых технологий, но и за счет

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применения инструментов искусственного интеллекта [2]. Исследование доступа населения к правосудию в Казахстане представляется актуальным в контексте реализации основных трендов цифровой модернизации судебной власти и создания альтернативных цифровых ресурсов для населения, позволяющих оценить перспективу судебного разбирательства и прогнозировать исход дела. Разработка и создание данной цифровой платформы, ее дальнейшее функционирование осуществляется посредством использования алгоритмов искусственного интеллекта. Формирование фрейма факторов и барьеров, препятствующих доступу к правосудию позволит определить модель цифровой платформы для населения, расширяющей возможности населения в доступе к правосудию.

Целью настоящего исследования является комплексный анализ доступа населения к правосудию в Республике Казахстан, в том числе определение системы факторов и барьеров препятствующих доступности правосудия, построения траектории устранения и минимизации существующих препятствий посредством использования технологий искусственного интеллекта.

В ходе исследования поставлены следующие задачи:

- определить уровень доступа населения к правосудию в Республике Казахстан, структурировать основные факторы и условия, определяющие доступность правосудия;

- сформировать фрейм факторов и барьеров, препятствующих доступу к правосудию, определить приоритетные направления их устранения и минимизации существующих и прогнозируемых рисков;

- определить значение цифровой трансформации судебной системы в расширении доступа к правосудию в Республике Казахстан, обосновать траекторию дальнейшей модернизации на основе использования технологий искусственного интеллекта как инструмента обеспечения доступности правосудия;

- изучить передовые практики расширения доступности правосудия за счет цифровых технологий, а также на основании инструментов искусственного интеллекта, спрогнозировать перспективы экстраполяции.

Цель настоящей работы и решаемые задачи обуславливают дуальный характер проведенного авторами исследования, заключающийся в изучении двух блоков проблем: первый — анализ доступа к правосудию; второй — анализ возможностей искусственного интеллекта в расширении доступности правосудия. По проблематике доступности правосудия проводились исследования следующих авторов: Д.И. Артемова, А.Н. Ахпанов, С.В. Баранов, В.Л. Варламова, А.А. Гамалей, А.А. Голикова, Н.Н. Ефремов, С.К. Журсимбаев, А.С. Корпен, Ю.В. Малинский, Е.А. Осипова, Е.В. Пластинина, И.А. Приходько, А.А. Рыжкова, В.М. Сидоренко, Г.Ж. Сулейменова, Е.А. Фокин, И.В. Чащина, М.С. Шакарян и др. В научных трудах перечисленных авторов, институт доступности правосудия исследуется в контексте анализа теоретико-правовой доктрины, а также через призму процессуальных норм законодательства, без акцента на возможности цифровых технологий в расширении доступа к правосудию. Цифровые технологии правосудия исследовали следующие авторы: С.А. Адилов, А. Айжанова, С.Н. Бачурин, Н.О. Дулатбеков, Д.Р. Егежанова, К.Г. Корякина, А.М. Мальцева, Н.В. Сидорова, И.А. Умнова-Конюхова, О.В. Хохрякова, Е.П. Шульгин, Е.Е. Якушева и др. Однако в работах данных ученых также не анализируется влияние цифровых технологий на расширение доступности правосудия. Возможности искусственного интеллекта в расширении доступности правосудия не являются предметом научных изысканий в силу новизны данного института. Проведенное авторами исследование имеет комплексный характер и направлено на совмещение всех аспектов доступности правосудия, в том числе расширение за счет инструментов искусственного интеллекта.

Методы и материалы

Методы исследования включают фундаментальные методы научного познания на основе анализа и синтеза теоретических взглядов, нормативных источников и результатов социологического исследования. Среди использованных методов ключевое значение имеет логико-правовой анализ правовых, институциональных и технологических аспектов доступности правосудия, через призму системного анализа условий и факторов, влияющих на доступ к правосудию в Казахстане. Сравнительно-правовой анализ направлен на изучение передовых практик, формирующих доступность правосудия и прогнозирование экстраполяции отдельных практик в Казахстане с целью минимизации воз-

можных рисков и устранения имеющихся барьеров. Проведенный социологический опрос населения Карагандинской области по вопросам доступности правосудия и юридической помощи членами авторского коллектива по программе целевого финансирования, в рамках которого проводится настоящее исследование, позволило использовать выборочные результаты данного опроса в настоящем исследовании. Нормативную основу исследования составили положения правовых актов Казахстана и зарубежного законодательства. Эмпирическая составляющая включает выборочные результаты социологического опроса, обозначенного выше.

Результаты

Проанализировав теоретические подходы к пониманию принципа доступности правосудия, действующее законодательство и сложившуюся судебную практику, предлагаем авторское понимание системы факторов и условий, способствующих реализации конституционного права на доступ к правосудию (данный перечень факторов и условий не является исчерпывающим):

1. Правовые факторы:

- конституционное закрепление права на судебную защиту своих прав и отраслевое регулирование данного права;
- конституционное закрепление права на квалифицированную юридическую помощь и отраслевое регулирование данного права;
- конституционное закрепление принципа равенства всех перед законом и судом;
- нормативное закрепление процессуальных принципов: судебная защита прав и свобод человека и гражданина; осуществление судопроизводства на началах равенства перед законом и судом; осуществление судопроизводства на основании состязательности и равноправия сторон; обеспечение права на квалифицированную юридическую помощь; язык судопроизводства; свобода обжалования процессуальных действий и решений;
- процессуальные гарантии рассмотрения спора в суде первой инстанции, а также гарантии права на апелляцию и кассацию.

2. Институциональные факторы:

- построение системы судебных органов с учетом административно-территориального деления, а также по принципу специализации судов;
- виды подсудности и возможность вариации подсудности;
- институциональное сопровождение квалифицированной юридической помощи (коллегии адвокатов, палаты юридических консультантов).

3. Организационные факторы:

- цифровизация судебной системы;
- введение электронного судопроизводства;
- финансирование судебных издержек;
- гарантирование бесплатной юридической помощи.

Проведенное социологическое исследование по вопросам доступности правосудия (в разрезе Карагандинской области) позволило сделать вывод, что факторы и условия доступности правосудия могут столкнуться с барьерами и препятствиями, которые могут иметь объективную или субъективную природу, но они негативно влияют на доступ к правосудию, в структуре фактора или условия, способствующего расширению доступности правосудия. Зависимость факторов и условий расширения доступа к правосудию от препятствий и барьеров отражена в таблице 1. Отметим, что приведенные в таблице 1 факторы и препятствия, определены авторами статьи на основании анализа: результатов социологического исследования; правоприменительной и судебной практики; отчетов деятельности судебных и правоохранительных органов, размещенных на официальных ресурсах; публикаций в средствах массовой информации и на сайтах республиканской коллегии адвокатов, республиканской коллегии юридических консультантов и других источников.

Таблица 1

Факторы и условия доступа к правосудию через систему препятствий и барьеров

Фактор и условие доступа к правосудию	Препятствие и барьер, сопряженный с фактором или условием
Правовые факторы и условия	
Конституционное закрепление права на судебную защиту своих прав и отраслевое регулирование данного права	Низкий уровень правовых знаний
	Недоверие населения правосудию
	Территориальная удаленность населенного пункта от судебных органов
	Сложные процедуры, бумажная волокита
	Низкий уровень цифровой грамотности
Конституционное закрепление права на квалифицированную юридическую помощь и отраслевое регулирование данного права	Высокая стоимость юридической помощи
	Территориальная удаленность населенного пункта от органов, оказывающих юридическую помощь (в т.ч. отсутствие адвокатов, юридических консультантов)
	Низкий уровень цифровой грамотности
Нормативное закрепление процессуальных принципов: - судебная защита прав и свобод человека и гражданина - осуществление судопроизводства на началах равенства перед законом и судом - осуществление судопроизводства на основании состязательности и равноправия сторон - обеспечение права на квалифицированную юридическую помощь - язык судопроизводства - свобода обжалования процессуальных действий и решений	Недоверие населения правосудию
	Низкий уровень правовых знаний
	Территориальная удаленность населенного пункта от судебных органов
	Территориальная удаленность населенного пункта от органов, оказывающих юридическую помощь (в т.ч. отсутствие адвокатов, юридических консультантов)
	Высокая стоимость юридической помощи
	Сложные процедуры, бумажная волокита
	Низкий уровень цифровой грамотности
	Коррупция
	Отсутствие квалифицированных переводчиков
	Обвинительный уклон уголовного судопроизводства
	Отсутствие единой судебной практики
Процессуальные гарантии рассмотрения спора в суде первой инстанции, а также гарантии права на апелляцию и кассацию	Недоверие населения правосудию
	Коррупция
	Низкая профессиональная квалификация судей
	Низкая профессиональная квалификация адвокатов, юридических консультантов
	Нарушение процессуального законодательства
	Нарушение правил профессиональной этики
	Отсутствие понятных алгоритмов процессуальных действий для населения
Институциональные факторы	
Построение системы судебных органов с учетом административно-территориального деления, а также по принципу специализации судов	Территориальная удаленность населенного пункта от судебных органов
	Низкий уровень цифровой грамотности
Виды подсудности и возможность вариации подсудности	Низкий уровень правовых знаний
Институциональное сопровождение квалифицированной юридической помощи (коллегии адвокатов, палаты юридических консультантов)	Территориальная удаленность населенного пункта от органов, оказывающих юридическую помощь (в т.ч. отсутствие адвокатов, юридических консультантов)
	Низкий уровень цифровой грамотности
	Высокая стоимость юридической помощи
Организационные факторы	
Цифровизация судебной системы	Низкий уровень правовых знаний
	Низкий уровень цифровой грамотности
	Сложный и непонятный интерфейс цифровой платформы суда (иного органа)
	Нет Интернета (плохое качество Интернета)
Введение электронного судопроизводства	Низкий уровень правовых знаний
	Низкий уровень цифровой грамотности
	Сложный и непонятный интерфейс цифровой платформы суда (иного органа)
	Нет Интернета (плохое качество Интернета)
Финансирование судебных издержек	Высокая стоимость судебных издержек
	Низкий социальный статус
	Отсутствие механизмов поддержки в финансировании судебных издержек
Гарантирование бесплатной юридической помощи	Высокая стоимость юридических услуг
	Некачественное оказание гарантированной государством бесплатной юридической помощи
	Низкая профессиональная квалификация адвокатов, юридических консультантов
	Территориальная удаленность населенного пункта от органов, оказывающих юридическую помощь (в т.ч. отсутствие адвокатов, юридических консультантов)
	Низкий уровень цифровой грамотности
	Низкий уровень правовых знаний

Расширение доступа населения к правосудию в Республике Казахстан должно происходить на стадии подготовки к судебному процессу, в том числе в направлении минимизации и устранении препятствий и барьеров доступности правосудия. Эффективным инструментом в реализации данной задачи является предсказанное правосудие, а также SMART сопровождение юридической помощи населению через создание и апробацию цифровой платформы «Legal Expert» для населения Казахстана, на основе инструментов искусственного интеллекта.

Функционал цифровой платформы «Legal Expert» — это генерированные искусственным интеллектом прогнозы исхода дела; формирование алгоритма действий при подготовке к судебному процессу, в судебном процессе; финансирование судебных издержек, в рамках которого также будут использованы результаты предсказанного правосудия, на основании анализа больших массивов данных.

Status Quo AI в правосудии — это не замена судьи-человека машиной (что, скорее всего, не произойдет никогда), а формирование условий и факторов расширения доступа населения к правосудию в Казахстане, в том числе с учетом экстраполяции передовых практик других государств.

Обсуждение

Конституция Республики Казахстан гарантирует право каждого на судебную защиту и на получение квалифицированной юридической помощи [3]. Реализация данного конституционного права в отраслевом законодательстве составляет сущность принципа доступности правосудия. Нормативного определения «доступность правосудия» в законодательстве Республики Казахстан нет, отсутствует такое понятие и в правовых актах зарубежных государств [4]. Понятие доступности правосудия и определение его сущности имеет доктринальное значение, однако, и на уровне теории отсутствует единообразное понимание данного принципа.

Развитие правовой науки показало изменение теоретического понимания доступности правосудия. Впервые доступность правосудия как принцип процессуального права рассматривается В.М. Семеновым [5; 64]. Дальнейшее развитие научных представлений о доступности правосудия связано с концепцией М. Каппеллети, в которой обоснована междисциплинарность данного принципа и аргументирована система факторов, влияющих на реализацию права на судебную защиту своих прав. Такими факторами, по его мнению, являются — юридические, экономические, социальные и политические факторы [6].

Современная юридическая доктрина по-разному определяет доступность правосудия, что обусловлено сложностью понимания факторов и условий, обеспечивающих доступ к правосудию. Усугубляется научная полемика о понимании доступа к правосудию развитием цифровых технологий, которые выводят на качественно новый уровень характеристики факторов и условий доступности правосудия.

Приведем отдельные научные подходы к пониманию доступности правосудия. Во-первых, доступность правосудия рассматривается через комплекс условий, формирующих возможность восстановления нарушенного права посредством беспрепятственного обращения в суд и квалифицированного рассмотрения спора в суде [7; 8]. Во-вторых, доступность правосудия обуславливается возможностью получения квалифицированной юридической помощи [8; 14]. В-третьих, соответствие правосудия международным стандартам доступа к правосудию, является критерием признания правосудия доступным [9; 126]. В-четвертых, доступность правосудия основана на комплексности процессуальных принципов: диспозитивность, состязательность, процессуальное равноправие, устность, языка судопроизводства и др. [10; 72].

Анализ научных подходов к сущности доступности правосудия показывает, многогранность данного принципа и его неоднородность как межотраслевого института, который в современных условиях не может рассматриваться только через призму одной отрасли права (например, гражданского процессуального права). В контексте сказанного, считаем более состоятельной точку зрения Е.Е. Якушевой, которая в систему условий, способствующих реализации возможности обращения в суд включает три кластера: организационные, институциональные и правовые. По ее мнению: «доступность правосудия — это совокупность организационных, институциональных и правовых условий, обеспечивающих возможность обращения в суд, квалифицированного рассмотрения и разрешения дела, а также эффективное восстановление нарушенных прав на основании вступившего в силу судебного акта» [7; 8].

В рамках реализации программы целевого финансирования «Инновационные подходы обеспечения доступности правосудия населению Республики Казахстан, с использованием инструментов

искусственного интеллекта» членами рабочей группы проведено социологическое исследование, в рамках которого проведен опрос населения Карагандинской области по вопросам доступа к правосудию. Всего было опрошено 1500 человек, представляющих разные возрастные и социальные группы, проживающих во всех районах области, городе Караганде, районных центрах, а также в сельской местности и отдаленных населенных пунктах. Респонденты ответили на пятнадцать вопросов, сгруппированные на пять блоков. Выборочные результаты социологического исследования, отражающие отношение респондентов к доступности правосудия и юридической помощи отражены в таблице 2.

Таблица 2

Выборочные результаты социологического исследования по вопросам доступности правосудия, на основе опроса населения Карагандинской области

№	Вопрос анкеты	Вариант ответа	Положительные ответы
1	Обращались ли Вы за юридической помощью?	да, в судебные инстанции	11,7 %
		да, к юристам/адвокатам	27,7 %
		да, при помощи электронных сервисов (онлайн-подача исков, eGov, сайты с юридической информацией и т.д.)	16,2 %
		нет, так как не было необходимости	50,6 %
		нет, так как не было возможности	6,5 %
2	Как Вы оцениваете уровень своих знаний о доступе к правосудию в Казахстане?	высокий	14,2 %
		средний	55,8 %
		низкий	19,6 %
		я ничего не знаю об этой системе	10,4 %
3	Что из нижеперечисленного мешает гражданам Казахстана обращаться за юридической помощью?	высокая стоимость юридической помощи	33,6 %
		территориальная удаленность населенного пункта (нужно далеко ехать)	8,7 %
		отсутствие возможности удаленного получения юридической помощи (отсутствие онлайн судов, удаленной подачи заявлений и т.п.)	12,3 %
		сложность процедур и бумажная волокита	28,5 %
		отсутствие знаний, что и как делать	29,2 %
		недоверие к системе правосудия (это бесполезно)	21,7 %
		отсутствие квалифицированных юристов/адвокатов	15,0 %
		сложный и непонятный интерфейс цифровой платформы суда (иного органа)	14,1 %
		отсутствие навыков работы в Интернете	6,5 %
		нет Интернета (плохое качество Интернета)	4,9 %
		ничего не мешает	24,6 %
		другое	0,9 %
4	Какие электронные платформы, оказывающие юридические услуги Вы знаете?	eGov.kz	77,7 %
		Закон.кз	17,7 %
		Adilet	25,4 %
		De facto	3,3 %
		Договор 24	4,5 %
		я не знаю ни одной электронной платформы, оказывающей юридические услуги	13,4 %
		другое	0,7 %

Анализ результатов социологического исследования показывает, что около 50 % населения Карагандинской области не сталкивались с необходимостью обращения за юридической помощью, а также с необходимостью судебной защиты своих прав и свобод. К судебным органам обращались 11,7 % респондентов, к адвокатам и юридическим консультантам — 27,7 %. Вопрос анкеты не позволяет конкретизировать предмет обращения к юристам и адвокатам, и, было ли это обращение связано с дальнейшим представительством интересов в суде. Однако юридическая и судебная практика такова, что население прибегает к помощи юридического консультанта или адвоката именно в целях представительства интересов в суде. Поэтому можем предположить, что подавляющее большинство обращавшихся граждан к юристам и адвокатам, затем обратились в суд. Следовательно, результаты

анкетирования показывают, что обращение в суд напрямую, без поддержки юридического консультанта или адвоката в разы реже, чем защита своих прав в суде через представителей. Данный факт позволяет сделать вывод, что доступность правосудия взаимосвязана с доступностью юридической помощи.

В контексте взаимообусловленности доступа к правосудию и доступностью юридической помощью, то при опросе респонденты в качестве препятствий (барьеров) указали высокую стоимость юридической помощи — 33,6 % респондентов, а также территориальную удаленность (8,7 %) и отсутствие возможности удаленного получения юридической помощи (12,3 %). Таким образом, главными препятствиями доступа к правосудию и юридической помощи являются финансовый фактор и фактор удаленности, причем последний также может косвенно затронуть финансовые расходы (проезд, проживание и т.д.).

Поскольку 50,6 % респондентов не обращались за юридической помощью из-за отсутствия необходимости, а ещё 6,5 % — по причине невозможности обращения, можно отметить, что из числа обратившихся в суд 16,2 % воспользовались электронными сервисами. Это составляет значительную долю среди тех, кто обращался за юридической помощью или в суд. Следовательно, еще один фактор доступности правосудия — это цифровизация судебной системы, а успешное пользование цифровыми сервисами зависит от цифровой грамотности населения (отсутствие навыков работы в Интернете отметили 6,5 %), а также от доступа к Интернету и его скорости (отсутствие Интернета или его плохое качество отметили 4,9 %). При этом сложный и непонятный интерфейс цифровой платформы суда (иного органа) обозначили уже 14,1 % опрошенных респондентов.

Достаточно большой процент респондентов в качестве барьеров доступа к правосудию и юридической помощи отметили сложность процедур и бумажную волокиту — 28,5 %, а также отсутствие знаний о порядке обращения за юридической поддержкой — 29,2 %. Также результаты опроса показывают, что 21,7 % респондентов не доверяют системе правосудия.

Осведомленность населения области о цифровых платформах показало, что лидером в социологическом опросе является цифровой ресурс eGov.kz — 77,7 %. Далее вторую и третью позицию занимают — Adilet (25,4 %) и Закон.кз (17,7 %) соответственно. Тем не менее, 13,4 % ответили, что не знают ни одной электронной платформы, оказывающей юридические услуги.

Анализ выборочных результатов социологического исследования позволил определить систему факторов и условий, которые влияют на доступность правосудия и расширяют возможности судебной защиты своих прав и свобод. В то же время эти же факторы могут в определенном проявлении и при определенных условиях стать препятствием и барьером доступа к правосудию. Например, процессы цифровизации оцениваются как фактор, расширяющий доступ к правосудию, в том числе решить проблему удаленного доступа. Однако, в случае отсутствия Интернета (плохого качества), а также в силу низкой цифровой грамотности могут быть препятствием доступа к правосудию. А эти препятствия в большинстве случаев возникают в удаленных населенных пунктах, и, следовательно, цифровизация правосудия при всей прогрессивной направленности, не решает частные проблемы доступности правосудия.

