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КОНСТИТУЦИОННОЕ, АДМИНИСТРАТИВНОЕ И МЕЖДУНАРОДНОЕ ПРАВО

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Роль средств массовой информации в формировании общегражданской идентичности (на примере Российской Федерации и Республики Казахстан)

В статье рассматривается роль системы образования, средств массовой информации и интернет-ресурсов в формировании личности в условиях цифровой эпохи. Авторы подчеркивают, что, несмотря на значимость системы образования в сфере просвещения, она не может в полной мере конкурировать с мощным влиянием СМИ и интернета на формирование социальной идентичности. Особое внимание уделяется тому, как информационные ресурсы, включая телевидение, интернет-платформы и социальные медиа, становятся основным инструментом воздействия на общественные и индивидуальные идентичности. В статье анализируется, как современный человек, даже пытаясь избежать воздействия СМИ, неизбежно становится частью информационного потока, с которым он сталкивается в повседневной жизни. Авторы приходят к выводу, что влияние СМИ на формирование социальной идентичности стало доминирующим, и это воздействие невозможно полностью игнорировать в условиях современной социальной структуры. СМИ играют ключевую роль в формировании общегражданской идентичности, особенно в условиях стремительного развития технологий и распространения информации. С увеличением доступа к интернет-ресурсам и социальным медиа каждый человек стал не только потребителем, но и создателем контента, что размывает традиционные границы между профессиональными журналистами и обычными пользователями. Это создает новые формы коммуникации, которые влияют на восприятие общественных ценностей и формируют гражданскую идентичность. СМИ не только информируют, но и становятся ареной для обсуждения политических, культурных и социальных вопросов, влияя на коллективное сознание и идентификацию людей с определёнными национальными и гражданскими идеалами.

Ключевые слова: гражданская идентичность, Республика Казахстан, Российская Федерация, средства массовой информации, информационные ресурсы, мультимедийные платформы, личность.

Введение

Актуальность темы исследования. В современном мире неуклонно повышается доступность информации. Развитие интернет-технологий даёт возможность обращения населения к материалам огромного количества электронных версий средств массовой информации (далее — СМИ), интернет-изданий, телеканалов и т.д.

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Более того, сегодня в создании контента участвуют не только профессиональные журналисты, но и вчерашние читатели и зрители — увлеченные любители. Это нередко стирает грань между говорящим и слушающим, формируя особую, доверительную форму коммуникации.

Информация играет огромную роль в формировании личности. Справедливо сказанное и в отношении такой значимой части личностного бытия, как социальная идентичность и гражданская идентичность.

Цель исследования: анализ юридической науки, законодательства, регулирующего роль СМИ в формировании общегражданской идентичности и его практической реализации в Российской Федерации и в Республике Казахстан.

Задачи исследования: исследовать научные труды, законодательство и правоприменительную практику в сфере воздействия СМИ на формирование общегражданской идентичности в Российской Федерации и в Республике Казахстан, сформулировать предложения и рекомендации по исследуемым вопросам.

Методы и материалы

Методология исследования опирается на общенаучные (диалектический, системный) и специальные (формально-юридический, сравнительно-правовой) методы и приемы изучения и анализа законодательства и правоприменительной практики в сфере государственного управления.

В Республике Казахстан правовой основой для регулирования общественных отношений в области масс-медиа является Закон Республики Казахстан от 19 июня 2024 года «О масс-медиа» [1].

В Российской Федерации нормативным правовым актом, регулирующим отношения между участниками производства массовой информации в России: между государством, обществом, средствами массовой информации (включая учредителя, издателя и редакцию), авторами, гражданами Российской Федерации, источниками информации и другими, является Закон Российской Федерации от 27.12.1991 года в ред. от 23.07.2025 года [2].

Теоретические и практические вопросы воздействия СМИ на общественные отношения в современном обществе являются одним из актуальных направлений юридической науки и практики.

Рассматриваемой в настоящей статье проблематике посвящены выступления Президента Республики Казахстан К. -Ж. К. Токаева [3] и Президента Российской Федерации В.В. Путина [4].

Феномен воздействия СМИ на общественные отношения является предметом рассмотрения в научных трудах Негман Е.С., Маклюэна Г.М., Галкина Д.В., Попова М.Е., Костомарова Н.И. Направления воздействия СМИ Казахстана на этнополитику Республики нашли отражение в статье Сченсновича В.Н., роль прессы в формировании общего культурного пространства Республики Казахстан анализирует Малиновский В.А. В статье Асылтаевой Э. и Нурова М. гражданская идентичность рассматривается в рамках таких категорий, как патриотизм, гражданская активность, активное проявление политической культуры.

Вместе с тем, в связи с возросшим влиянием СМИ на формирование социальной идентичности в условиях цифровой эпохи, особое внимание уделяется тому, как информационные ресурсы, включая телевидение, интернет-платформы и социальные медиа, становятся основным инструментом воздействия на общественные и индивидуальные идентичности. Вследствие этого актуализируется необходимость анализа и оценки возникших отношений и выработки организационно-правовых мер по воздействию СМИ на формирование социальной идентичности, соответствующей основным направлениям позитивной общественно-политической жизни, традиционным отечественным культурным, историческим, нравственным ориентирам, способствующим объединению народа на основе общих ценностей.

Результаты

1. Гражданская идентичность представляет собой свойство, отражающее принадлежность индивида к народу как единому целому, вне зависимости от его национальной, культурной или религиозной принадлежности. Она основана на восприятии общих культурных, исторических, духовных ценностей, приверженности интересам своего государства, осознании себя как гражданина, стремящегося осуществлять свои действия во благо страны.