Важным фактором и условием расширения доступа к правосудию является цифровизация судебной деятельности, которая позволяет обеспечить инклюзивность правосудия. На сегодняшний день цифровая модернизация судебной системы осуществлена во многих странах (около 47). Создание отечественной цифровой платформы судебной системы с 2014 года претерпело различные уровни цифрового покрытия, от запуска «Судебного кабинета» и «Төрелік», до реализации отдельных инструментов роботизации правосудия.

В Казахстане режим «одного окна» позволяет населению реализовать право на доступ к правосудию через возможности «Судебного кабинета». Основные возможности данного сервиса связаны с цифровым сопровождением процессуальных действий (подать иск, отзыв на иск, встречный иск, оплатить государственную пошлину и др.). Тем не менее, анализ результатов социологического исследования показал, что барьеры и препятствия доступа к правосудию связаны со стадией подготовки к судебному процессу (не будем повторяться, выше был приведен анализ).

Компаративное исследование показало, что лидирующие позиции в развитии технологий искусственного интеллекта занимают США и Китай. Юридические процессы, судебная и правоохранительная деятельность также являются одним из кластеров, который подвержен цифровой трансформации в данных странах, в том числе в направлении интеграции искусственного интеллекта. По мнению И.А. Филиповой в гонке технологий искусственного интеллекта государства соревнуются по

трем индикаторам. Первый — уровень развития искусственного интеллекта, здесь лидером являются США, а вторая позиция завоевана Китаем. Второй критерий — темпы развития искусственного интеллекта, и, по данному показателю Китай является стабильным лидером, а США остаются в роли догоняющего. Третий критерий — уровень правового регулирования искусственного интеллекта. По этому показателю лидирующие позиции занимают Китай и Евросоюз [11; 46].

Интересен прогрессивный рывок в сфере применения технологий искусственного интеллекта Объединеных Арабских Эмиратов. Впервые в мире цифровой зал судебных заседаний запущен в 2018 году в Абу-Даби [12]. В судах ADGM Courts внедрена технология блокчейн, которая обеспечивает снижение финансовых издержек, ускоряет исполнение судебных решений и предоставляет сторонам и юридическому сообществу доступ к судебной документации, хранящейся в цифровом виде в распределённом реестре. Пилотная версия данного проекта апробирована по делам международной торговли и по коммерческим делам [13].

Новый тренд цифровизации правосудия и других сфер правоохранительной деятельности связан с искусственным интеллектом. За короткий период в Казахстане проведена большая работа по формированию правовых основ искусственного интеллекта — разработана и утверждена Концепция об искусственном интеллекте [14], разработаны проекты Цифрового кодекса [15] и Закона «Об искусственном интеллекте» [16]. Внедрение ИИ в государственное управление и общественные процессы приняло устойчивый и необратимый характер, вызывая активные профессиональные дискуссии о формах, рисках и пределах технологической трансформации.

Status Quo AI обозначает практику применения инструментов искусственного интеллекта в условиях отсутствия должного нормативно-правового регулирования, что порождает правовую неопределённость и потенциальные риски для государства, бизнеса и граждан. Конечно, такое положение вещей имеет временный характер, приведенные выше проекты нормативных правовых актов будут приняты, но с большей долей вероятности, можем утверждать, что они все равно достаточно быстро станут не актуальными и потребуется их новация или даже возможно разработка новых нормативных правовых актов. Это обусловлено тем, что темпы технологического развития значительно опережают возможности нормативных регуляторов по их оперативной адаптации.

Актуальное направление применения искусственного интеллекта — это SMART сопровождение юридических процессов, в том числе на стадии досудебной подготовки. Например, американская цифровая технология Ross, основана на алгоритмах искусственного интеллекта и дает возможность профессиональному юридическому сообществу получить юридически аргументированный ответ на требуемый вопрос согласно кейсу, который сопровождается ссылками на судебную практику и правовые нормы. Самостоятельным кластером в цифровых процессах является предсказательное правосудие, которое активно развивается в Европейском Союзе. Алгоритмы машинного обучения, позволяющие обрабатывать и анализировать большие массивы данных, являются инструментом прогнозирования исхода дела. Прогноз судебной перспективы дела оказывает влияние на формирование позиции по делу, а это дает возможность оценить финансовые перспективы по делу, оценить временные и финансовые затраты при подготовке к судебному разбирательству, а также в ходе судебного рассмотрения дела. Согласно проведенному исследованию эффективность искусственного интеллекта в прогнозе исхода дела составляет 80 % [17; 82]. Эффективность генерированного искусственным интеллектом прогноза исхода дела можно оценить в рамках апробации систем предсказательного правосудия. Это в свою очередь потребует временные ресурсы для более полного и аргументированного анализа, основанного на практике.

Актуальность разработки цифровых платформ для населения Республики Казахстан обусловлена необходимостью расширения доступа к правосудию. Приведенные примеры зарубежного опыта показывают, что технологии искусственного интеллекта оказывают помощь юридическому сообществу (юристам, адвокатам). Участие авторами статьи в программе целевого финансирования направлено на разработку и создание цифровой платформы для населения, на основе машинного обучения и использование генерированных искусственным интеллектом прогнозов исхода дела, формирование алгоритма действий при подготовке к судебному процессу, в судебном процессе. Отдельное направление программы — решение проблемы финансирование судебных издержек, в рамках которого также будут использованы результаты предсказанного правосудия, на основании анализа больших массивов данных.

Можем согласиться с Л.К. Кусаиновой и Ш.Т. Байкенжиной, которые утверждают, что «полностью переложить правосудие на искусственный интеллект невозможно. Но ИИ может стать надеж-

ным помощником не только для рядовых граждан, не имеющих определенных знаний в области права, но и для профессионалов в лице судей, адвокатов, прокуроров. Мы считаем, что при грамотном машинном обучении и грамотном системном администрировании он способен облегчить рутинные задачи и для населения, и для профессиональных юристов» [18; 142].

Научно-исследовательская группа программы совместно с партнером «IT by design» работает над созданием пилотного проекта цифровой платформы «Legal Expert» для населения Казахстана, на основе инструментов искусственного интеллекта. Даная платформа является отражением Status Quo AI в расширении доступа к правосудию.

Возможности цифровой платформы «Legal Expert» на данном этапе:

1. Анализ судебных документов, на основе использования инструментов искусственного интеллекта, их классификация и отнесение к соответствующей категории.

2. Конструктор судебных документов, с использованием искусственного интеллекта, на основании текстового запроса с учетом заданного кейса.

Перспективное развитие платформы «Legal Expert»:

1. Создание модуля по финансированию судебных процессов, с целью обеспечения финансирования судебных издержек населения.

2. Создание автоматизированной системы подготовки к судебным делам, оказывающей помощь населению в подготовке к судебному разбирательству, в том числе предоставление информации о стадиях дела и изучения судебной практики на основе инструментов искусственного интеллекта.

3. Прогноз исхода дела, так называемое «прогнозируемое правосудие».

4. Конструктор судебных документов, адаптированных под конкретную ситуацию.

Таким образом, «разработка уникальных цифровых продуктов, позволяющих пользователю самостоятельно получать необходимую информацию и правовое сопровождение со стороны искусственного интеллекта, в том числе прогноз судебной перспективы отдельного кейса, подготовка судебных (иных юридических) документов, формировать позицию по делу и др. — это перспектива дня завтрашнего, основы которой закладываются в дне сегодняшнем. Достижение перечисленных задач возможно за счет использования возможностей искусственного интеллекта в обработке больших массивов данных и генерирования на их основе требуемых запросов» [19; 78].

Выводы

Доступность правосудия в Республике Казахстан и Status Quo AI взаимосвязанные звенья одного процесса, который является новым витком в цифровой трансформации судебной системы. Сформированные и успешно функционирующие цифровые платформы судебной системы Республики Казахстан доказали свою состоятельность и востребованность в судебной практике. Это проявляется, в том числе и в международной оценке качества правосудия в Казахстане.

Новый тренд развития цифровой инфраструктуры связан с использованием машинного обучения на основе алгоритмов искусственного интеллекта и анализа больших массивов данных. Успешная комбинация таких разработок является одним из факторов расширения доступа к правосудию в Республике Казахстан. В данном случае доступность правосудия формируется уже на стадии подготовки к судебному процессу, что позволяет прогнозировать свои перспективы в суде, оценивать финансовые и временные затраты, реализовывать предложенные машиной алгоритмы действий при подготовке к судебному процессу, а также в ходе судебного рассмотрения дела. Примером такой цифровой платформы является «Legal Expert», разработкой и апробацией, которой занимаются авторы статьи в составе исследовательской группы по программе целевого финансирования.

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Қазақстан Республикасындағы сот төрелігіне қолжетімділік және Status Quo AI

Зерттеудің мақсаты — Қазақстан Республикасындағы халықтың сот төрелігіне қолжетімділігін талдау, ағымдағы проблемаларды анықтау және жасанды интеллект құралдарын қолдану арқылы сот төрелігіне қол жеткізудегі кедергілер мен тәуекелдерді жою перспективаларын анықтау. Зерттеу нәтижесінде авторлар цифрлық трансформация жағдайында Қазақстандағы сот төрелігінің дамуының негізгі траекториясы құқықтық технология, оның құрылымында инновациялық жаңғыртудың жаңа жолы — Құқықтық AI қалыптасқан деген қорытындыға келді. Бұл технологиялық шешімдер Қазақстанда сот жүйесін цифрландыру кезеңінде қалыптасқан халықтың сот төрелігіне қолжетімділігін кеңейту құралы болып табылады, бірақ қазіргі кезеңде сот төрелігінің қолжетімділігі мәселелерін шешуде жасанды интеллекті пайдалану мүмкіндіктері, сондай-ақ болашақта болжамды сот төрелігі жаңартылды. Зерттеудің негізгі нәтижелері — авторлардың қазіргі жағдайда халықтың

сот төрелігіне қолжетімділік деңгейі туралы тұжырымдарды қорытындылауы, сот төрелігіне тең қол жеткізу құқығын жүзеге асыруға кедергі келтіретін факторларды анықтау, сот төрелігінің цифрлық қолжетімділігін арттырудың, оның ішінде жасанды интеллект құралдарын енгізудің ұсынылатын бағыттары. Жүргізілген зерттеу нәтижелеріне негізделген негізгі қорытынды — сот процесіне қатысу траекториясын (алгоритмін) өз бетінше құруға, уақыт пен қаржылық шығындарды азайтуға, істің нәтижесін болжауға және сот шығындарын қаржыландыру мәселесін шешуге мүмкіндік беретін халықты құқықтық қамтамасыз етудің қосалқы қызметтерін біріздендіру және жүйелеуге мүмкіндік беретін жаңа цифрлық платформаны қалыптастырудың негіздемесі. Ұсынылып отырған цифрлық платформа жасанды интеллект алгоритмдері негізінде жұмыс істейтін сот төрелігіне қолжетімділікті қамтамасыз етудің жаңа құралы.

Кілт сөздер: сот төрелігіне қолжетімділік, цифрландыру, жасанды интеллект, электронды сот залы, сот отырысы залы, «Төрелік», ақпараттық-коммуникациялық технологиялар, сот жүйесі, заң көмегі, кедергілер мен тәуекелдер, болжамды сот төрелігі, қаржылық және уақыт шығындары, іс-әрекет алгоритмі.

N.V. Sidorova, A.M. Serikbayev

Access to Justice in the Republic of Kazakhstan and the Status Quo AI

The purpose of this study is to analyze the population's access to justice in the Republic of Kazakhstan, identify current problems and determine the prospects for eliminating barriers and risks in access to justice through the use of artificial intelligence tools. As a result of the study, the authors came to the conclusion that in the context of digital transformation, the main trajectory of justice development in Kazakhstan is Legal tech, in the structure of which a new track of innovative modernization has been formed — Legal AI. These technological solutions are a tool for expanding the population's access to justice in Kazakhstan, which were formed during the period of digitalization of the judicial system, but at the present stage, the possibilities of using artificial intelligence in solving problems of access to justice, as well as in the future of predictive justice, have been updated. The main results of the study are that the authors formulated conclusions about the level of access of the population to justice in modern conditions, identified factors that impede the implementation of the right to equal access to justice, proposed directions for improving the digital accessibility of justice, including the introduction of artificial intelligence tools. The main conclusion based on the results of the study is the justification for the formation of a new digital platform, which will unify and systematize auxiliary services for legal support of the population, allowing to independently build a trajectory (algorithm) of participation in the trial, minimize time and financial costs, predict the outcome of the case and solve the problem of financing legal costs. The proposed digital platform is a new tool for ensuring access to justice, operating on the basis of artificial intelligence algorithms.

Keywords: access to justice, digitalization, artificial intelligence, electronic courtroom, courtroom, "Arbitration", information and communication technologies, judicial system, legal aid, barriers and obstacles, predictive justice, financial and time costs, algorithm of actions.

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Criminal acts related to poaching in Kazakhstan: a study of the offender's personality

This study presents a comprehensive criminological analysis of the personality of poachers who commit criminal offenses in the field of illegal nature management in the territory of the Republic of Kazakhstan. The purpose of the study is to identify a set of demographic, social, criminal-legal and psychological characteristics of offenders, as well as to determine the factors predisposing to the commission of poaching. The methodological basis of the study was statistical and substantive analysis, methods of interviewing, questionnaires, grouping and expert assessments. As a result of the conducted study, it was established that the main group of poachers consists of men of working age (30–39 years old), who do not have higher education and often do not have official employment. It was determined that the main motivational determinants of their criminal activity are economic necessity, lack of environmental awareness and social disorder. In addition, the analysis of empirical data allowed us to identify characteristic behavioral attitudes and the level of legal awareness of offenders. Special attention is paid to the comparative analysis of Kazakhstan and international practice, including the study of gender, age and educational differences among poachers. Conclusions are made about the need to introduce comprehensive preventive measures aimed at reducing the level of poaching, as well as the development of targeted programs for the formation of environmental culture and social responsibility of the population.

Keywords: poaching, criminal offense, environmental crime, personality of the offender, demographic factors, environmental legal consciousness, statistical analysis, legislation, crime prevention, illegal use of natural resources.

Introduction

The relevance of studying poaching as a form of environmental crime is due to the need to respond to the growing threats to biodiversity and sustainable nature management under anthropogenic pressure. In addition, one of the most urgent problems of our time is environmental protection and responsible use of natural resources, which is pointed out by researchers of the Republic of Kazakhstan [1; 30]. In the Republic of Kazakhstan, the problem of illegal withdrawal of natural resources has acquired a stable criminological character, as evidenced by the data of legal statistics: for the period from 2017 to 2024, more than 7000 criminal offenses qualified as poaching were registered, while the detection rate of such crimes does not exceed 57 %. This situation exacerbates the need for a systematic analysis of the personality of the offender, since it is the individual characteristics of the subject that often predetermine the commission of a crime.

Despite the availability of theoretical works in the field of criminology and environmental protection, there is still methodological fragmentation in the scientific environment in approaches to the study of poaching. In some studies, the legal emphasis on the qualification of the corpus delicti prevails, in others — the environmental or sociological interpretation of the problem, while the integrative interdisciplinary approach is not applied often enough, which creates an internal methodological conflict: the lack of a unified conceptual apparatus and a consistent model of analysis leads to differences in the interpretation of the motivation of offenders, their social roles and psychological characteristics.

The studies of domestic specialists in the field of environmental law focus on the urgent need for in-depth scientific study of the mechanisms of environmental protection activities and prevention of environmentally dangerous acts [2–4; 14]. In this context, a comprehensive analysis of the factors determining the predisposition to commit environmental offenses, including criminogenic attitudes and social environmental conditions, is of high importance [5]. Particular attention should be paid to the study of individual-

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psychological characteristics of persons involved in poaching activities as a key aspect in the formation of an effective system for preventing such crimes.

In addition, this topic is insufficiently studied and there are not many studies by both Kazakh [6; 7] and foreign [8–10] authors concerning the selected problems. The analysis of current studies also reveals a significant gap in empirical data concerning the demographic, educational, labor and legal profile of persons committing environmental crimes. Foreign studies raise important issues related to the social structure of poachers, but their conclusions are often not directly confirmed in the Kazakhstani context. Domestic studies are mainly focused on law enforcement practice, while criminological aspects remain understudied.

Taking into account the identified gaps, we proceed from the need to form a comprehensive criminological portrait of poachers, including not only socio-demographic and legal parameters, but also motivational, psychological and cultural characteristics. At the same time, the author takes the position that the fight against poaching is impossible without taking into account socio-economic determinants such as employment, level of education and legal awareness. This research direction allows not only to identify determinants of criminal behavior, but also to develop science-based measures to prevent it, based on national realities and international experience.

In the Criminal Code of the Republic of Kazakhstan, in Chapter 13 “Environmental criminal offences”, there are a number of norms characterized as facts of poaching: illegal extraction of fish resources, other aquatic animals or plants (Art. 335); illegal hunting (article 337 of the Criminal Code of the RK); illegal treatment of rare and endangered species of plants or animals, their parts or derivatives prohibited for use (article 339 of the Criminal Code of the RK); illegal cutting, destruction or damage to trees and shrubs (article 340 of the Criminal Code of the RK) [11].

The primary aim of the present academic inquiry is the criminological examination of the socio-legal characteristics and behavioral traits of an individual engaged in poaching within the jurisdiction of the Republic of Kazakhstan.

In alignment with the stated objective, the research is structured around the following tasks:

1. To conduct an exhaustive examination of scholarly sources, encompassing a critical review of both domestic and international academic contributions concerning the phenomenon of poaching, with the intent to elucidate fundamental theoretical constructs and to identify existing lacunae within the prevailing body of knowledge.

2. Collection and systematization of statistical data to obtain information on demographic, social and personal characteristics of poachers.

3. Multidisciplinary analysis of the personality of poachers: application of methods of psychology, criminal law and criminology to analyze biophysiological, social, criminal-legal and moral-psychological aspects of the personality of criminals, which will allow a more complete assessment of the motives and conditions of committing crimes.

4. Development of proposals for the optimization of law enforcement practice and prevention of poaching: formulation of specific recommendations based on the study, aimed at improving the mechanisms of prevention of poaching facts.

Methods and materials

The study employs an interdisciplinary methodology combining qualitative and quantitative approaches to examine the socio-legal and psychological traits of individuals engaged in poaching in Kazakhstan. Statistical analysis of URPI data (2017–2024), structured interviews, surveys, and expert assessments were used to gather demographic, educational, and behavioral data. Special attention was paid to Articles 335, 337, 339, and 340 of the Criminal Code. Grouping, profiling, and comparative legal analysis ensured comprehensive offender characterization. The triangulation of statistical, empirical, and legal sources ensured analytical reliability and helped identify criminogenic factors and systemic gaps in poaching prevention mechanisms.

Results

The personality of an individual who commits a criminally punishable act is a key focus of analysis in legal science, psychology, criminal procedure, criminology, and forensic studies. Each discipline examines the offender through its own theoretical and methodological lens. The offender’s profile reflects stable behavioral, psychological, and social traits essential for understanding crime causation. This study aims to construct a criminological portrait of individuals engaged in illegal natural resource exploitation, based on official statistical data, domestic and international scientific findings, and the author’s own analysis, to reveal

factors influencing criminal behavior in the context of environmental offenses. The analysis and comprehensive accounting consideration of criminological characteristics of offender's personality contributes to a clear differentiation between persons prone to unlawful behavior and representatives of law-abiding population, as well as provides the identification of determining conditions and circumstances that affect the formation and implementation of criminal intentions [12; 156]. Thus, in the period from 2017 to 2024, a total of 10464 pretrial investigations on poaching were initiated in the Republic, of which: 1350 under Article 335 of the Criminal Code of the Republic of Kazakhstan; 913 under Article 337 of the Criminal Code of the Republic of Kazakhstan; 1704 under Article 339 of the Criminal Code of the Republic of Kazakhstan; 3087 under Article 340 of the Criminal Code of the Republic of Kazakhstan. In total, 7054 criminal offenses in the field of poaching were committed during the study period (Table1) [13].

Table 1

The number of criminal offenses registered in the URPI from 2017 to 2024

Article of the Criminal Code of the Republic of Kazakhstan	2017	2018	2019	2020	2021	2022	2023	2024	Total
	Registered annually								
335	205	194	224	179	169	131	130	118	1350
337	135	134	117	160	107	101	83	76	913
339	299	236	208	230	228	148	190	165	1704
340	1183	908	688	45	51	61	87	64	3087
total by years	1822	1472	1237	614	555	441	490	423	7054

Over the same analyzed period, a total of 8,634 poaching incidents were under investigation, of which 4,879 were solved, representing 56.5 % (Table 2).

Table 2

Number of criminal cases in progress and criminal cases solved in the Republic of Kazakhstan from 2017 to 2024.

Article of the CC RK	2017		2018		2019		2020		2021		2022		2023		2024	
	Total	opened cases	Total	opened cases	Total	opened cases	Total	opened cases	Total	opened cases	Total	opened cases	Total	opened cases	Total	opened cases
335	275	55	285	70	257	100	221	116	187	88	137	84	137	83	130	67
337	157	77	166	63	145	52	184	78	152	79	121	48	104	52	89	47
339	318	199	258	187	227	154	263	155	258	173	167	102	211	119	201	87
340	1431	1084	1244	790	816	595	110	8	83	16	88	15	120	18	92	18
total	2181	1415	1953	1110	1445	901	778	357	680	356	513	249	572	272	512	219

The above-mentioned results actualize the chosen topic of the research, emphasizing its importance in the conditions of biodiversity conservation in the Republic of Kazakhstan. Within the framework of criminological knowledge there is a variety of theoretical positions regarding the structure and content of the concept of personality of an offender [14; 18]. Generalization of the provisions contained in a number of scientific sources allows us to conclude that the criminological portrait of the subject of crime includes a set of the following interrelated components: biophysical characteristics (including gender, age parameters and other physiological features); social parameters (educational level, position in the family system, professional status and other indicators of social status); juridical status indicators (presence or absence of a criminal record and facts of involvement in the crime). The analysis of statistical information for 2017–2024 on persons who committed the considered type of criminal offenses shows that poaching is predominantly a male type of crime (Table 3).

Table 3

Number of men and women who have committed poaching offenses in the Republic of Kazakhstan from 2017 to 2024.

Article of the Criminal Code of the Republic of Kazakhstan	2017		2018		2019		2020		2021		2022		2023		2024	
	M	W	M	W	M	W	M	W	M	W	M	W	M	W	M	W
335	127	1	166	0	139	0	141	4	134	1	122	0	122	0	111	0
337	133	0	125	0	93	0	92	0	97	0	79	0	78	0	70	0
339	192	26	195	17	140	19	170	13	291	22	117	15	143	11	108	3
340	1051	33	116	0	599	5	12	0	13	0	13	1	15	0	16	0

Empirical data concerning the gender composition of individuals implicated in poaching-related criminal behavior indicates a pronounced predominance of male subjects over their female counterparts. Simultaneously, females are occasionally identified as perpetrators of offenses associated with the unlawful circulation of flora and fauna specimens classified as rare, endangered, or prohibited, including their constituent parts or biological derivatives. In exceptional instances, women have been found culpable of unauthorized extraction of aquatic biological resources, including ichthyofauna and hydrophytic vegetation. However, no documented occurrences of illicit hunting activities committed by women have been recorded within the temporal scope spanning 2017 to 2024. This criminological trend is reasonably attributable to the nature of the unlawful conduct in question, which presupposes the exertion of significant physical effort, frequently necessitates specialized technical preparation, and demands proficiencies typically characteristic of the male demographic group [15]. Not an unimportant aspect in the study of the personality of poachers is the study of age composition. Thus, the analysis of the age composition of poaching offenders for the period from 2017 to 2024 allows us to identify key patterns and determine the distribution of offenders by age groups.

The study covers the following categories: 1) juveniles (16-17 years old); 2) young adults (18–20 years old); 3) young adults (21–29 years old); 4) middle-aged persons (30–39 years old); 5) older persons (40–49 years old); 6) persons of pre-retirement age (50–59 years old); 7) elderly (60 years and older).

The aggregate analysis of the empirical data covering the entire period of observation showed a marked heterogeneity in the distribution of offenders by age category. The least quantitative participation in the commission of unlawful acts was recorded among minors, whose number was limited to only 4 cases within the time period under consideration. The most substantial proportion of individuals implicated in unlawful acts is attributed to the cohort aged 30 to 39 years, the quantitative indicator of which reached 1,342 persons, thereby substantiating the classification of this demographic segment as the dominant category within the typological structure of poaching-related criminal offenses. Elevated incidence rates are likewise observed among individuals aged 40 to 49 years, accounting for 1,184 documented violations, as well as those in the 21 to 29 age bracket, with 931 recorded infractions. Within the near-retirement demographic group, encompassing persons between the ages of 50 and 59, law enforcement authorities registered 661 instances of criminal conduct. Among citizens exceeding the age threshold of 60 years, 213 criminal episodes of a poaching-related nature were identified. As for young adults aged 18 to 20, although their degree of involvement surpasses that of minors, this group remains among the least statistically represented, comprising 83 offenders within the specified period.

The revealed data indicate a stable trend, according to which the largest number of poaching offenses is committed by persons of working age, mainly from the categories of 30–39 and 40–49 years old. This may be related to their physical activity, professional activity in hunting or nature management-related areas, as well as economic motives. The participation of people of pre-retirement age, although noticeably decreasing, remains significant. At the same time, the involvement of youth and elderly people is much lower, which can be explained by physical and social limitations.

The structural distribution of poaching acts in accordance with the provisions of the Criminal Code of the Republic of Kazakhstan is of scientific interest. The greatest concentration of registered facts of illegal behavior is associated with the norms of Article 340, which provides responsibility for the illegal removal of representatives of specially protected species of fauna. This category of crimes is especially characteristic of persons in the age groups of 30–39 and 40–49 years, which indicates the stable involvement of mature individuals in environmentally dangerous activities. A significant number of offenses are also recorded under

Article 339, concerning illegal hunting, with increased activity predominantly among young adult citizens between the ages of 21 and 29. Although the level of offenses under other articles is significantly lower, their distribution also shows a certain age correlation, indicating similar demographic trends.

Based on the analysis, it can be concluded that effective prevention of poaching requires a focus on groups of able-bodied population, especially in the categories of 21–49 years old. It is proposed to develop measures that take into account the specifics of violations related to the characteristics of age categories, as well as to strengthen control in professional and economic spheres, where these groups are most active.

In our opinion, the educational level of an individual is also one of the essential parameters to be taken into account in the formation of a criminological portrait of a person committing illegal actions in the sphere of illegal use of natural resources. The received education has a significant impact both on the formation of attitudes and socially significant orientations, and on the development of cognitive abilities that determine behavioral strategies. The findings derived from the examination of official statistical data reveal that the overwhelming majority of individuals engaged in poaching lack credentials confirming the attainment of higher professional education. This circumstance may serve as an indicator of an underdeveloped legal awareness and a deficiency in cognitive-intellectual capacity, which, in aggregate, acts as criminogenic determinants reducing the propensity for normative, law-compliant behavioral patterns (Table 4).

Table 4

Information on the education of individuals who committed poaching between 2017 and 2024

Article of the Criminal Code of the Republic of Kazakhstan	Education															
	2017		2018		2019		2020		2021		2022		2023		2024	
	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education	higher education	Secondary and specialized sec. education
335	6	122	3	12	6	130	6	136	6	127	6	116	5	117	16	95
337	16	114	20	101	13	79	12	73	10	81	9	66	16	58	4	61
339	37	179	24	185	21	138	32	137	19	194	17	114	21	132	19	86
340	6	122	3	112	6	130	1	11	1	10	5	9	1	14	3	13

It should be noted that, as practice shows, persons who do not have higher education, are mostly executors of crime and choose rather primitive ways of committing acts that do not require the application of specialized professional knowledge.

When studying the criminological characteristic of the personality of a poacher, we should not miss the information about the commission of criminal offenses by him earlier. Thus, statistical data show that out of 100 % of all committed criminal offenses on the facts of poaching, in the period from 2017 to 2024, from 13–17 % are committed by previously convicted (Table 5).

Table 5

Information on criminal records of individuals who committed poaching between 2017 and 2024

	2017		2018		2019		2020		2021		2022		2023		2024	
Article	total	convicted	total	convicted	total	convicted	total	convicted	total	convicted	total	convicted	total	convicted	total	convicted
335	128	10	166	16	139	27	141	26	134	19	122	20	122	32	111	27
337	133	22	125	14	93	19	92	16	97	20	79	18	78	14	70	15
339	218	31	212	35	159	20	183	19	313	34	132	22	154	28	108	17
340	1084	278	1051	16	604	186	12	2	11	4	14	2	15	4	16	5

It seems reasonable to include in the analysis such a significant component as legal status in the context of a person's citizenship. The study of this characteristic allows us to identify possible migration, socio-cultural and legal factors that influence the involvement of individuals in illegal activities, including crimes in the field of environmental legislation (Table 6).

Table 6

Information about the citizenship of individuals who committed poaching between 2017 and 2024

Article	2017		2018		2019		2020		2021		2022		2023		2024	
	RK	other	RK	other	RK	other	RK	other	RK	other	RK	other	РК	other	RK	other
335	110	18	106	9	131	4	140	1	128	7	119	1	122	0	110	1
337	131	1	124	1	90	1	91	0	94	0	79	0	74	2	69	1
339	205	7	199	9	148	8	163	2	207	4	129	1	149	1	104	1
340	1071	7	793	4	588	1	12	0	10	0	122	0	14	1	15	1

Based on the data presented in the table, the analysis of the nationality of persons who committed poaching in the territory of the Republic of Kazakhstan in the period from 2017 to 2024 revealed the dominance of local citizens in the structure of the considered offenses. The predominant volume of unlawful acts classified as poaching was perpetrated by nationals of the Republic of Kazakhstan, which may be attributed to their comparatively greater degree of territorial accessibility to indigenous natural assets, as well as their extensive familiarity with the regional ecosystem, including species — specific characteristics of local flora and fauna. At the same time, the number of cases registered against foreign nationals remains relatively low throughout the analyzed period, which indicates the effectiveness of control over compliance with environmental legislation at the borders and inside the country, as well as a high level of migration security in the context of preventing environmental crimes.

Thus, it is very important to continue the work on international cooperation and information exchange for effective control and prevention of poaching activities by both local and foreign citizens. It is recommended to develop educational programs aimed at raising public awareness of the seriousness and consequences of poaching, as well as strengthening administrative and criminal penalties for violators.

Notwithstanding the widespread scholarly position that incorporates ethical and psychosocial attributes into the criminological profile of the perpetrator; academic discourse also contains a number of specialized studies that place particular emphasis on the examination of psychological determinants inherent to individuals engaged in unlawful conduct within the sphere of environmental protection [16; 17]. In this regard, it should be emphasized that psychological and criminological approaches to the analysis of offender personality have a complementary nature and require comprehensive consideration within a single research paradigm.

An essential direction in the framework of analyzing the psychological portrait of the subject who carries out illegal activities in the field of illegal nature management is the interpretation of empirical data obtained through the use of questionnaire methods and targeted interviews with persons criminally prosecuted for relevant acts. Indicators of social functioning, including behavioral patterns and status roles of individuals in the community, are significant indicators in the study of the personality structure of poachers.

Let us consider the issue of their marital status. Empirical data suggest that approximately 60 % of surveyed individuals implicated in the unauthorized appropriation of natural assets are formally in marital or domestic partnerships, with 75 % of them identifying this form of illegal activity as their principal means of subsistence. This criminological peculiarity may be attributed to the circumstance that, in certain instances, poaching assumes a culturally entrenched and hereditary character, gradually evolving into a familial subsistence craft or an element of the informal shadow economy. Among the relevant parameters for assessing the social standing of an offender, particularly within the framework of criminological profiling, professional occupation and labor market participation are regarded as significant indicators, insofar as they reflect the extent of the individual’s socio-economic integration [18]. Examination of employment-related information concerning this offender category reveals that a substantial proportion of individuals involved in poaching lack formal labor engagement, thereby evidencing the presence of adverse socio-economic conditions that serve as criminogenic catalysts for unlawful behavior (Table 7).

Table 7

Information on the employment activity of individuals who committed poaching between 2017 and 2024

Article	2017		2018		2019		2020		2021		2022		2023		2024	
	working	unemployed	working	unemployed	working	unemployed	working	unemployed	working	unemployed	working	unemployed	working	unemployed	working	unemployed
335	44	84	2	104	5	126	16	115	9	117	11	101	9	107	9	94
337	16	92	20	91	10	68	23	48	14	65	22	43	17	43	17	37
339	8	173	20	164	11	123	21	121	30	137	20	88	13	113	9	76
340	30	1001	2	104	5	126	1	11	3	8	2	10	1	10	3	11

In this regard, it seems reasonable to assert that there is a causal relationship between the social status of persons committing poaching offenses and their motivational attitudes that determine illegal behavior. The analysis of motivational factors influencing the commission of poaching offenses indicates that the motivational sphere is formed under the influence of a complex of external and internal conditions, including individual psychological characteristics of offenders. In the predominant majority of cases, the leading incentive for poaching is self-interest, which is confirmed by the results of the questionnaire survey, in which 80% of respondents cited material gain as the principal motive. This conclusion is confirmed by statistical data and sociological observations, since a significant proportion of poachers are socially vulnerable and economically disadvantaged citizens who do not have a permanent source of legal income.

It is necessary to underscore that within the framework of moral-psychological characteristics attributed to this category of individuals, a distinct pattern of pronounced egocentric orientation is observed, which is reflected in a predominantly instrumental and utilitarian perception of wildlife and natural ecosystems. According to empirical evidence derived from international scholarly research, the majority of subjects implicated in poaching-related criminal conduct exhibit a marked apathy toward the adverse ecological and legal repercussions resulting from their own unlawful behavior [19]. Such an attitudinal position may be interpreted as an indicator of an underdeveloped level of ecological legal awareness and an absence of internalized ethical restraints, which ordinarily function as regulatory mechanisms ensuring adherence to the provisions of environmental protection legislation.

The scientific novelty of the present research is reflected in the analytical and evaluative rethinking of the national strategic initiative “Taza Kazakhstan” for the period 2024–2029 [20], which for the first time officially articulated objectives directed at cultivating a sustainable ecological consciousness among the general population. Nevertheless, the program simultaneously revealed substantial content-related and methodological shortcomings — most notably, the absence of empirically grounded sociological inquiries dedicated to the study of mechanisms for safeguarding biodiversity, specifically in relation to fauna and flora. The study also underscores the limited scope and fragmented nature of pre-2009 environmental policy measures, during which the issue of preserving endangered species remained marginal and was infrequently integrated into systemic environmental governance agendas. Thus, the presented work fills the existing scientific gap, forming an analytical basis for further developments in the field of criminological study of poaching and a systematic approach to the formation of environmental responsibility. Scientific novelty of the chosen direction of research is also confirmed by the fact that in his last message to the people of Kazakhstan from September 2, 2024 [21], one of the directions of development of the Republic of Kazakhstan President of the country proclaimed the improvement of the environmental situation and cultivation of careful attitude to the environment.

Discussion

Our results show that poaching in Kazakhstan is predominantly a male crime committed by individuals without higher education, which is consistent with the research of other scientists [22; 23]. At the same time, our data on the age structure of criminals supplement and clarify previously obtained data: the majority of poachers fall into the 30–39 age group, which coincides with the conclusions of other researchers [13]. Also, our results that most poachers in Kazakhstan are middle-aged men without higher education are consistent with the findings of S.L. Eliason [24], who also notes similar behavioral patterns among poachers in the United States. Furthermore, the results of the conducted study align with the findings of similar works, which emphasize the multifaceted nature of poaching, highlighting the interconnectedness of socio-economic, cul-

tural, and environmental aspects [25]. Like other authors, we have concluded that poaching has a significant impact at the level of global regions, especially in countries with high biodiversity [26; 3-4].

Examining the similarities and differences between previous studies and the presented work, we note that our research confirms S.L. Eliason's findings that poachers often use illegal hunting methods. However, in contrast to his position, we have established that economic motivation plays a key role in the behavior of poachers in Kazakhstan. This circumstance gives the Kazakhstani poaching phenomenon a particular specificity, distinguishing it from the more complex socio-cultural and psycho-emotional determinants considered in other scientific studies dedicated to analyzing the behavioral characteristics of individuals involved in the illegal extraction of natural resources. The study revealed similarities in poaching methods across different countries, such as the use of modern hunting technologies, which is also mentioned in the analysis of poaching problems in Africa [27]. However, in our context, poaching is primarily linked to economic necessity, which differs from the motives described in some international studies. The results of the study indicate that poaching in Kazakhstan is closely linked to low levels of education and lack of stable employment. Based on the analysis, it can be argued that the fight against poaching in Kazakhstan should include educational programs and job creation to reduce the appeal of poaching as a source of income. Overall, a comprehensive approach is needed to reduce the level of poaching, including the improvement of socio-economic conditions and the strengthening of legislation. The study results can be explained through the lens of Edwin Sutherland's differential association theory [28], which emphasizes the influence of the social environment on criminal behavior, as well as through the rational choice theory, which suggests that criminal acts are the result of a conscious choice. This suggests that improving socio-economic conditions can reduce the level of poaching. In this study, we conducted a multifaceted comparison of existing data on this issue, with an emphasis on socio-economic, cultural, and environmental aspects, which signifies the importance of a comprehensive approach to the study of poaching. Our results correlate with the findings of international studies, particularly regarding the socio-economic motivations of poachers, and are largely based on legal statistics, which emphasizes their reliability. The results of this study not only confirm the significance of the analysis but also suggest ways to develop effective strategies to combat poaching, making its contribution to the scientific community particularly important and relevant.

Conclusions

This study presents a deep and multifaceted criminological analysis of the poacher's personality, operating in the Republic of Kazakhstan. The study focuses on the social, psychological, and criminal-legal characteristics of offenders, which allows us to paint a complex picture of the motivations and conditions leading to the commission of environmental offenses. These analyses undoubtedly contribute to the understanding of the problem of poaching, enriching the scientific community with new conclusions and proposals for optimizing law enforcement practices and preventing these crimes.

The study's findings emphasize the importance of a comprehensive approach to the problem, including strengthening criminal liability and improving state control mechanisms. The proposed measures for prevention and optimization of law enforcement activities can significantly enhance the effectiveness of combating poaching in Kazakhstan, contributing to the conservation of biodiversity and sustainable use of natural resources. In general, it seems reasonable to conclude that the profile of a poacher operating in the territory of the Republic of Kazakhstan is formed on the basis of a comprehensive study of their social, demographic, criminal-legal, and psychological characteristics.

The results of the analysis allow us to assert that the majority of those committing offenses in the sphere of illegal environmental use are men in the age category of 30 to 39 years, predominantly without higher education, which, in turn, indicates an insufficient level of legal awareness and understanding of the environmental consequences of illegal activities. From the point of view of criminal-legal status, the majority of the subjects studied do not have criminal records, however, the presence among them of persons previously brought to criminal responsibility, including under similar articles, indicates the need to develop and implement targeted preventive strategies aimed at reducing the level of recidivism in this category of crimes.

The personality of a poacher in Kazakhstan is determined by a complex interaction of various factors, each of which contributes to a predisposition to commit environmental offenses. The research results offer important directions for developing effective strategies for preventing and controlling poaching, emphasizing a comprehensive approach to solving this problem. In addition, the results achieved have significant scientific novelty and relevance, providing valuable recommendations for law enforcement agencies and political figures, as well as for the general public interested in preserving ecological balance and sustainable development.

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Қазақстандағы браконьерлік саласындағы қылмыстық жазаланатын іс-әрекеттер: құқық бұзушының жеке басын зерттеу

Мақалада Қазақстан Республикасының аумағында табиғатты заңсыз пайдалану саласында қылмыстық жазаланатын іс-әрекеттер жасайтын браконьердің жеке басына жан-жақты криминологиялық талдау жасалған. Зерттеудің мақсаты табиғи ортаны қорғау саласында құқыққа қайшы әрекеттер жасайтын адамдардың демографиялық, әлеуметтік, криминалдық-құқықтық және психологиялық-мінез-құлық ерекшеліктерінің жиынтығын анықтау, сондай-ақ браконьерлік қызметті жүзеге асыруға бейімділіктің қалыптасуына ықпал ететін детерминистік жағдайларды анықтау. Зерттеудің әдіснамалық негізін статистикалық және мазмұнды талдау, сұхбат беру, сауалнама жүргізу, топтастыру және сараптамалық бағалау әдістері құрайды. Жүргізілген жұмыстың нәтижесінде браконьерлердің негізгі тобын жоғары білімі жоқ және көбінесе ресми жұмысқа орналаспаған еңбекке қабілетті жастағы (30-39 жас) ер адамдар құрайтыны анықталды. Олардың қылмыстық белсенділігінің негізгі мотивациялық детерминанттары экономикалық қажеттілік, экологиялық құқықтық сананың тапшылығы және әлеуметтік тұрақсыздық екені айқындалды. Сонымен қатар, эмпирикалық деректерді талдау құқық бұзушыларға тән мінез-құлық көзқарастары мен құқықтық хабардарлық деңгейін анықтауға мүмкіндік берді. Мақалада браконьерлер арасындағы гендерлік, жас және білім беру айырмашылықтарын зерттеуді қоса алғанда, қазақстандық және халықаралық тәжірибені салыстырмалы талдауға ерекше назар аударылды. Браконьерлік деңгейін төмендетуге бағытталған кешенді алдын алу шараларын енгізу, сондай-ақ экологиялық мәдениет пен халықтың әлеуметтік жауапкершілігін қалыптастыру жөніндегі нысаналы бағдарламаларды әзірлеу қажеттілігі туралы қорытындылар жасалды.

Кілт сөздер: браконьерлік, қылмыстық құқық бұзушылық, экологиялық қылмыс, құқық бұзушының жеке басы, демографиялық факторлар, экологиялық құқықтық сана, статистикалық талдау, заңнама, қылмыстың алдын алу, табиғатты заңсыз пайдалану.

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Уголовно-наказуемые деяния в сфере браконьерства в Казахстане: исследование личности правонарушителя

Статья представляет собой всесторонний криминологический анализ личности браконьера, совершающего уголовно-наказуемые деяния в сфере незаконного природопользования на территории Республики Казахстан. Целью настоящего исследования является установление комплекса демографических, социологических, криминально-правовых и психолого-поведенческих признаков лиц, совершающих противоправные деяния в сфере охраны природной среды, а также идентификация детерминирующих условий, способствующих формированию склонности к осуществлению браконьерской деятельности. В результате проведённой работы установлено, что основную группу браконьеров составляют мужчины трудоспособного возраста (30–39 лет), не имеющие высшего образования и зачастую не обладающие официальным трудоустройством. Определено, что основными мотивационными детерминантами их преступной активности выступают экономическая необходимость, дефицит экологического правосознания и социальная неустроенность. Кроме того, анализ эмпирических данных позволил выделить характерные поведенческие установки и уровень правовой информированности правонарушителей. В представленной статье акцентировано внимание на сопоставительном исследовании национального и зарубежного опыта, с учётом анализа гендерных, возрастных и образовательных различий среди лиц, привлекаемых к ответственности за незаконную деятельность в сфере природопользования. Сформулированы выводы о целесообразности реализации системных превентивных стратегий, ориентированных на снижение распространённости браконьерства, а также разработке специализированных инициатив, направленных на формирование устойчивых экологических установок и повышение уровня социальной ответственности в обществе.

Ключевые слова: браконьерство, уголовное правонарушение, экологическая преступность, личность правонарушителя, демографические факторы, экологическое правосознание, статистический анализ, законодательство, профилактика преступлений, незаконное природопользование.

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The Role of family mediation in conflict resolution: international experience and prospects for Kazakhstan

The article explores the role of family mediation in conflict resolution, analyzes international experience in its application, and examines prospects for its development in Kazakhstan. Particular emphasis is paid to the advantages of mediation compared to litigation, and based on the analysis of foreign practices, key mechanisms and models of family mediation that can be adapted in Kazakhstan are highlighted. In the course of the research, the following methods of the scientific research were used: specifically sociological, comparative legal, formal legal, statistical, logical, system-structural, functional. Based on the methods of scientific research, the concept and essence of family mediation were comprehensively revealed. In addition, family mediation is applicable for conflict resolution in the conduct of family business. In conclusion, recommendations are proposed for improving the national legal framework and developing the institution of family mediation in the country, as well as the possibility of applying family mediation in resolving disputes related to family entrepreneurship.

Keywords: family legal relations, family mediation, dispute resolution, conciliation procedures, mediator, family disputes, confidentiality, voluntariness of mediation, alternative dispute resolution, family entrepreneurship.

Introduction

The family is of particular interest as an ancient social institution that not only ensures the stability of society, but also evolves with it, adapting to innovations and changes. In such a system of intensive, close cooperation, disputes, conflicts, and crises cannot but arise, the signs of which at the moment are:

1. The growing number of divorces and the instability of marriage unions. Modern marriages are becoming less stable, and married couples are inclined to faster decisions about divorce, sometimes without an attempt of meaningful conflict resolution. Divorces often occur due to partners' inability to engage in constructive dialogue, unmet expectations, or lack of financial stability. The emergence of "serial marriages" (several short unions over a lifetime) reflects the declining value of traditional marriage. On the one hand, according to the Ministry of Justice, 124.7 thousand marriages were registered in Kazakhstan in 2024, which is 3 thousand more than in 2023 (121.7 thousand). This suggests that, according to statistics, the country has a stable trend in this regard. On the other hand, Kazakhstan holds a leading position in divorce. In 2024, over 17.7 thousand divorces were registered by the Civil registration authorities, which are 900 more than in 2023 (16.8 thousand). Normally, about 30 % of divorces occur by mutual consent of the spouses, the remaining 70 % through the courts due to disputes over the division of property or the place of residence of the chil-

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dren. The total number of divorces in 2024 was 40.6 thousand. In 2023, Kazakhstan ranked among the top countries with the highest divorce rates — 40.2 thousand, with an annual increase of 400. On average, more than 40 thousand marriages break up in the country every year [1].

2. Changing gender roles and blurring the traditional family model. Women have become more engaged in building careers, taking leadership positions and ensuring financial independence, which reduces their dependence on marriage. Men are less actively involved in child rearing and household management. These changes lead to difficulties in the distribution of roles in the family, which can provoke conflicts and dissatisfaction between partners.

3. Family relationships are increasingly strained, with parents and children engaging less frequently due to competing demands such as work, education, and digital distractions. Virtual communication replaces live communication, which reduces the level of empathy and family support.

4. Economic pressure on the family, for instance, the high cost of housing, instability in the labor market, and inflation make the maintenance of the family difficult. Both partners are forced to work, which leads to a lack of time for parenting and relationship development. Financial disagreements often lead to conflicts and divorces.

5. Weakening of the institution of marriage and the growth of alternative union forms. According to sociologists Ulrich and Elisabeth Beck, we have been struck by the "tyranny of choice" [2]. Society is moving away from the clear and predictable path of "school — institute — marriage — family — children" to diversity, which includes guest marriages, conscious loneliness, "patchwork" families, children born out of friendship and from sperm donors, as well as polyamorous unions, open relationships and Boston marriages (a family formed by female friends who manage a household together). More and more people are choosing civil marriages, unregistered partnerships, or staying single, and formal marriage is no longer considered the only socially acceptable form of family. Personal life has become an individual project, rather than social prescriptions [2; 178].

6. The rise in family conflicts stems from the fact that families function as long-term systems of continuous social engagement, which naturally brings about disagreements and crises. Conflicts between spouses are the most common types of contradictions, and divorces have serious consequences for children: custody disputes, attachment disorders, psychological traumas. Conflicts between generations are becoming widespread when parents do not understand the values and attitudes of young people, and children consider their parents' views outdated. In addition, family conflicts between family members can worsen during the joint management of family business, namely the division of roles in the management of the family business, inheritance and division of shares by the heirs of the family business, and so on. Thus, the crisis of the family as a social institution is caused by a combination of economic, social, psychological and cultural factors. It is family mediation that can become a tool for resolving conflicts, finding compromises and strengthening family ties.

When contradictions arise within the family unit, individuals are confronted with the necessity of determining an appropriate course of resolution. The attention of the state and society to disputes related to family relations is steadily increasing; family disputes are one of the most common categories of lawsuits. Family conflicts are becoming more complex, often accompanied by emotional tension and lengthy court proceedings. Lawsuits can exacerbate conflicts, and their duration negatively affects all participants, especially children. This requires effective mechanisms for their resolution. One of these mechanisms is family mediation, aimed at peaceful resolution of conflicts without judicial proceedings. Mediation has been developing in the Republic of Kazakhstan since 2011; however, its application in family disputes remains limited. The aim of this article is to analyze family mediation as a method of dispute resolution in the Republic of Kazakhstan, identify existing challenges, and determine possible ways to improve it.

Methods and materials

Family mediation is an alternative dispute resolution method based on the principles of voluntariness, confidentiality, neutrality, and equality of the parties. The primary goal of mediation in family conflicts is to preserve relationships between spouses, protect the rights and interests of children, and reach a compromise solution without coercion. At the international level, family mediation is regulated by several documents, including the UN Convention on the Rights of the Child, the European Convention on the Law Applicable to Contractual Obligations, and the UN Guidelines on Access to Justice for Children.

Kazakhstan also strives to implement international standards in the field of family mediation. The Civil Procedure Code of the Republic of Kazakhstan (the "CPC RK"), effective as of January 1, 2016, provides for

conciliation procedures in Chapter 17 of the CPC RK. According to Article 174 of the CPC RK, conciliation procedures include the conclusion of a settlement agreement, an agreement on dispute (conflict) resolution through mediation, and an agreement on dispute resolution through a participatory procedure [3].

The main regulatory act governing mediation is the Law of the Republic of Kazakhstan "On Mediation" (the "Law"), dated January 28, 2011, which defines mediation as a procedure for resolving disputes (conflicts) between parties with the assistance of a mediator (or mediators) to achieve a mutually acceptable solution, carried out with the voluntary consent of the parties. Family disputes can be resolved with the participation of mediators who have the appropriate qualifications [4].

The Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" also provides for the possibility of applying mediation in cases related to divorce, determining a child's place of residence, alimony collection, and other matters [5].

Family mediation is an alternative way to resolve family disputes, in which a neutral mediator helps the parties come to a mutually acceptable solution, taking into account their interests and emotional needs. This process is aimed not only at conflict resolution, but also at maintaining or restoring constructive relationships between family members, especially in situations involving children. Mediation is an alternative to the judicial dispute resolution procedure or an addition to the judicial procedure, which, in turn, helps to reduce the burden on the courts and increase the number of reconciliations, including in family disputes.

According to the Law, the goal of mediation is to develop a mediated agreement that satisfies the conflicting parties. In court proceedings, lawyers or attorneys typically advocate for one party, and the final decision largely depends on their professionalism, which does not always align with a fair resolution. Theoretically, a mediator maintains a neutral position toward all parties involved in the conflict.

According to Article 7 of the Law of the Republic of Kazakhstan "On Mediation", a mediator must be impartial, conduct mediation in the interests of both parties, and ensure equal participation of the parties in the mediation process. Article 9 of the Law establishes that a mediator can be an independent, impartial, and unbiased individual, who is not interested in the outcome of the case, chosen by mutual consent of the mediation parties, included in the mediator registry, and has agreed to perform the function of a mediator [4].

Family mediation generally involves finding solutions to issues related to marital and parent-child relationships, as well as in the context of family businesses. The application of mediation in family disputes has distinct characteristics, stemming from the differences between family law relations and those of a civil law nature. As we discussed earlier, mediation is justified in various categories of family disputes, including divorce, determining the child's place of residence in case parents live separately, resolving cases of parent-child contact when one parent lives separately, dividing jointly acquired property, issues arising from alimony relations, as well as dividing shares in a family business, and others. In our opinion, introducing mandatory family mediation could, in some cases, help preserve and possibly strengthen the marriage. It is important to note that mediation cannot be applied in cases concerning the deprivation of parental rights, restrictions on parental rights, restoration of parental rights, or the removal of such restrictions. Disputes in these categories must be resolved exclusively through court proceedings, as, due to their legal nature and specific evidentiary requirements, it is impossible for the parties to reach a settlement agreement.

Mediation has been practiced in Anglo-Saxon countries since the 1960s and was later adopted in countries with a continental legal system. Proponents of this procedure consider it an essential element in the development and advancement of civil society. Empirical evidence demonstrates that mediation facilitates the establishment of new informal connections between indiv*i*duals, ultimately leading to the discovery of joint, unconventional solutions that result in mutually beneficial and acceptable outcomes. In the long run, this process contributes to social stability [6; 53].

The scholarly perspective on the practice of family mediation in the Republic of Kazakhstan is still in the process of formation. It is worthwhile to consider the viewpoints of several foreign scholars on this matter.

Renowned researcher in the field of family mediation, Lisa Parkinson, defines family mediation as a process in which a neutral third party (mediator) assists conflicting parties in reaching a mutually acceptable agreement while minimizing harm to children and preserving opportunities for future cooperation [7; 147].

As is well known, mediation is only possible when both parties participate on an equal footing in discussions, in conditions of physical safety and psychological comfort, and when they are capable of making independent decisions and fulfilling their commitments. Consequently, there are several restrictions on the application of mediation in family disputes, which may be associated with the following factors: repeated instances of domestic violence, either ongoing at the time of mediation preparation or occurring in the recent

past; child abuse; intimidation, threats, or a significant imbalance of power between the parties; a mental illness affecting one of the parties; the legal incapacity of one of the parties; substance addiction affecting one of the parties; deliberate misrepresentation and the provision of knowingly false information; refusal or inability to adhere to the fundamental principles of the mediation process [7; 147].

According to John Haynes and Susan Fisher, family mediation is a structured process aimed at resolving disputes between spouses or other family members with the participation of a neutral mediator who facilitates effective communication and the search for compromise [8; 214].

Robert A. Baruch Bush & Joseph P. Folger believe that mediation, including family mediation, is seen as a process of transformation in which the parties not only find a solution to the conflict, but also develop new forms of interaction based on mutual understanding and responsibility [9; 278].

According to Constance Ahrons & Katherine Irwin, family mediation is a process that promotes cooperation between former spouses and prevents conflict escalation, particularly in matters related to child-rearing after divorce [10; 198].

The legal definition provided by the European Commission for the Efficiency of Justice (CEPEJ) states that family mediation is a process in which disputing parties, with the assistance of a mediator, seek to reach an agreement on family-related matters, including divorce, parental rights, financial obligations, and other aspects of family relationships [11].

Thus, family mediation is understood as a structured process of alternative dispute resolution in which a neutral third party (mediator) assists the parties in reaching a mutually acceptable agreement while minimizing negative consequences for all participants, especially children.

Different researchers emphasize various aspects of family mediation. Lisa Parkinson highlights the importance of preserving opportunities for future cooperation. John Haynes and Susan Fisher emphasize the structured nature of the process and the mediator's role in communication. Robert Bush and Joseph Folger view mediation as a transformative process that fosters the personal growth of the parties involved. Katherine Irwin focuses on preventing conflict escalation and promoting cooperation between former spouses. The European Commission for the Efficiency of Justice (CEPEJ) provides a legal definition that encompasses a broad range of family issues. Overall, family mediation is a flexible and multi-layered tool aimed not only at conflict resolution but also at improving interaction among family members, fostering a culture of peaceful dispute resolution, and protecting the interests of children. However, in domestic legal scholarship, the psychological aspects of family mediation remain largely unaddressed. Family conflicts are characterized by a high level of emotional involvement, which requires mediators to possess not only legal expertise but also psychological training.

It would be valuable to explore the specific characteristics of family disputes from a psychological perspective in greater detail. Family conflicts are typically marked by high emotional intensity; the parties involved often act not based on rational arguments, but under the influence of strong emotions such as resentment, anger, or disappointment. The presence of children as a particularly vulnerable party further complicates parental disputes, as the conflict may cause emotional trauma to the child — especially when children are used as leverage or become "bargaining chips" in the negotiation process. Family relationships are deeply personal, involving emotional attachments, shared histories, and often a continuing need for contact in the future — for example, in co-parenting arrangements. These factors significantly complicate the mediation process. Moreover, individuals engage in conflict using different communication styles and behavioral strategies. Some may avoid confrontation, while others may demonstrate aggression, passivity, or manipulative behavior. These variations require a highly skilled mediator who is capable of adopting an individualized approach. A family mediator must be equipped with a diverse set of psychological tools. One of the key techniques is active listening, which helps reduce tension and build a climate of trust. Emotional regulation is another essential skill, enabling the mediator to assist participants in managing anger and anxiety, thereby facilitating a shift from emotional reactivity to constructive dialogue. Identifying shared interests helps uncover common ground, paving the way for compromise. The technique of "reframing", in which the mediator rephrases hostile or emotionally charged statements into neutral language, can help the parties re-evaluate the conflict and see the situation from a new perspective. It is crucial that family mediators possess psychological knowledge or undergo advanced training in the field of family psychology. Without such expertise, it is difficult to effectively manage the emotional dynamics inherent in family disputes and to guide the parties toward a resolution that supports both relational healing and the well-being of all involved — especially the children.

Results

The limited use of mediation in family disputes in the Republic of Kazakhstan can be attributed to the fact that this procedure is not mandatory. In contrast, in several other countries — such as Germany and France — mediation is compulsory for certain categories of cases. This mandatory approach contributes to reducing the burden on the judicial system and improving the overall quality of dispute resolution outcomes.

Despite the existence of a legal framework, the practice of family mediation in Kazakhstan encounters a number of challenges, among which the following can be highlighted: one of the key obstacles to the development of family mediation is the low level of public awareness regarding its potential. Many individuals do not consider mediation as an alternative to court proceedings, either because they are unaware of its existence or perceive it as a complex legal process. There is a widespread belief that family conflicts can only be resolved through the courts, and there are concerns that a mediated agreement may possess less legal force than a court decision. To achieve positive change in this area, it is necessary to implement educational campaigns — through mass media, social networks, and educational institutions — as well as to develop special programs within civil registry offices and courts, where citizens would be informed about the advantages of mediation. It is also advisable to introduce a mandatory informational stage prior to judicial proceedings in family cases, during which the parties would be made aware of the possibilities for pre-trial settlement. At present, not all mediators working with family conflicts possess sufficient knowledge and skills. This highlights the need for comprehensive training and professional development for mediators, particularly in areas that require both legal expertise and psychological competence.

The main issues in the training of family mediators include the absence of unified educational standards, a lack of programs focused on in-depth study of family psychology, conflict resolution, and child psychology. By Order of the Minister of Information and Social Development of the Republic of Kazakhstan dated June 14, 2023 No. 244-NK, the Rules for training in the mediation training program were approved, which establish general provisions, however, the specialized course provides for the topic “Peculiarities of dispute resolution arising from family legal relations”, consisting of 6 hours in total (2 hours of lectures, 4 hours practical exercises). This is absolutely not enough to train professional mediators in this category of cases [12].

It is essential to introduce specialized training courses for family mediators that include mandatory instruction in psychology and child psychology. Additionally, certification criteria should be made more rigorous, ensuring that only professionals with an adequate level of preparation are eligible to practice as family mediators. The development of a mentorship system — where experienced mediators provide guidance and training to new specialists — would also significantly contribute to the overall quality and effectiveness of family mediation practice.

Mediation is actively developing in major cities, where trained specialists, informational resources, and support from the judiciary are available. However, access to mediators in rural areas remains extremely limited. In many cases, mediation services are fee-based, which renders them inaccessible to the rural population. Small towns and villages often lack dedicated mediation centers, and online mediation services are not yet sufficiently developed. To foster the development of family mediation in the regions, it is necessary to implement government-supported programs aimed at promoting mediation in rural areas. This includes the introduction of accessible online mediation platforms for residents of remote regions, as well as the training of local professionals — such as lawyers, educators, and social workers — in family mediation skills. These measures would contribute to expanding the reach of mediation services and ensuring equitable access to alternative dispute resolution mechanisms across the country.

In judicial practice, a unified approach should be established regarding the approval of agreements reached through mediation. This includes the clear legislative enshrinement of the mandatory recognition of mediated agreements in family disputes, the introduction of a standardized format for mediation agreements to facilitate their approval by the courts, and the development of a mechanism for monitoring the implementation of such agreements — potentially involving court bailiffs or notaries.

Mandatory mediation, or the compulsory participation of parties in a mediation process prior to initiating court proceedings, is applied in various forms in a number of foreign jurisdictions. In 2010, Italy introduced mandatory mediation for specific categories of civil and commercial disputes, including family matters. This legislative measure aimed to reduce the burden on the judicial system and to promote the peaceful resolution of conflicts. The initiative was implemented through Legislative Decree No. 28 of March 4, 2010, “On the Establishment and Regulation of Mediation Aimed at Conciliation in Civil and Commercial Dis-

putes". However, in 2012, the Constitutional Court of Italy declared certain provisions of the decree unconstitutional, which led to subsequent amendments and a relaxation of the mandatory nature of mediation in some cases [13].

The Australian Experience. In family disputes involving child custody matters, Australian legislation mandates compulsory participation in family mediation before a claim can be filed with the court. Exceptions are permitted in cases involving violence or threats to safety. This requirement is governed by the Family Law Act 1975, specifically Section 60-I, which outlines the obligation to attempt family dispute resolution prior to litigation. Exceptions to this requirement are strictly regulated and apply only in circumstances where there is a risk to the safety of any party involved. The relevant provisions are found in Family Law Act 1975 (Cth), Part VII (Australia) [14].

In 2013, Turkey introduced mandatory mediation for labor disputes, and since 2018, it has extended this requirement to certain commercial cases. Although family disputes are not subject to mandatory mediation, voluntary participation is encouraged [15].

In certain federal states of Germany, a mandatory attempt at mediation or another form of alternative dispute resolution is required before initiating legal action for specific civil cases [16].

Singapore has been actively promoting mediation as a means of dispute resolution. In 2019, the Singapore Convention on Mediation was adopted, facilitating the international recognition and enforcement of agreements reached through mediation [17].

Since 2016, Polish legislation requires courts to direct parties to participate in an informational mediation session before initiating legal proceedings in certain civil and commercial cases [18].

Mandatory mediation contributes to reducing the burden on judicial bodies and encourages peaceful dispute resolution. However, its effectiveness depends on the quality of mediator training, public awareness, and the cultural characteristics of society.

Discussion

In the Republic of Kazakhstan, the mediation procedure is carried out on a voluntary basis. The principle of voluntariness is the basic principle of mediation. Despite the voluntary nature of the mediation procedure, family legal disputes often require more targeted intervention focused not only on the legal, but also on the deep personal and emotional aspects of the conflict. In this regard, it seems appropriate to establish, if not mandatory mediation in disputes arising from marital relations, then at least mandatory informational meetings with the mediator. Moreover, as elements of the mediation approach, tools such as conflict counseling and conflict coaching can be institutionalized — methods aimed at the parties' awareness of the nature of the conflict, restoring communication and reducing emotional tension. These practices are not opposed, but, on the contrary, are organically integrated into the mediation procedure, enhancing its preventive and restorative functions.

Conflict counseling is a professional activity aimed at identifying the nature of the conflict, its causes and dynamics, as well as at forming an informed attitude towards the situation among the parties. Within the framework of counseling, a mediator (or a specialist with training in the field of conflictology) helps participants in a family conflict formulate their positions and interests, reduce tension and aggression, and identify a zone of possible mutual understanding. This approach is especially effective at the pre-mediation stage and can serve as a preparatory stage for constructive mediation.

Conflict management coaching is a specialized form of support for conflict participants, aimed at developing their skills of self-reflection, emotional self-control, communication and finding solutions. Unlike consulting, coaching is focused on uncovering the internal resources of the parties and building a positive interaction scenario. It can be used both before and during mediation, including in cases where one of the parties is not yet ready for a direct dialogue, but needs individual support.

By the present time, distinct areas of mediation have effectively emerged, although they have not been legally differentiated in the law. Family mediation stands out as a separate area of practice. The distinctive feature of this field is that the mediator, as a professional and independent arbitrator, specializes in resolving disputes arising from family legal relationships. The recognition of family mediation as a separate dispute resolution method through mediation implies the use of combined techniques, distinguishing this field from other types of mediation, such as corporate or educational mediation. However, there are no formal legal grounds to officially recognize family mediation as an independent area. This is likely due to the fact that resolving disputes in various fields through mediation primarily involves special, non-legal methods of working. For example, when handling family disputes, the mediator must also be an excellent conflict reso-

lution expert, skilled in psychotherapeutic techniques. Family mediation typically focuses on resolving disputes regarding the division of marital property, the establishment and enforcement of child support obligations, child custody issues, and other related matters [19].

We would like to draw attention to the potential application of mediation for resolving disputes in family businesses. Family business represents a unique form of enterprise where business relationships intertwine with personal ones. In accordance with Article 32 of the Entrepreneurial Code of the Republic of Kazakhstan, the forms of joint entrepreneurship are: 1) entrepreneurship of spouses carried out on the basis of common joint ownership of spouses; 2) family entrepreneurship carried out on the basis of common joint ownership of a peasant farm or common joint ownership of a privatized dwelling [20].

Article 32 of the Entrepreneurial Code of the Republic of Kazakhstan mentions family entrepreneurship, but it does so narrowly — as a form based on joint ownership of a peasant farm or housing. This does not cover, for example, Individual entrepreneurship, Limited liability partnership, opened within the family, where spouses, children, sisters, brothers, etc. work. It is advisable, in our opinion, the following definition of family entrepreneurship. Family entrepreneurship is a form of entrepreneurial activity in which participation in management, labor and (or) business ownership is carried out primarily by members of the same family (including spouses, parents, children, siblings, grandparents, as well as other relatives living together or running a common household), regardless of depending on the organizational and legal form, based on the agreement of the parties and (or) a family agreement [20].

This creates both unique advantages and significant risks, especially when disputes arise. In this context, family mediation becomes an effective tool for conflict resolution, ensuring the application of a balance between business interests and the preservation of family relationships. Family businesses often encounter the following types of conflicts: disagreements regarding the strategic development of the business; disputes over profit distribution and managerial authority; conflicts between generations (senior and junior members of the business); business division during divorce or when one participant exits; inheritance issues and management transitions. Traditional judicial procedures are not always suitable for resolving such disputes, as they may exacerbate family discord and lead to a loss of trust between the parties. For successful implementation of mediation in family businesses, the following steps are necessary: legislative formalization of mediation procedures in family business disputes; development of specialized training programs for mediators that account for the specificities of entrepreneurial activity; promotion of mediation among family businesses through educational and informational campaigns; establishment of specialized family mediation centers that bring together lawyers, economists, and psychologists. Family mediation in the business sphere has significant potential to prevent the destructive consequences of conflicts, fostering not only effective business management but also the preservation of family values. The development of this practice requires a comprehensive approach, including the improvement of legislation, professional training of mediators, and public awareness campaigns about the advantages of mediation as an alternative dispute resolution method.

Conclusions

The analysis of international experience confirms that family mediation is an important mechanism for the peaceful resolution of family disputes, reducing the level of conflict, promoting the preservation of constructive relationships between the parties, and minimizing the negative consequences for children. Different countries apply various models of mediation — ranging from mandatory to voluntary — as well as differing requirements for mediators, procedural standards, and the extent of state regulation. Mandatory mediation can be considered in law as one option, akin to the mandatory pre-court (pre-litigation) dispute resolution process, where before filing a lawsuit, the plaintiff must first approach the defendant with an offer to resolve the conflict peacefully through mediation. Tools such as conflict counseling and conflict coaching can be used as ways to resolve conflict and reduce its severity. The inclusion of these tools in the list of possible stages of the family mediation procedure will increase its effectiveness, prevent the escalation of conflict, and in some cases avoid legal proceedings. Conflict counseling and coaching do not replace mediation, but organically complement it, forming the parties' understanding of their own responsibility for the outcome of the conflict and creating conditions for a sustainable agreement.

Although this idea may be seen as radical, it could yield tangible results in a number of case categories, such as divorce, division of marital property, child custody in cases of separated parents, the exercise of parental rights by the parent living separately, and the communication arrangements between relatives and the child.

In Kazakhstan, family mediation remains an emerging institution, facing challenges such as insufficient public awareness, a lack of trained specialists, weak integration into the judicial system, and uneven distribution across regions. To effectively implement mediation in family disputes in Kazakhstan, it is necessary to develop the legal framework, enhance mediator qualifications, expand access to mediation procedures, particularly in rural areas, and foster a culture of peaceful resolution of family conflicts.

In the absence of a clear and comprehensive regulatory definition of family entrepreneurship in the legal system of the Republic of Kazakhstan, it is necessary to legislate this institution as a form of entrepreneurial activity based on the participation of family members in management, labor and business ownership. This will not only ensure the legal protection of such subjects, but also create the basis for the development of effective forms of intra-family conflict resolution, including mediation in both divorce and generational change in business.

Thus, it is necessary:

1. To consolidate the term family mediation in the family and marriage legislation.

2. Include tools such as conflict counseling and conflict coaching in the list of possible stages of family mediation procedures.

3. Introduce into the legislation the definition of family entrepreneurship as a form of entrepreneurial activity in which participation in management, labor and (or) business ownership is carried out primarily by members of the same family (including spouses, parents, children, brothers and sisters, grandparents, as well as other relatives living together or leading a common household), regardless of its organizational and legal form, on the basis of an agreement between the parties and (or) a family agreement. In this context, family mediation will become an effective conflict resolution tool, ensuring a balance between business interests and the preservation of family relations.

Therefore, family mediation is not merely a method of conflict resolution, but a promising direction that contributes to strengthening the family as a social institution. International experience proves that family mediation plays a key role in conflict resolution, and Kazakhstan should adopt the best global practices for its further development.

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Дауларды шешудегі отбасылық медиацияның рөлі: халықаралық тәжірибе мен Қазақстан үшін перспективалар

Мақалада дауларды шешу барысында отбасылық медиацияның рөлі жан-жақты қарастырылған, оны қолданудың халықаралық тәжірибесі мен Қазақстандағы даму перспективалары талданған. Сот талқылауларына қарағанда медиацияның артықшылықтарына ерекше назар аударылады, шетелдік тәжірибелерді талдау негізінде Қазақстанда бейімделуі мүмкін отбасылық медиацияның негізгі тетіктері мен үлгілері айқындалады. Зерттеу барысында ғылыми зерттеудің келесі әдістері қолданылды: нақты-социологиялық, салыстырмалы-құқықтық, формальды-құқықтық, статистикалық, логикалық, жүйелі-құрылымдық, функционалды әдістер. Ғылыми зерттеу әдістерінің негізінде отбасылық медиацияның түсінігі мен мәні жан-жақты ашылды. Сонымен қатар, отбасылық медиация отбасылық кәсіпкерлікті жүргізу кезінде туындайтын дауларды шешу барысында да пайдаланылады. Қорытындыда елдегі отбасылық медиация институтын дамыту және оған қатысты ұлттық құқықтық базаны жетілдіру, отбасылық кәсіпкерлікті жүзеге асыру кезінде отбасылық медиацияны қолдану мүмкіндіктері бойынша бірқатар ұсынымдар ұсынылды.

Кілт сөздер: отбасылық құқықтық қатынастар, отбасылық медиация, дауларды шешу, татуластыру рәсімдері, медиатор, отбасылық даулар, құпиялылық, медиацияның еріктілігі, дауларды шешудің балама тәсілдері, отбасылық кәсіпкерлік.

Ф. Абугалиева, М. Жаскайрат

Роль семейной медиации в разрешении конфликтов: международный опыт и перспективы для Казахстана

В статье рассматривается роль семейной медиации в разрешении конфликтов, анализируется международный опыт её применения и перспективы развития в Казахстане. Особое внимание уделяется преимуществам медиации перед судебными разбирательствами, на основе анализа зарубежных практик выделяются ключевые механизмы и модели семейной медиации, которые могут быть адаптированы в Казахстане. В процессе исследования были использованы следующие методы научного исследования: конкретно-социологический, сравнительно-правовой, формально-юридический, статистический, логический, системно-структурный, функциональный. На основании методов научного исследования были всесторонне раскрыты понятие и сущность семейной медиации. Кроме того, семейная медиация применима для разрешения конфликтов при ведении семейного предпринимательства. В заключении предложены рекомендации по совершенствованию национальной правовой базы и развитию института семейной медиации в стране, возможности применения семейной медиации при разрешении семейного предпринимательства.

Ключевые слова: семейные правоотношения, семейная медиация, разрешение споров, примирительные процедуры, медиатор, семейные споры, конфиденциальность, добровольность медиации, альтернативные меры разрешения споров, семейное предпринимательство.

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Сравнительный анализ правового регулирования закупок в США и в Республике Казахстан

В настоящей статье проведен сравнительный анализ правового регулирования государственных закупок и закупок субъектами квазигосударственного сектора в Соединенных Штатах Америки и в Республике Казахстан. В условиях глобализации и растущей конкуренции между государствами за инвестиции и инновации, вопросы регулирования государственных закупок и закупок в квазигосударственных компаниях приобретают особую актуальность. Казахстан, стремящийся к модернизации экономики, проводит реформы в сфере закупок, в том числе и в квазигосударственном секторе. В то время как США, обладая развитой системой рыночных механизмов, демонстрируют иной вектор развития закупочных процедур. Целью исследования является выявление ключевых различий и общих черт в подходах к правовому регулированию государственных закупок и закупок квазигосударственными компаниями в США и в РК, а также определение преимуществ и недостатков каждой модели в контексте повышения эффективности, транспарентности и гибкости закупочных процессов. Системы государственных закупок и закупок в квазигосударственном секторе Казахстана и США представляют собой два различных подхода к управлению государственными ресурсами: централизованный, регулируемый в Казахстане и рыночный, конкурентный в США, который можно назвать клаузальным, так как наблюдается зависимость от конкретной ситуации, связанной, в том числе с источником финансирования и правовым статусом организации. Несмотря на наличие общих принципов, таких как прозрачность, эффективность и антикоррупционные меры, различия в структурах, регулировании и практике закупок формируют уникальные вызовы и проблемы для каждой из стран.

Ключевые слова: государственные закупки, закупки субъектами квазигосударственного сектора, закупочная модель, централизованная модель государственных закупок, децентрализованная модель государственных закупок, особенности правового регулирования закупок субъектами квазигосударственного сектора.

Введение

Современные вызовы экономического развития требуют эффективного и прозрачного использования государственных ресурсов, особенно в рамках закупочной деятельности. Особое внимание в этом контексте уделяется квазигосударственному сектору, который, с одной стороны, не является частью традиционной государственной структуры, а с другой — тесно связан с государственными интересами и государственным финансированием.

В Республике Казахстан закупочная деятельность регулируется (Таблица 1):

- Законом Республики Казахстан «О государственных закупках» [1] (*далее — Закон о государственных закупках*) — который регулирует процесс приобретения товаров, работ и услуг государственными органами и учреждениями за счет бюджетных средств;

- Законом Республики Казахстан «О закупках отдельных субъектов квазигосударственного сектора» [2] (*далее — Закон о квазигосударственных закупках*) — который регулирует процесс приобретения товаров, работ и услуг государственными компаниями (*квазигосударственные предприятия*), которые формально не являются государственными органами, но полностью или частично принадлежат государству, ведут хозяйственную деятельность и участвуют в реализации государственной политики, при этом действуют как юридические лица.

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Таблица 1

Законы о закупочной деятельности РК

Законы, регулирующие закупочную деятельность в Республике Казахстан	
Закон Республики Казахстан от 8 июня 2021 года № 47-VII ЗРК «О закупках отдельных субъектов квазигосударственного сектора»	Закон Республики Казахстан от 1 июля 2024 года № 106-VIII «О государственных закупках»

Методы и материалы

В данной статье основное внимание будет уделено сравнительно-правовому анализу законодательства Соединенных Штатов Америки *(далее — США)* и Республики Казахстан (далее — РК) о закупках и практики его применения, а также выявлению особенностей правового регулирования государственных закупок и закупок субъектами квазигосударственного сектора в РК и США с выработкой рекомендаций по применению положительного американского опыта в казахстанской практике.

В данном исследовании были применены методы сравнительного анализа, метод моделирования. Метод контент-анализа использовался при работе с научными публикациями.

Результаты

В соответствии с Законом о квазигосударственных закупках, отдельными субъектами квазигосударственного сектора являются национальные управляющие холдинги, национальные компании, социально-предпринимательские корпорации (*далее — СПК*), причем в отношении последних Законом о квазигосударственных закупках предусмотрены исключения. При этом, правовой статус субъектов квазигосударственного сектора характеризуется тем, что они:

1) контролируются государством;

2) осуществляют свою деятельность в рыночных условиях (*по принципам частного бизнеса*);

3) не являются государственными органами;

4) выполняют важные государственные функции.

К числу отдельных субъектов квазигосударственного сектора, подпадающих под регулирование Закона о квазигосударственных закупках, в первую очередь, относится АО «Самрук-Қазына» — фонд национального благосостояния (*далее — ФНБ «Самрук-Қазына»*), объединяющий крупнейшие национальные компании:

- АО «КазМунайГаз» — национальная нефтегазовая компания;
- АО «Қазақстан темір жолы» — национальная железнодорожная компания;
- АО «Казахтелеком» — крупнейший оператор связи;
- АО «Казпочта» — национальный почтовый оператор;
- АО «KEGOC» — оператор национальной электрической сети;
- и другие.

В целях реализации положений Закона о квазигосударственных закупках, Министром финансов Республики Казахстан 30 ноября 2021 года был издан Приказ «Об утверждении Правил осуществления закупок отдельными субъектами квазигосударственного сектора, за исключением Фонда национального благосостояния и организаций Фонда национального благосостояния» (*далее — Правила*) [3].

Таким образом, на сегодня закупочный процесс отдельных субъектов квазигосударственного сектора регулируется двумя актами, один из которых законодательный, а другой — подзаконный акт. Вместе с тем, Правила не распространяются на ФНБ «Самрук-Қазына» и его организации, поскольку он самостоятельно утверждает «Порядок осуществления закупок акционерным обществом «Фонд национального благосостояния «Самрук-Қазына» и юридическими лицами, пятьдесят и более процентов голосующих акций (долей участия) которых прямо или косвенно принадлежат АО «Самрук-Қазына» на праве собственности или доверительного управления)» (*далее — Порядок осуществления закупок*) [4].

В результате, закупочный процесс отдельных субъектов квазигосударственного сектора в Республике Казахстан регулируется тремя нормативными правовыми актами — Законом о квазигосударственных закупках и Правилами, а для организаций, входящих в структуру ФНБ «Самрук-Қазына» — Законом о квазигосударственных закупках и внутренним корпоративным документом (Порядок осуществления закупок) (Таблица 2).

Таблица 2

Нормативные акты о квазигосударственном секторе

Закон Республики Казахстан от 8 июня 2021 года № 47-VII ЗРК «О закупках отдельных субъектов квазигосударственного сектора»	
Приказ Министра финансов Республики Казахстан от 30 ноября 2021 года № 1253 «Об утверждении Правил осуществления закупок отдельными субъектами квазигосударственного сектора, за исключением Фонда национального благосостояния и организаций Фонда национального благосостояния».	«Порядок осуществления закупок акционерным обществом «Фонд национального благосостояния «Самрук-Қазына» и юридическими лицами, пятьдесят и более процентов голосующих акций (долей участия) которых прямо или косвенно принадлежат АО «Самрук-Қазына» на праве собственности или доверительного управления» — Приложение № 3 к Протоколу очного заседания Совета директоров АО «Самрук-Қазына» от 3 марта 2022 года № 193.

Обсуждения

В связи с вышеизложенным возникает закономерный вопрос о том, почему закупки ФНБ «Самрук-Қазына» и его организаций осуществляются в рамках внутреннего корпоративного документа и не регулируются специальным законодательством о квазигосударственных закупках?

С одной стороны, ФНБ «Самрук-Қазына» управляет стратегически важными активами Казахстана (энергетика, нефтегазовая отрасль, урановая отрасль, телекоммуникации и т.д.), играющими ключевую роль в экономике страны, и ему требуются гибкость и маневренность в принятии решений. Но, с другой стороны, квазигосударственный сектор экономики и так чересчур значителен и, несмотря на серьезную государственную поддержку, в том числе и за счет средств бюджета, нет никакой прозрачности в процедурах закупок, в которых большая часть закупок осуществляется неконкурентным способом и т.д. [5]. В этой связи казахстанские эксперты достаточно жестко критикуют сложившуюся систему квазигосударственных закупок, высказывая, в том числе, и предложения о полной ликвидации квазигосударственного сектора.

В частности, директор НИИ частного права Каспийского университета, академик Национальной академии наук Республики Казахстан, доктор юридических наук, профессор М.К. Сулейменов активно поддерживает идею ликвидации государственных предприятий, такого же мнения придерживаются доктор юридических наук, профессор Ф.С. Карагусов и кандидат юридических наук А.Е. Дуйсенова, называя в качестве основной негативной проблемы — значительное присутствие государства в экономике, что может сдерживать развитие рыночных механизмов [6].

Следует отметить, что в 2024 году в Казахстане был введен двухлетний мораторий на создание новых субъектов квазигосударственного сектора, что отражает стремление государства на сдерживание его роста [7]. Кроме того, в Указе Президента РК «О мерах по либерализации экономики» предусмотрены меры по сокращению доли государства в экономике, включая ревизию и приватизацию государственных активов [8].

В целом мы считаем, что определенное присутствие квазигосударственного сектора необходимо государству для решения стратегических задач (управление важными секторами экономики), где частный сектор не всегда способен эффективно работать. Помимо этого, не стоит забывать и о национальной безопасности, которую обеспечить может только государство в лице своих органов. Наконец, присутствие государства в экономике помогает управлять макроэкономическими процессами, снижать кризисные риски, поддерживать стабильность в обществе и не допускать усиление социальной напряженности.

Зарубежные эксперты — специалисты в сфере мировой экономики отмечают положительное влияние квазигосударственного сектора на развитие и стабильность экономики отдельных государств. Например, профессор экономики инноваций и общественной ценности Университетского колледжа Лондона, а также директор Института инноваций и общественных целей Мариана Маццукато, считают, что государство должно играть ключевую роль в стимулировании инноваций и создании новых рынков, действуя как предприниматель и инвестор, а не только как регулятор [9].

Американский экономист, Лауреат Нобелевской премии по экономике, профессор Колумбийского университета, иностранный член Российской академии наук (2003), Джозеф Юджин Стиглиц отмечает, что рынки не способны эффективно работать без должного регулирования со стороны государства, иначе это может привести к возрастанию власти корпораций и неравенству доходов [10].

На наш взгляд, государственный и квазигосударственный сектора в экономике должны развиваться наряду с частным сектором, не монополизируя отдельные виды деятельности, а, наоборот, способствуя развитию свободной конкуренции и рыночной экономики.

Опыт США в регулировании государственных и квазигосударственных закупок

В США процесс приобретения товаров, работ и услуг государственными органами и учреждениями за счет бюджетных средств регулируется Федеральным положением о закупках (Federal Acquisition Regulation — FAR), но основу данного положения составляет целая система нормативных правовых актов, таких как Competition in Contracting Act (Закон «О конкуренции в закупках»), Buy American Act (Закон «О покупке американских товаров») и т.д. [11].

В частности, среди основных нормативных правовых актов США, на основании которых сформировано Федеральное положение о закупках (FAR) следует выделить следующие (Таблица 3):

Таблица 3

Основные нормативные правовые акты США о закупках (FAR)

№	Нормативные правовые акты США	Описание	Связь с Федеральным положением о закупках (FAR)
1	CICA (Competition in Contracting Act, 1984)	Требует проведения преимущественно открытого тендера	Основной закон, на основе которого работает — Part 6 FAR
2	Buy American Act (1933)	Обязывает закупать преимущественно американские товары	Отражён в FAR — Part 25
3	Trade Agreements Act (TAA, 1979)	Позволяет закупать товары из стран, заключивших торговые соглашения с США	Влияет на закупки у зарубежных поставщиков
4	Defense Production Act (DPA, 1950)	Даёт Президенту США приоритетное право на организацию и проведение закупок в оборонной сфере	Используется при чрезвычайных ситуациях
5	Federal Property and Administrative Services Act (1949)	Устанавливает принципы закупок через GSA (General Services Administration)	Лежит в основе создания FAR
6	Services Acquisition Reform Act (SARA, 2003)	Регламентирует закупки услуг, особенно через IDIQ-контракты и межведомственные соглашения	Используется для гибких форматов контрактов
7	Small Business Act (1953)	Устанавливает оказание государственной поддержки малого бизнеса в системе государственных закупок	Включён в FAR Part 19
8	Clinger-Cohen Act (1996)	Регламентирует закупки IT и технологий	Применяется через Part 39 FAR
9	Federal Acquisition Streamlining Act (FASA, 1994)	Упрощает и ускоряет закупки, особенно мелкие и стандартные	Влияние на FAR Part 13 (simplified acquisition procedures)

Все вышеперечисленные нормативные акты образуют правовую основу, можно сказать задают правила игры *(что допускается, что положено, какие цели преследуются)* для Федерального положения о закупках ***(FAR)*** [12].

По своей структуре Федеральное положение о закупках *(далее — FAR)* состоит из частей *(Parts)*, дополнений *(Supplements)* и клауз *(Clauses)*.

В структуру FAR входит 53 части, которые в свою очередь делятся на разделы «*Общие положения*» (часть 1-4), «*Планирование закупок*» (часть 5-12), «*Контракты и процедуры*» (часть 13-18), «*Администрирование и исполнение*» (часть 19-33), «*Специальные ситуации и форматы*» (часть 34-53).

Каждое федеральное ведомство имеет свой собственный регламент, который дополняет FAR, всего 11 дополнений (***DFARS*** *— Defense Federal Acquisition Regulation Supplement,* ***HSAR —*** *Homeland Security Acquisition Regulation,* ***NFS*** *— NASA FAR Supplement,* ***DOSAR*** *— Department of State Acquisition Regulation,* ***VAAR*** *— Veterans Affairs Acquisition Regulation* и др.), которые представляют следующие ведомства США: Министерство обороны, Министерство внутренней безопасности, Нацио-

нальное аэрокосмическое агентство, Государственный департамент, Министерство по делам ветеранов, Министерство энергетики, Министерство сельского хозяйства и т.д.

Кроме того, в FAR существует такое понятие как клаузы (Clauses) — это стандартные положения, условия и требования, которые включаются в контракты между сторонами. Эти условия являются обязательными для выполнения сторонами контракта.

В таблице ниже приведены примеры клаузы в контексте FAR (Таблица 4):

Таблица 4

Примеры клаузы в контексте FAR

Часть (FAR)	Название	Пример клаузы	Перевод
Часть 12	Commercial Items (коммерческие товары)	52.212-1 (Instructions to Offerors — Commercial Items), 52.212-4 (Contract Terms and Conditions — Commercial Items)	52.212-1 (инструкции для претендентов — коммерческие товары), 52.212-4 (условия договора — коммерческие товары)
Часть 13	Simplified Acquisition Procedures (Упрощенные процедуры приобретения)	52.213-1 (Fast Payment Procedure), 52.213-2 (Invoicing), 52.213-3 (Notice of Shipment)	52.213-1 (Процедура быстрой оплаты), 52.213-2 (Выставление счетов), 52.213-3 (Уведомление об отгрузке)
Часть 15	Contracting by Negotiation (Заключение контрактов путем переговоров)	52.215-1 (Instructions to Offerors — Competitive Acquisition), 52.215-10 (Price Reduction for Defective Cost or Pricing Data)	52.215-1 (Инструкции для участников торгов — Конкурентное приобретение), 52.215-10 (Снижение цены за неверные данные о стоимости или ценах)

В казахстанском законодательстве в качестве аналога клаузы можно назвать отдельные условия и положения, которые регулируют отношения между заказчиком и подрядчиком по договору государственных закупок.

Например, Гражданский кодекс Республики Казахстан [13] (далее — ГК РК) регулирует общие условия заключения, исполнения и прекращения договоров, а также устанавливает правила для отдельных гражданско-правовых обязательств, которые аналогичны клаузам в FAR.

В Законе о государственных закупках также имеются условия, аналогичные клаузам, например, определение обязательств сторон, сроки исполнения, требования к качеству товаров и т.д.

В таблице ниже приведен пример аналога клаузы FAR в казахстанском законодательстве (Таблица 5):

Таблица 5

Пример аналога клаузы FAR в казахстанском законодательстве

Клауза (FAR)	Аналог в казахском праве
52.212-4 (Contract Terms and Conditions)	Положения Закона о государственных закупках (например, договорные условия)
52.225-1 (Buy American — Supplies)	Требования по закупкам товаров отечественного производства
52.216-7 (Allowable Cost and Payment)	Условия по оплате и расчетам по договору государственных закупок
52.219-6 (Notice of Total Small Business Set-Aside)	Положения о поддержке субъектов малого предпринимательства в государственных закупках

FAR, в основном, применяется в отношении федерального правительства, однако квазигосударственный сектор не подпадает под него напрямую.

В то же время, отдельные положения могут применяться к квазигосударственному сектору по условиям финансирования или по собственной инициативе (когда организации сами изъявляют желание).

Следует отметить, что закупки в квазигосударственном секторе США не регулируются одним универсальным законом, как это делает FAR для федерального правительства.

Вместо этого, каждая квазигосударственная организация (государственная корпорация, автономное агентство, полукоммерческая структура) регулирует закупки в рамках собственных внутренних правил, но при этом обязана учитывать федеральные требования, если используются федеральные средства бюджета.

В США каждая квазигосударственная организация создается на основании отдельного федерального закона. Например, деятельность United States Postal Service USPS (Почтовая служба США) регулируется Postal Reorganization Act of 1970 (Закон о реорганизации почтовой службы 1970), в котором указано, что USPS не подчиняется FAR.

Закупочная деятельность United States Postal Service (далее — USPS), (Почтовая служба США) регулируется внутренним нормативным документом Postal Service's Supplying Principles and Practices SP&P (Принципы и практика снабжения почтовой службы), у National Railroad Passenger Corporation — Amtrak (квазигосударственная пассажирская железнодорожная корпорация США) закупочный процесс регулируется внутренним документом «Amtrak Procurement Manual» или «Procurement Policies and Procedures Manual» и т.д.

Следует отметить, что, если квазигосударственная организация в США получает федеральный грант, то контроль за использованием федеральных средств будет регулироваться в рамках Uniform Guidance 2 CFR Part 200 [14; 11].

Градация в данном случае будет следующей, в случае если федеральное ведомство выступило в роли донора и предоставило денежный грант квазигосударственной организации, то процесс будет регулироваться Uniform Guidance 2 CFR Part 200.

В случае, когда федеральное ведомство выступило как заказчик, а квазигосударственная организации как поставщик, то процесс будет регулироваться в рамках Федерального положения о закупках (FAR).

В итоге мы имеем дифференцированную модель правового регулирования закупок по источникам финансирования (Таблица 6).

Таблица 6

Дифференцированная модель правового регулирования закупок по источникам финансирования

Источник финансирования	Регулируется
Федеральное ассигнование	Федеральным положением по закупкам (FAR)
Собственные средства организации	Внутренними правилами организации
Федеральные гранты	Едиными правилами Uniform Guidance 2 CFR Part 200

Как уже отмечалось выше, в Казахстане, вне зависимости от источника финансирования процесс закупок в квазигосударственном секторе регулируется Законом квазигосударственных закупках, Правилами и Порядком осуществления закупок.

В свою очередь, в США каждая квазигосударственная организация создается на основании отдельного федерального закона, а ее закупочная деятельность регулируется внутренним нормативным документом, но с учетом законодательства соответствующего штата (законодательство о государственных закупках, антикоррупционные нормы штата и т.д.), что говорит о децентрализованной системе закупок в квазигосударственном секторе США.

В Казахстане действует централизованная система закупок в квазигосударственном и государственном секторах:

- централизованные органы регулирования закупочного процесса (Министерство финансов РК, ФНБ «Самрук-Қазына»);
- наличие единых нормативных правовых документов и внутренних нормативных документов;
- единая электронная платформа закупок — zakup.sk.kz, у крупных госкомпаний имеются собственные закупочные платформы, но они также проводятся в рамках централизованной системы;
- единые формы договоров и шаблонов документов;
- единые методики оценки и сопоставления заявок;
- централизованный контроль и аудит и т.д.

Заключение

Системы закупок в квазигосударственном секторе Казахстана и США представляют собой два различных подхода к управлению государственными ресурсами: централизованный, регулируемый в Казахстане и рыночный, конкурентный в США.

Несмотря на наличие общих принципов, таких как прозрачность, эффективность и антикоррупционные меры, различия в структурах, регулировании и практике закупок формируют уникальные вызовы и проблемы для каждой из стран.

В США действует децентрализованная система, при которой каждая квазигосударственная организация самостоятельно определяет порядок закупок на основе собственного внутреннего регулирования, с учетом федеральных или грантовых требований.

Платформой для федеральной закупочной системы является Федеральное положение о закупках FAR, но квазигосударственные структуры действуют в рамках собственных правил (например, SP&P в USPS, Procurement Manual в Amtrak) и могут попадать под действие Uniform Guidance 2 CFR Part 200 при получении федеральных грантов. Закупочная модель построена на принципе гибкости и адаптации к нуждам конкретной организации.

В США отсутствует единая система, а механизмы правового регулирования зависят от источника финансирования и юридической формы организации. Приоритет отдается частной инициативе, а участие государства в экономике регулируется с позиции обеспечения справедливости и инновационного развития.

В Казахстане применяется централизованная система регулирования закупок в квазигосударственном секторе, охватывающая все организации, вне зависимости от источника финансирования. Реализована единая платформа закупок, типовые формы договоров и единые методы оценки заявок, однако существует критика в адрес непрозрачности и высокой доли неконкурентных процедур. По сути, данный подход можно назвать формализованным и бюрократизированным, поскольку он не позволяет оперативно принимать решения организатору закупок и в полной мере не формирует конкурентную среду для всех участников.

С другой стороны, предпринимаются шаги к либерализации экономики, включая мораторий на создание новых субъектов квазигосударственного сектора и курс на приватизацию. Часть экспертного сообщества Казахстана обсуждает необходимость сокращения и даже полной ликвидации части квазигосударственного сектора.

Таким образом, можно прийти к выводу о том, что в США сложился казуальный подход к правовому регулированию закупок, так как наблюдается зависимость от конкретной ситуации, связанной в том числе с источником финансирования и правовым статусом организации, а в Казахстане действует более абстрактный подход к правовому регулированию закупок, который выражается в наделении отдельных субъектов квазигосударственного сектора неоправданными преимуществами перед другими участниками, что, в конечном счете, приводит к снижению прозрачности, открытости и конкурентности закупочного процесса в целом.

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С.П. Мороз, В.В. Тен

АҚШ пен Қазақстан Республикасындағы сатып алуды құқықтық реттеудің салыстырмалы талдауы

Мақалада Америка Құрама Штаттары мен Қазақстан Республикасындағы мемлекеттік сатып алуды және квазимемлекеттік сектор субъектілерінің сатып алуларын құқықтық реттеудің салыстырмалы талдауы берілген. Жаһандану және инвестициялар мен инновациялар үшін мемлекеттер арасындағы бәсекелестіктің күшеюі жағдайында мемлекеттік сатып алулар мен квазимемлекеттік компаниялардағы сатып алуларды реттеу мәселелері ерекше өзекті болуда. Экономикасын жаңғыртуға ұмтылған Қазақстан сатып алу саласында, оның ішінде квазимемлекеттік секторда реформалар жүргізуде. Сонымен бірге АҚШ өзінің дамыған нарықтық механизмдер жүйесімен сатып алу рәсімдерін дамытудың басқа векторын көрсетеді. Зерттеудің мақсаты — Америка Құрама Штаттары мен Қазақстандағы квазимемлекеттік компаниялар тарапынан мемлекеттік сатып алуды және сатып алуды құқықтық реттеу тәсілдерінің негізгі айырмашылықтары мен ортақ ерекшеліктерін анықтау, сондай-ақ сатып алу процестерінің тиімділігін, ашықтығын және икемділігін арттыру контексінде әрбір модельдің артықшылықтары мен кемшіліктерін анықтау. Қазақстан мен АҚШ-тың квазимемлекеттік секторындағы мемлекеттік сатып алулар мен сатып алулар жүйесі мемлекеттік ресурстарды басқарудың екі түрлі тәсілін білдіреді: орталықтандырылған, Қазақстанда реттелетін және нарықтық, Америка Құрама Штаттарында бәсекеге қабілетті, оны шарттық деп атауға болады, өйткені нақты жағдайға, соның ішінде қаржыландыру көзіне және ұйымның құқықтық мәртебесіне тәуелділік бар. Транспаренттілік, тиімділік және сыбайлас жемқорлыққа қарсы шаралар сияқты ортақ қағидаттардың болуына қарамастан, құрылымдардағы, реттеудегі және сатып алу тәжірибесіндегі айырмашылықтар әрбір ел үшін бірегей қиындықтар мен проблемаларды тудырады.

Кілт сөздер: мемлекеттік сатып алу, квазимемлекеттік сектор субъектілерінің сатып алуы, сатып алу моделі, мемлекеттік сатып алудың орталықтандырылған моделі, мемлекеттік сатып алудың орталықтандырылмаған моделі, квазимемлекеттік сектор субъектілерінің сатып алуларын құқықтық реттеу ерекшеліктері.

S.P. Moroz, V.V. Ten

Comparative analysis of legal regulation of procurement in the USA and in the Republic of Kazakhstan

This article provides a comparative analysis of the legal regulation of public procurement and procurement by quasi-public sector entities in the United States of America and the Republic of Kazakhstan. In the context of globalization and growing competition between states for investment and innovation, issues of regulating public procurement and procurement in quasi-public companies are becoming especially relevant. Kazakhstan, striving to modernize its economy, is carrying out reforms in the field of procurement, including in the quasi-public sector. At the same time, the United States, with its developed system of market mechanisms, demonstrates a different vector of development of procurement procedures. The purpose of the study is to identify key differences and common features in approaches to the legal regulation of public procurement and procurement by quasi-public companies in the United States and Kazakhstan, as well as to determine the advantages and disadvantages of each model in the context of increasing the efficiency, transparency and flexibility of procurement processes. The systems of public procurement and procurement in the quasi-public sector of Kazakhstan and the United States represent two different approaches to the management of public resources: centralized, regulated in Kazakhstan and market, competitive in the United States, which can be called clausal, since there is a dependence on a specific situation, including the source of funding and the legal status of the organization. Despite the presence of common principles, such as transparency, efficiency and anti-corruption measures, differences in the structures, regulation and practice of procurement create unique challenges and problems for each of the countries.

Keywords: public procurement, procurement by quasi-public sector entities, procurement model, centralized model of public procurement, decentralized model of public procurement, features of legal regulation of procurement by quasi-public sector entities.

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Adaptation of effective international models for regulating the investment activities of ENPFS to the conditions of Kazakhstan

The article is devoted to the legal framework of the investment operation of the Unified Accumulative Pension Fund (UAPF) of the Republic of Kazakhstan. Particular attention is paid to the need for improvement of the current legislation under the conditions of globalization and integration of financial markets. The study offers a comparative analysis of foreign practice in pension asset management in such countries as Norway, Canada, and Australia, where effective models of investment policy have been implemented, ensuring sustainable returns with minimal risks. The possibilities of using these best practices in Kazakhstan's legal and economic environment are considered. In particular, emphasis is placed on the expansion of the range of investment instruments, the introduction of more liberal asset management company regulations, and the creation of conditions for attracting foreign investors. Special attention is paid to introducing mechanisms for monitoring and assessing the efficiency of investments, including regular audits, risk analysis, and the use of digital technologies. The article also stresses the necessity to raise the level of financial literacy of the population and increase public participation in managing the pension savings. Finally, the article gives recommendations on the modernization of the legal framework, transparency of the investment process, and the elaboration of a complex approach to bringing things into compliance with international standards. These actions, in the long run, should improve the pension system's financial stability and enhance public confidence in the UAPF.

Keywords: UAPF, investment, pension system, legal regulation, risks, profitability, international experience, sustainability, financial literacy, pension funds, management models, Social Code.

Introduction

In the context of globalisation and constant changes in the world financial markets, effective management of pension funds is of particular importance to ensure sustainability and reliability of national pension systems. In the Republic of Kazakhstan, the Unified Accumulative Pension Fund (UNPF) fulfills a key function in the pension system, accumulating mandatory pension contributions and providing investment income, which directly affects the level of future pensions of citizens. Efficient and safe investment of the Eskom Pension and Provident Fund (EPPF) assets is not only a matter of individual welfare of future pensioners, but also a strategic factor in the development of the national economy.

As noted by Kazakh researchers [1;79], pension funds in modern conditions can play a more active role in financial markets, stimulating economic growth, innovation and sustainable development. However, the realisation of this potential is impossible without quality legal regulation of the fund's investment activity, capable of ensuring a balance between profitability, security and social responsibility.

Despite progress in the institutionalisation of the pension system and the consolidation of assets under a single fund, the legal mechanism for the investment of the Unified National Pension Fund still needs to be significantly updated. In particular, the problems associated with limited portfolio diversification, insufficient development of risk management tools, as well as non-transparent investment decision-making procedures remain unresolved [2; 30].

The purpose of this study is to formulate scientifically substantiated proposals to improve the legal regulation of investment activities of the Unified National Pension Fund taking into account international experience and the specifics of the Kazakh pension system. Within the framework of this goal the following tasks are set:

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- to conduct a comparative analysis of the models of regulation of pension funds in economically developed countries (USA, UK, Netherlands, Canada);

- to identify key legal and institutional prerequisites for investment sustainability of pension funds;

- to critically analyse the current legislation of the Republic of Kazakhstan regulating the investments of the Unified National Pension Funds;

- to identify legal barriers that prevent the introduction of progressive mechanisms (ESG, 'green' bonds, public-private investment initiatives);

- to propose measures to adapt international approaches to investment policy considering national realities.

The study pays special attention to the principles of diversification, transparency, accountability and long-term sustainability. In countries with developed pension systems, the application of these principles allows not only to increase fund returns, but also to strengthen public confidence in the pension system. Thus, in the Netherlands and Norway, the management of pension assets is carried out with orientation on ESG-approaches and strict control over information disclosure, which contributes to minimising risks and ensuring social efficiency of investments [3].

Kazakhstan authors [4, 5] emphasise the importance of taking into account the specifics of the national market, including the degree of its development, institutional infrastructure and demographic characteristics. Therefore, a simple copy of foreign models is unacceptable — it requires flexible adaptation regarding the Kazakhstani conditions. For example, the introduction of ESG-standards in the investment policy of the EPPF should be accompanied by the development of appropriate methodologies for assessing the sustainability of projects, as well as training of staff [6].

Thus, this study is aimed at finding a balanced approach to the legal regulation of pension assets investments, which, on the one hand, will protect the interests of depositors and, on the other hand, will contribute to economic development. The analysis will result in the development of regulatory and institutional proposals aimed at modernising the investment mechanism of the Unified National Pension Fund and improving its sustainability in the long term.

Methods and materials

In the framework of this study, dedicated to improving the legal mechanism of investing assets of the Unified Accumulative Pension Fund of the Republic of Kazakhstan (UAPF), a complex multilevel methodology based on both qualitative and quantitative methods of analysis was applied. This approach allows not only to identify existing gaps in the legal regulation of the fund's investment activity, but also to substantiate the applicability of international experience to the specifics of the Kazakhstan pension system.

The purpose of the study is to develop scientifically substantiated proposals for reforming the system of legal regulation of pension assets investment on the basis of foreign models adapted to the socio-economic realities of Kazakhstan.

Empirical base of the study

The study relies on the following groups of sources:

Regulatory and legal acts of the Republic of Kazakhstan, including the Social Code of the RK (2023) [7], as well as by-laws regulating the investment policy of the ENPF. These documents served as a basis for analysing the current legal framework and assessing its effectiveness.

Reports of international organisations (World Bank [8], International Monetary Fund, OECD), containing an assessment of the investment activity of pension funds, including in developing economies.

Official statistics, including data of the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan, the Unified National Pension Fund, as well as comparable international data on profitability, asset structure and risk levels of pension funds [9].

Expert interviews with representatives of government agencies, management companies, academic community and professional pension sector, which allowed obtaining primary qualitative information on the problems of law enforcement and proposals to improve regulation.

Research Methods

The study uses a multidisciplinary approach combining legal, economic and institutional analyses. The main methods include:

Comparative legal analysis applied to study foreign models of regulation of pension funds' investment activities (Germany, the Netherlands, Australia). This method allowed to identify effective elements of legal infrastructure and institutional interaction relevant for Kazakhstan.

Content analysis of normative legal acts, carried out in order to identify internal contradictions, legal lacunas and insufficient detailing of norms. The analysis was carried out taking into account international standards of investment activity regulation, including IOSCO and IOPS recommendations.

The method of thematic case studies made it possible to assess successful examples of implementing foreign experience in the pension systems of other post-Soviet countries (e.g., Latvia and Poland) with similar starting conditions and institutions.

Questionnaires and expert surveys conducted among the participants of the pension market of Kazakhstan (including management companies, NPFs, auditors and consultants) provided empirical testing of hypotheses regarding the perception of the current legislation and potential directions of its reform. The survey methodology was based on Likert and rating scales, which allowed for quantitative data processing.

Predictive modelling was applied to assess the expected effects of the proposed changes in legal regulation. Scenario approach was used to analyse the impact on profitability, risk level and diversification of the ENPF investment portfolio.

Scientific novelty and significance

The application of a comprehensive and well-founded methodological approach allowed not only to identify legal and institutional constraints inhibiting effective investment of pension funds, but also to propose instruments of legal response adapted to Kazakhstani conditions. This approach is in line with the principles of evidence-based policymaking and can be used to develop draft regulations in the field of pension provision [10; 63].

The results of the study are of scientific and applied value for public authorities regulating the financial sector, as well as for researchers dealing with the problems of sustainable development of the pension system of Kazakhstan. The implementation of the developed recommendations can improve investment efficiency, ensure the sustainability of the pension system and strengthen public confidence in social security institutions.

Results

This article analyses the key problems and provides scientifically substantiated proposals for optimising the legal mechanism of investing the assets of the Unified Accumulative Pension Fund of the Republic of Kazakhstan (UAPF). The study focuses on the need to improve the efficiency of the fund's investment policy through the introduction of best international practices, considering the national context. The presented results are based on a comprehensive analysis of foreign models, legal norms, institutional mechanisms and macroeconomic factors affecting the stability of the pension system.

1. Analysing foreign experience: the scientific basis for comparisons.

The comparative analysis reveals that in countries with highly developed pension systems, such as Canada, Norway and Australia, the sustainability and efficiency of funds are ensured through several critical factors:

- independence of investment management from political pressures (e.g., CPPIB in Canada operates on principles of institutional autonomy);
- diversification of the investment portfolio across a wide range of assets, including infrastructure and alternative instruments;
- strong accountability and transparency mechanisms, which ensures public trust and regulatory oversight [11].

Academic publications in the field of public governance indicate that it is the institutional autonomy of pension funds that is positively correlated with their returns and ESG (environmental, social and corporate governance) standards with sustainability and social return on investment [12].

2. Addressing political influence: increasing the independence of the EPPF.

One of the most important findings of the study is the need to ensure the independence of the investment management of the EPPF from direct state influence. Currently, the fund's governance structure is subject to institutional risk due to insufficiently clear delineation of powers between government agencies and management structures.

It is proposed to reform the current model by introducing an independent supervisory board with the participation of representatives of the public, professional community and international experts. Such practice is successfully implemented in the Caisse de dépôt et placement du Québec (Canada), where the governing body is formed according to the criterion of professional competence rather than political quotas [13].

3. Transparency and accountability: systemic prerequisites for trust.

The current system of disclosure of information on the activities of the ENPF is not detailed enough and does not provide the possibility of a broad public assessment of investment performance. In order to eliminate this problem, the necessity to introduce a unified standard of investment data disclosure, similar to the Global Investment Performance Standards (GIPS) adopted in international practice [14].

Scientific research [15] emphasises that a high degree of accountability contributes to increasing depositors' confidence and stabilising long-term expectations, which is especially important in the context of demographic and economic changes.

4. Asset Diversification and Alternative to Government Bonds.

The limited current investment portfolio of the ENPF, which is primarily oriented towards government and quasi-government securities, significantly reduces returns and increases dependence on domestic government debt.

Considering the experience of the Norwegian State Pension Fund, it is proposed to expand the investment strategy to alternative asset classes — real estate, infrastructure projects, private capital and foreign securities. This should be accompanied by the creation of a legal framework for investing in projects with long-term public value and the inclusion of ESG criteria in the evaluation procedures [16].

Modeling has shown that the inclusion of even 10–15 % of alternative investments can increase the expected return of the portfolio by 1.2–1.8 percentage points while reducing risk due to geographical and sectoral diversification [17].

5. Establishment of a Public Monitoring Institute: Social Dimension of Control.

The necessity to form a mechanism of independent public monitoring of the EPPF's investment activities, including regular reports, public hearings and participation of the civil sector in the efficiency assessment was substantiated. This will ensure social accountability and public involvement in the management of pension resources.

According to studies by Transparency International and the Global Alliance for Pension Reform, public participation and civil control contribute to the reduction of corruption risks and increase the social efficiency of funds [18].

6. Results of the study and their impact on the pension policy of Kazakhstan.

The results of the analysis allow us to state that:

Improving the investment efficiency of the EPPF is possible under the condition of institutional reform aimed at increasing independence, transparency and diversification of assets.

Development of new legal mechanisms for investment regulation, including changes in risk management approaches and introduction of ESG standards, will ensure compliance with modern global challenges.

Adaptation of foreign practices requires flexible integration, taking into account national realities, the level of capital market development and the current state of financial infrastructure.

Thus, scientifically substantiated proposals of the study have an impact on the development of pension policy in Kazakhstan in the following directions:

- Improving the investment climate, increasing the interest of international management companies and investors to co-operate with the EPPF;
- Strengthening public trust through accountability and transparency;
- Flexible adaptation to economic challenges, including inflation risks and instability of external markets;
- Stimulating economic growth by investing in long-term infrastructure projects and innovative sectors of the economy.

A comprehensive analysis of the identified problems, comparison with international best practices and modeling of possible reform scenarios allow us to assert that the sustainability and efficiency of Kazakhstan's pension system directly depend on a deep transformation of the legal mechanism for investing the Unified National Pension Fund. The recommendations developed in the framework of the study are based on the evidence base, international standards and sustainable development principles. Their implementation can contribute not only to the financial stability of pension assets, but also to the growth of the country's economic potential in the long term [19; 93].

Discussion

The efficiency of the pension system directly depends on the quality of legal regulation of pension funds' investment activities. In economically developed countries, such as the Netherlands, the UK, Canada, the USA, and Norway, there is a stable legal framework that ensures independence of investment decisions,

institutional transparency and diversification of the investment portfolio [20]. The study of pension asset management models in these countries allows identifying tools and mechanisms potentially applicable in the context of Kazakhstan, regarding its legal and socio-economic peculiarities.

The Dutch model: collective responsibility and long-term investment.

According to a study by the European Insurance and Occupational Pensions Authority (EIOPA, 2022), Dutch pension funds demonstrate high performance due to collective governance, strict disclosure standards and actuarial risk assessment. Such elements as employee participation in fund management, stable actuarial forecasts and long-term investment horizons ensure the system's resilience to market shocks [21].

For Kazakhstan, the use of collective forms of pension funds, such as professional or sectoral funds, can be a tool to increase institutional trust and balance risk sharing among pension system participants [22; 115].

UK: auto-enrolment and ESG-focused investing.

Since 2012, the UK has implemented auto-enrolment of employees into occupational pension schemes (auto-enrolment), reaching over 10 million new members (UK Department for Work and Pensions, 2021). In addition, the investment policies of funds are increasingly orientated towards ESG principles (environmental, social and governance factors). This increases not only the sustainability of pension assets, but also corresponds to the global agenda of sustainable development [23].

The adaptation of these mechanisms to Kazakhstan's practice requires amendments to the Law 'On Pension Provision' and by-laws, as well as the creation of institutional conditions for the integration of ESG principles into the investment strategies of the UNPF (Zhaksylykova, 2022) [24; 56].

US: decentralisation and tax incentives.

The US pension system combines public benefits (Social Security) with individual savings programmes, such as 401(k) and IRAs. These programmes offer high flexibility but require high levels of financial literacy among the population and stable market conditions [11]. Educational initiatives aimed at increasing the understanding of investment risks and opportunities among the population may also be useful for Kazakhstan, where the level of financial literacy remains below average [17].

Canada: Investment Authority Independence

The Canada Pension Plan Investment Board (CPPIB) is a prime example of effective institutional independence. According to official CPPIB data (2023), active portfolio management with a focus on alternative investments has achieved an average return of 9.2 % over the past 10 years. Kazakhstan could benefit from the introduction of similar practices, in particular the creation of an independent investment council with a mandate for long-term management of the EPPF and regular reporting to the public and parliament [13].

Norway: ethical public fund governance.

The Norwegian Global Pension Fund (GPFG) is the world's largest public fund, operating on the principles of transparency, political neutrality and sustainability. The fund has strict rules for excluding companies that violate environmental or social standards, which demonstrates the strategic integration of ethics into financial decisions (NBIM, 2023) [14]. Kazakhstan could take these principles into account when reforming the ENPF's investment policy, especially in the aspects of ESG filtering and divestment from risky or unethical assets.

Adapting International Experience: Implications and Limitations.

Obviously, none of the foreign models can be fully transferred to the Kazakh reality without deep adaptation. However, empirical evidence suggests that the introduction of elements of such models — collective governance, ESG investment, independent supervision and educational programmes — can significantly improve the sustainability and profitability of Kazakhstan's pension system [19; 96].

Scientific analyses show that successful reform requires a systemic approach, including:

- regulatory and legal modernisation (taking into account soft-law models);
- institutional separation of functions between the NBK, the ENPF and investment advisors;
- development of digital infrastructure for public monitoring of investment efficiency.

Thus, the international experience of pension asset management provides a rich empirical basis for evidence-based transformation of the ENPF system. It is important to emphasise that the key to success lies not in mechanical copying of models, but in scientific reflection, adaptation and correlation of best practices with Kazakhstan's realities.

Conclusions

Strengthening the legal framework for investment of the Uniform Accumulative Pension Fund in Kazakhstan, taking into account international experience

Recommendations for reforming the investment policy of the Uniform Accumulative Pension Fund:

1. Improving a flexible legal and regulatory framework for investment activities.

It is necessary to adapt the current legislation regulating the activities of the Unified Savings Pension Fund (USPF) to the modern requirements of the financial market. This includes:

- introducing flexible regulatory mechanisms for investing in a wide range of financial and alternative assets (including infrastructure, real estate and venture capital), similar to the approach of Australia and Canada;
- developing legal frameworks to respond quickly to macroeconomic and market developments;
- ensuring stable and transparent investment standards (OECD, 2023).

2. Introduce ESG principles (environmental, social and governance factors).

Sustainable investment standards should be introduced into the ENPF practice:

- form regulatory requirements for the assessment of investment projects in terms of ESG criteria, based on the practices of GPFG (Norway) and UK Pensions Regulator;
- introduce mandatory non-financial reporting on the implementation of ESG strategies;
- develop a system to reward long-term sustainable investments (PRI, 2022).

3. Expanding and diversifying the investment portfolio.

Given the limited returns on traditional assets, it is necessary to:

- expand the list of acceptable financial instruments to include assets with a long investment horizon;
- use the principles of active management based on the example of the Canadian CPPIB, including through the creation of professional management structures;
- apply international practices of risk hedging and capital concentration control (World Bank, 2022).

4. Development of collective pension schemes.

Decentralising the system and moving towards a model involving sectoral and corporate pension funds, as in the Netherlands, requires:

- legalisation of the mechanism for establishing collective pension schemes;
- a clear division of responsibilities between employer, employee, and the state;
- formalisation of risk management systems and mechanisms for employee participation in fund management.

5. Improving financial literacy of the population.

Financial behaviour of citizens is a key factor in the success of pension reform. It is recommended to:

- introduce a national programme to educate the population on financial planning and pension savings;
- integrate financial literacy modules into school and university curricula;
- use digital platforms to simulate investment scenarios and pension planning (OECD INFE, 2021).

6. Increasing transparency and accountability.

Building public trust in the ENPF requires:

- regular publication of detailed reporting on portfolio structure and investment performance;
- establishment of an independent supervisory board with the participation of representatives of the government, expert community and civil society;
- digitalisation of reporting with open access to key performance indicators.

Projected results and expected effects:

1. Formation of a sustainable and diversified pension system.

Adapting best international practices will allow Kazakhstan to build a competitive, long-term effective pension system that is resilient to external shocks and provides a high degree of protection for citizens.

2. Increasing confidence in the EPPF.

Transparent governance, citizen participation in the process of investment strategy formation and access to information will be the foundation for increasing public trust and involvement in the pension system.

3. Development of the financial market and the real economy.

Expanding the investment mandate of the ENPF will increase demand for high quality financial instruments and will stimulate the development of the national capital market, especially in the segment of infrastructure and innovative projects.

4. Integration into the global financial architecture.

Adherence to international standards, including ESG and long-term investment principles, will increase Kazakhstan's investment attractiveness and enable the country to participate more actively in global investment initiatives (e.g., UN PRI, GPFI).

5. Reducing the fiscal burden and strengthening macroeconomic stability.

An efficient pension system reduces long-term budget expenditures on social security and redistributes the burden of social support from the state to institutional savings mechanisms.

Strengthening the legal framework for the investment activities of the EPPF in Kazakhstan is a key component of modernising the national pension system. Comparative analysis of the experience of countries with highly efficient pension systems, such as Canada, the Netherlands, Norway, Australia and the UK, indicates the importance of diversification, ESG-oriented approach, institutional independence and transparency. However, the implementation of these models requires adaptation to the socio-economic and legal conditions of Kazakhstan [18].

Science-based transformation should be based on the following structural vectors:

- formation of flexible and adaptive legislation;
- institutionalisation of collective pension mechanisms;
- introduction of modern standards of sustainable investment;
- increasing citizen participation and improving their financial competence;
- ensuring accountability and digital openness of the fund.

The comprehensive implementation of the proposed reforms will lead to the creation of a transparent, inclusive and socially oriented pension system that can not only ensure a decent standard of living for citizens in retirement, but also play a significant role in the sustainable economic development of Kazakhstan in the long term.

The study shows that efficient investment of the Uniform Accumulative Pension Fund (UAPF) requires a comprehensive approach that includes improving legal regulation, enhancing transparency and introducing elements of international practice, taking into account national specifics. Based on the analysis of pension investment models in such countries as Canada, Sweden, Chile and the Netherlands, it is possible to identify key elements that contribute to the sustainability and profitability of pension funds: institutional independence of governing bodies, diversification of the investment portfolio, multi-level control, as well as a high level of accountability and transparency [24; 59].

Kazakhstan, having a unique model of a centralised pension fund, needs a legal and institutional reformatting of the system of asset management of the Unified National Pension Fund. In particular, it is necessary to:

- legislatively strengthen the independence of investment management with the establishment of clear criteria for accountability and performance assessment;
- ensure diversification of investment instruments with a priority on long-term and sustainable assets, including infrastructure and ‘green’ projects;
- introduce ESG (environmental, social and corporate governance) principles into the investment strategy;
- intensify public and parliamentary control over the activities of the asset manager institution.

Thus, adaptation of the best practices of foreign pension systems cannot be mechanical: it requires deep consideration of Kazakhstan’s socio-economic realities, the level of financial market development and the maturity of institutions. Effective reform of the legal mechanism for investing the Unified National Pension Fund's funds is possible only if there is a balanced interaction between the government, the professional investment community and a wide range of stakeholders. Only in this case the pension system will be able to ensure not only the safety, but also the multiplication of pension savings, which is critical for the long-term financial sustainability of the country.

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Б.К. Амирова, Е.С. Меербеков, Э. Юхневичус

БЖЗҚ инвестициялық қызметін реттеудің тиімді халықаралық модельдерін Қазақстан жағдайына бейімдеу

Мақала Қазақстан Республикасының Бірыңғай жинақтаушы зейнетақы қорының (БЖЗҚ) инвестициялық қызметінің құқықтық негіздеріне арналған. Жаһандану және қаржы нарықтарының интеграциясы жағдайында қолданыстағы заңнаманы жетілдіру қажеттілігіне ерекше назар аударылды. Зерттеу Норвегия, Канада және Австралия сияқты елдерде зейнетақы активтерін басқарудың шетелдік тәжірибесін салыстырмалы талдауды ұсынады, онда минималды тәуекелдермен тұрақты кірісті қамтамасыз ететін инвестициялық саясаттың тиімді модельдері енгізілген. Қазақстанның құқықтық және экономикалық ортасында осы үздік тәжірибелерді пайдалану мүмкіндіктері қарастырылуда. Атап айтқанда, инвестициялық құралдар спектрін кеңейтуге, активтерді басқару компаниялары үшін неғұрлым либералды ережелерді енгізуге және шетелдік инвесторларды тарту үшін жағдай жасауға

ерекше назар аударылады. Тұрақты аудиттерді, тәуекелдерді талдауды және цифрлық технологияларды пайдалануды қоса алғанда, инвестициялардың тиімділігін мониторингтеу және бағалау тетіктерін енгізуге ерекше назар аударылады. Мақала авторлары халықтың қаржылық сауаттылық деңгейін арттыру және Зейнетақы жинақтарын басқаруға жұртшылықтың қатысуын кеңейту қажеттігін атап көрсетеді. Қорытындыда нормативтік-құқықтық базаны жаңғырту, инвестициялық процестің ашықтығын қамтамасыз ету және жағдайды халықаралық стандарттарға сәйкес келтіруге кешенді тәсілді әзірлеу бойынша ұсыныстар беріледі. Бұл шараларды іске асыру ұзақ мерзімді перспективада зейнетақы жүйесінің қаржылық тұрақтылығын нығайтуға және халықтың БЖЗҚ-ға деген сенімін арттыруға ықпал етуі тиіс.

Кілт сөздер: БЖЗҚ, инвестиция, зейнетақы жүйесі, құқықтық реттеу, тәуекел, кірістілік, халықаралық тәжірибе, тұрақтылық, қаржылық сауаттылық, зейнетақы қорлары, басқару модельдері, әлеуметтік кодекс.

Б.К. Амирова, Е.С. Меербеков, Э. Юхневичус

Адаптация эффективных международных моделей регулирования инвестиционной деятельности ЕНПФ к условиям Казахстана

Статья посвящена правовым основам инвестиционной деятельности Единого накопительного пенсионного фонда (ЕНПФ) Республики Казахстан. Особое внимание уделяется необходимости совершенствования действующего законодательства в контексте глобализации и интеграции финансовых рынков. В исследовании представлен сравнительный анализ зарубежной практики управления пенсионными активами в таких странах, как Норвегия, Канада и Австралия, где реализованы эффективные модели инвестиционной политики, обеспечивающие стабильную доходность при минимальных рисках. Рассмотрены возможности применения лучших зарубежных практик в правовой и экономической среде Казахстана. В частности, акцент сделан на расширении спектра инвестиционных инструментов, введении более либеральных норм для компаний по управлению активами, а также создании благоприятных условий для привлечения иностранных инвесторов. Особое внимание уделяется внедрению механизмов мониторинга и оценки эффективности инвестиций, включая регулярные аудиты, анализ рисков и использование цифровых технологий. Авторы статьи подчеркивают необходимость повышения уровня финансовой грамотности населения и расширения участия общественности в управлении пенсионными накоплениями. В заключении даются рекомендации по модернизации нормативно-правовой базы, обеспечению прозрачности инвестиционного процесса и выработке комплексного подхода к приведению ситуации в соответствие с международными стандартами. Реализация этих мер в долгосрочной перспективе должна способствовать укреплению финансовой стабильности пенсионной системы и повышению доверия населения к ЕНПФ.

Ключевые слова: ЕНПФ, инвестиция, пенсионная система, правовое регулирование, риски, доходность, международный опыт, устойчивость, финансовая грамотность, пенсионные фонды, модели управления, социальный кодекс.

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Теоретико-правовые аспекты принудительного лишения права собственности

Целью исследования является комплексный теоретико-правовой анализ института принудительного лишения права собственности в законодательстве Республики Казахстан с учетом новелл, внесенных Законом «О возврате государству незаконно приобретенных активов». Особое внимание уделено выявлению сущности данного института, его места в системе гражданско-правовых механизмов прекращения права собственности, а также оценке соотношения конституционных гарантий неприкосновенности собственности и публичных интересов государства. В ходе исследования проанализированы нормы Конституции Республики Казахстан, Гражданского кодекса и указанного Закона, а также международный опыт стран континентальной и англо-американской правовых систем. Показано, что казахстанская модель сочетает в себе черты обеих правовых традиций, включая применение сниженного стандарта доказывания («разумная степень достоверности») и перераспределение бремени доказывания между истцом и ответчиком. Отмечено, что подобный подход способствует эффективности процедур по возврату активов необъяснимого происхождения, однако требует более детальной регламентации используемых понятий. Результаты исследования свидетельствуют о неоднородности института принудительного лишения права собственности: одни его формы предполагают компенсацию (реквизиция, изъятие для государственных нужд), другие — исключают ее полностью (конфискация, обращение в доход государства активов незаконного происхождения). Такой подход отражает баланс между защитой частных прав и необходимостью обеспечения верховенства закона и интересов общества. Сделан вывод о том, что дальнейшее развитие института принудительного лишения собственности в Казахстане должно быть связано с формированием единообразной судебной практики, уточнением критериев «разумной степени достоверности» и обеспечением соразмерности вмешательства государства в право собственности, что позволит укрепить доверие к правовой системе и повысить эффективность возврата активов.

Ключевые слова: право собственности, возврат активов, изъятие, конфискация, принудительное отчуждение, прекращение права собственности, активы необъяснимого происхождения, бремя доказывания, разумная степень достоверности.

Введение

Право собственности является одной из фундаментальных правовых категорий, закрепленных в Конституции Республики Казахстан, а также в ряде международных актов, участником которых является Казахстан. Согласно статье 26 Конституции Республики Казахстан, граждане могут иметь в частной собственности любое законно приобретенное имущество. Собственность гарантируется законом, и никто не может быть лишен своего имущества иначе как только по решению суда.

Вместе с тем современная правовая система Республики Казахстан, сохраняя конституционный принцип неприкосновенности собственности, предусматривает исключительные случаи ее принудительного лишения. Они возникают, как правило, по двум основаниям: во-первых, при применении мер ответственности за совершенные правонарушения, во-вторых, в силу общественной необходимости, когда защита интересов общества или государства требует изъятия имущества у его собственника.

Цель настоящей статьи — провести теоретико-правовой анализ оснований и пределов принудительного лишения права собственности в законодательстве Республики Казахстан, с особым акцентом на институт возврата государству незаконно приобретенных активов, выявить его правовую природу, место в системе мер прекращения права собственности, а также выработать предложения по обеспечению баланса между публичными интересами и конституционными гарантиями неприкосновенности собственности.

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Методы и материалы

В процессе подготовки статьи использовался комплекс общенаучных и частно-правовых методов исследования. Базой послужил диалектический метод познания, позволивший рассматривать институт принудительного лишения права собственности в развитии и взаимосвязи с другими правовыми категориями. Применялись формально-юридический метод для анализа нормативных положений Конституции, Гражданского кодекса и Закона Республики Казахстан «О возврате государству незаконно приобретенных активов», а также сравнительно-правовой метод для сопоставления казахстанской модели с подходами, существующими в странах общего и континентального права.

Перечень оснований прекращения права собственности установлен в части 2 статьи 249 Гражданского кодекса Республики Казахстан (ГК). Данный перечень является исчерпывающим, что служит гарантией от произвольного вмешательства. Каждый из них имеет собственное правовое основание и процедурные особенности.

В связи с принятием в 2023 году Закона Республики Казахстан «О возврате государству незаконно приобретенных активов» действовавшие восемь оснований были дополнены девятым — «обращение в доход государства имущества в соответствии с законодательством Республики Казахстан о возврате государству незаконно приобретенных активов» (пункт 9 части 2 статьи 249 ГК).

Результаты и обсуждение

Прекращение права собственности может быть добровольным, вследствие утраты собственности по объективным причинам или осуществляться в принудительном порядке [1; 25].

Принудительное лишение права собственности подразумевает под собой прекращение права собственности помимо воли собственника.

По определению Э.С. Бутаевой прекращение права собственности помимо воли собственника — это «предусмотренная гражданским законодательством конкретная совокупность юридических оснований, предусматривающих не только исчерпывающий перечень случаев изъятия вещи у собственника в одностороннем порядке, но и гарантированную законом целостную систему обеспечения надлежащей компенсации собственнику убытков в полном объеме и в упреждающем порядке» [2; 7].

Вместе с тем полностью согласиться с данным подходом представляется затруднительным, поскольку компенсация убытков предусмотрена далеко не во всех случаях принудительного отчуждения имущества.

Так, конфискация, являясь мерой ответственности за правонарушение, осуществляется безвозмездно, а обращение в доход государства имущества, признанного незаконно приобретенным в порядке, установленном Законом Республики Казахстан «О возврате государству незаконно приобретенных активов» (Закон), также не предполагает возмещения его стоимости собственнику. Аналогично, при изъятии имущества, которое не может принадлежать данному лицу в силу закона, компенсация выплачивается не всегда или может быть ограниченной.

Таким образом, в действующем законодательстве принудительное лишение права собственности выступает неоднородным институтом, включающим как случаи, при которых возмещение убытков является обязательным (например, реквизиция, изъятие для государственных нужд), так и случаи, в которых оно прямо исключается (конфискация, обращение в доход государства незаконно приобретенных активов).

Норма о прекращении права собственности в рамках Закона Республики Казахстан «О возврате государству незаконно приобретенных активов» реализуется через особую процедуру: по решению суда имущество, происхождение которого не подтверждается законными доходами, обращается в собственность государства.

При этом обязанность доказывания законности происхождения имущества возлагается на его владельца либо аффилированных с ним лиц. Активы признаются незаконно приобретенными в связи с их признанием судом активами необъяснимого происхождения.

В свою очередь активы необъяснимого происхождения — это активы субъекта и (или) его аффилированных лиц, соответствие стоимости которых размеру законных доходов либо иных законных источников покрытия расходов на приобретение таких активов соответствующего лица не доказано им суду в порядке, установленном законодательством Республики Казахстан.

Такой подход позволяет государству изымать имущество, источники которого не могут быть подтверждены, при этом процедура проводится в рамках гражданского судопроизводства с соблюдением гарантий защиты права собственности.

Следует отметить, что в Законе употребляется понятие «разумная степень достоверности», которое отражает пониженную планку доказывания по сравнению с уголовным процессом. Данный стандарт предполагает, что истец (Комитет по возврату активов) не обязан устанавливать обстоятельства с абсолютной, недопустимой к сомнению точностью, а должен лишь убедить суд в высокой вероятности того, что имущество приобретено незаконным путем. При этом сам термин не раскрывается в законе, что позволяет суду исходить из совокупности представленных доказательств, их внутренней согласованности, непротиворечивости и связи с другими обстоятельствами дела.

Такой подход близок к оценке доказательств, принятой в странах с системами общего права. В англо-американской правовой традиции установление фактов в судебном разбирательстве рассматривается как вопрос вероятности, а не абсолютной достоверности. Как отмечается в научной доктрине, обоснованными могут считаться лишь те гипотезы, относительно которых суд способен установить, что: а) они, вероятно, имели место; б) с высокой степенью вероятности имели место; или в) практически несомненно имели место. Все иные предположения не признаются оправданными и подтвержденными опытом и знаниями [3; 246].

Соответственно, в США сформировалось применение трех основных стандартов доказывания: «за пределами разумных сомнений» (beyond a reasonable doubt) — для уголовных дел, «перевес доказательств» (preponderance of the evidence) — для большинства гражданских споров, и «ясные и убедительные доказательства» (clear and convincing evidence) — для отдельных категорий дел, требующих повышенного уровня уверенности.

В Англии суды используют два стандарта: «за пределами разумных сомнений» для уголовных дел и «баланс вероятностей» (balance of probabilities) — для гражданских споров [4; 26]. Наиболее цитируемое определение стандарта «баланс вероятностей» при рассмотрении гражданских дел было дано лордом Деннингом в деле Miller v Minister of Pensions. Согласно его формулировке, «если доказательства таковы, что суд может сказать: «мы считаем это более вероятным, чем нет», то бремя доказывания считается выполненным; но если вероятности равны, то нет» [5; 219].

Континентальная (романо-германская) правовая система оперирует иной логикой: здесь применяются концепции субъективного убеждения судьи (intime conviction во Франции, libero convincimento del giudice в Италии, richterliche Überzeugung в Германии) — форма внутренней уверенности, которая может быть выше, чем баланс вероятностей, но ниже уголовного стандарта «вне разумных сомнений» [6].

В казахстанском праве при рассмотрении дел об обращении в доход государства активов необъяснимого происхождения закреплен особый подход, сочетающий отдельные элементы как общего, так и континентального права. Статья 28 Закона прямо предусматривает распределение бремени доказывания между истцом и ответчиком, устанавливая, что истец обязан с «разумной степенью достоверности» доказать принадлежность активов, тогда как ответчик должен представить «ясные и убедительные доказательства» законности источников их приобретения.

Таким образом, казахстанский стандарт доказывания занимает промежуточное положение: по ключевым обстоятельствам он приближается к «балансу вероятностей» в англо-американской системе, а по требованию к доказательствам ответчика — к более высокому уровню убедительности, характерному для отдельных категорий гражданских дел. Такое сочетание отражает стремление законодателя обеспечить эффективность возврата незаконно приобретенных активов при одновременном сохранении процессуальных гарантий сторон.

Заключение

Анализ правового регулирования принудительного лишения права собственности в Республике Казахстан показал, что данный институт охватывает как традиционные основания, закрепленные в Гражданском кодексе, так и новые механизмы, связанные с обращением в доход государства активов необъяснимого происхождения. Введение данного основания, предусмотренного Законом «О возврате государству незаконно приобретенных активов», отражает современные тенденции в сфере борьбы с незаконным обогащением и возврата активов в государственную собственность. Особенностью казахстанской модели является перераспределение бремени доказывания между истцом и ответчиком, а также использование стандарта «разумной степени достоверности», что сближает ее с подходами,

применяемыми в зарубежных странах. Проведенное исследование позволяет заключить, что дальнейшее развитие правоприменительной практики в этой сфере должно быть направлено на формирование единообразного понимания и применения указанных правовых стандартов, что обеспечит эффективность института при соблюдении принципов законности и соразмерности вмешательства в право собственности.

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Меншік құқығынан мәжбүрлеп айырудың теориялық және құқықтық аспектілері

Зерттеудің мақсаты — Қазақстан Республикасының заңнамасындағы мәжбүрлеп меншіктен айыру институтына, соның ішінде «Мемлекетке заңсыз иеленген активтерді қайтару туралы» Заңымен енгізілген жаңалықтарды ескере отырып, кешенді теориялық-құқықтық талдау жүргізу. Ерекше назар аталған институттың мәнін айқындауға, оны меншік құқығын тоқтатудың азаматтық-құқықтық тетіктері жүйесіндегі орнына, сондай-ақ меншікке қол сұқпаушылықтың конституциялық кепілдіктері мен мемлекеттің қоғамдық мүдделерінің арақатынасын бағалауға аударылған. Зерттеу барысында Қазақстан Республикасының Конституциясы, Азаматтық кодексі мен аталған Заңның нормалары, сондай-ақ континенттік және ағылшын-американдық құқықтық жүйелер елдерінің халықаралық тәжірибесі талданды. Көрсетілгендей, қазақстандық модель екі құқықтық дәстүрдің ерекшеліктерін ұштастырады, оның ішінде төмендетілген дәлелдеу стандартының («дәлдіктің қисынды дәрежесі») қолданылуын және талапкер мен жауапкер арасындағы дәлелдеу ауыртпалығын қайта бөлуді қамтиды. Аталған тәсіл түсініксіз шығу тегі бар активтерді қайтару рәсімдерінің тиімділігін арттыруға ықпал ететіні, алайда қолданылатын ұғымдарды неғұрлым егжей-тегжейлі реттеуді талап ететіні атап өтілді. Зерттеу нәтижелері мәжбүрлеп меншіктен айыру институтының біркелкі еместігін көрсетеді: оның кейбір нысандары өтемақы қарастырады (реквизиция, мемлекеттік қажеттіліктер үшін алу), ал басқалары оны толықтай жоққа шығарады (конфискация, заңсыз жолмен алынған активтерді мемлекет кірісіне алу). Мұндай тәсіл жеке құқықтарды қорғау мен заң үстемдігін және қоғам мүдделерін қамтамасыз ету қажеттілігінің арасындағы тепе-теңдікті бейнелейді. Қорытынды ретінде Қазақстандағы мәжбүрлеп меншіктен айыру институтының одан әрі дамуы біркелкі сот тәжірибесін қалыптастырумен, «дәлдіктің қисынды дәрежесі» өлшемдерін нақтылаумен және мемлекеттің меншік құқығына араласуының өлшемділігін қамтамасыз етумен байланысты болуы тиіс екені атап өтілді. Бұл құқықтық жүйеге деген сенімді нығайтуға және активтерді қайтарудың тиімділігін арттыруға мүмкіндік береді.

Кілт сөздер: меншік құқығы, активтерді қайтару, алып қою, тәркілеу, мәжбүрлеп иеліктен шығару, меншік құқығын тоқтату, түсініксіз шыққан активтер, дәлелдеу ауыртпалығы, сенімділіктің ақылға қонымды дәрежесі.

N.M. Suindikov

Theoretical and legal aspects of compulsory deprivation of property rights

The aim of the study is to conduct a comprehensive theoretical and legal analysis of the institution of compulsory deprivation of property rights in the legislation of the Republic of Kazakhstan, taking into account the amendments introduced by the Law 'On the Return of Illegally Acquired Assets to the State'. Special attention is given to identifying the essence of this institution, its place in the system of civil law mechanisms for terminating ownership rights, and assessing the balance between constitutional guarantees of property rights and the public interests of the state. The study analyses the provisions of the Constitution of the Republic of Kazakhstan, the Civil Code and the aforementioned Law, as well as international experience from countries with continental and Anglo-American legal systems. It is shown that the Kazakh model combines features of both legal traditions, including the application of a reduced standard of proof ('reasonable degree of certainty') and the redistribution of the burden of proof between the plaintiff and the defendant. It is noted that this approach contributes to the effectiveness of procedures for the return of assets of unexplained origin, but requires more detailed regulation of the concepts used. The results of the study indicate the heterogeneity of the institution of compulsory deprivation of property rights: some forms of it involve compensation (requisition, seizure for public use), while others exclude it entirely (confiscation, conversion of assets of illegal origin into state revenue). This approach reflects the balance between protecting private rights and the need to ensure the rule of law and the interests of society. It is concluded that further development of the institution of compulsory deprivation of property in Kazakhstan should be linked to the formation of uniform judicial practice, clarification of the criteria for 'reasonable degree of certainty' and ensuring the proportionality of state intervention in property rights, which will strengthen confidence in the legal system and increase the effectiveness of asset recovery.

Keywords: property rights, asset recovery, seizure, confiscation, compulsory alienation, termination of property rights, assets of unexplained origin, burden of proof, reasonable degree of certainty.

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