2. В этом контексте, в условиях цифровой эпохи, СМИ отведена одна из ключевых ролей в утверждении гражданской идентичности, освещении истории, культуры и географии страны, продвижении государственного языка, формировании общественного согласия. СМИ выполняют функции

просвещения и мобилизации, влияя на общественное сознание и способствуя объединению народа на основе общих ценностей и представлений.

3. Одной из важнейших задач СМИ, законодательно закрепленных в Российской Федерации и Республике Казахстан, является создание содержательного отечественного контента, направленного на развитие личности, общества и государства. Государству необходимо совершенствовать организационно-правовой механизм, обеспечивающий расширение позитивной роли отечественных СМИ в формировании общегражданской идентичности.

4. В современных условиях возрастает роль правовых аспектов регламентации вопросов этики, ответственности и достоверности информации.

Новизна исследования. Влияние средств массовой информации на формирование гражданской идентичности становится доминирующим фактором, который невозможно игнорировать в условиях современной социальной структуры.

СМИ играют важную роль в формировании общегражданской идентичности, особенно в условиях стремительного развития технологий и распространения информации.

Информационные технологии и мультимедийные платформы становятся неотъемлемыми инструментами в процессе формирования и трансформации общественных и индивидуальных идентичностей, что актуализирует совершенствование правовых аспектов регламентации вопросов этики, ответственности, достоверности и содержательности информационного контента.

Обсуждение

Система образования, средства массовой информации и многочисленные ресурсы сети «Интернет» — сегодня это три кита, на которые опирается формирование личности новой цифровой эпохи. И если в сфере просвещения система образования способна, хотя бы в некоторых предметных областях, уверенно выступить конкурентом двух других китов, то в сфере информационного воздействия на формирование социальной идентичности у СМИ нет конкурентов. Человек может сознательно избегать их воздействия, но по-настоящему это сегодня возможно только вне общества.

Да, именно СМИ до сих пор занимают центральное место в названной выше триаде. Прямо или опосредованно они влияют на формирование личности практически с рождения и не прекращают своего воздействия до самого конца её бытия — смерти или тяжелых когнитивных нарушений.

СМИ, с одной стороны, сохраняют атрибуты инструмента — гипотетически их можно использовать исключительно во благо, для информирования и просвещения населения, они действительно сохраняют потенциал влияния на формирование объединяющих образов — образов позитивного будущего, образа единой страны, образа её единого народа, включающего широкое разнообразие этнических и этноконфессиональных общностей, вместе стремящихся строить и развивать родную землю.

Насколько способны СМИ соответствовать такому образу?

Американский экономист и социолог Эдвард Герман и известный лингвист и философ Ноам Хомский в 1988 году выдвинули теорию «модели пропаганды», согласно которой «в любом обществе неравномерность распределения богатства и власти воспроизводится в СМИ посредством экономических условий». По сути, средства массовой информации и социальные медиа представляют собой своеобразные фабрики по обработке и продаже сознания своей аудитории заказчику — корпорациям, а в конечном итоге — финансово-экономическим группам, обладающим значительным политическим влиянием. В подобных условиях объективность СМИ неизбежно уступает интересам заказчиков — от рекламодателей до идеологических структур. [5].

Современное развитие социальных сетей и мессенджеров позволяет говорить о реальном воплощении в жизнь метафоры Маршалла Маклюэна — «Глобальной деревни», в которой обеспечивается возможность мгновенной коммуникации между людьми из разных уголков планеты. Тем не менее, значительная часть информации и её интерпретаций в «Глобальной деревне» по-прежнему производится традиционными СМИ, изменились лишь каналы распространения информации [6].

Современная российская молодежь, особенно та её часть, которая стремится соответствовать новейшим зарубежным социальным тенденциям и практикам, нередко рассматривает в качестве преимущества отказ от телевизора или отказ от федеральных телеканалов, прежде всего государственных. Речь идет об отказе от потребления информационных и общественно-политических телевизионных программ, что свидетельствует о трансформации информационного поведения и переориентации молодежной аудитории на альтернативные цифровые источники.

Более того, представители молодежи всё чаще считают тип средства медиакommunikации, посредством которого они получают информацию, важнейшим его атрибутом, однако не атрибутом, влияющим на восприятие информации, в том числе «ускоряющим и усиливающим коммуникационную функцию», а атрибутом, определяющим степень достоверности самой информации [7].

Интересен и всё более распространен случай искаженной интерпретации ещё одного знаменитого утверждения Маршала Маклюэна: «средство коммуникации есть сообщение» [6].

В пределе, в наиболее востребованном «средстве» медиакommunikации достоинством становится не содержание, а манипулятивно навязанная форма.

Место авторитета — человека, обладающего общественной известностью и репутацией, взаимодействующего с потребителем информации (от которого, в свою очередь, порой требуются немалые усилия для её понимания и правильной интерпретации), — занимает аноним.

Модель восприятия приобретает вид: «осведомленный профан рассказывает неосведомленному профану о сакральном». Реальное же её содержание — «анонимный профессионал-пропагандист в маске профана рассказывает профанам о сакральном». Возникает вопрос: насколько значима и заметна подобная проблема?

Думается, что мы стали свидетелями явного подтверждения существования такого рода диалогов. Немалая часть — прежде всего молодежи (атрибутирующей себя достаточно широким спектром самых «прогрессивных» эпитетов), а также представителей более старших возрастных когорт, — оказалась в искусно надутым, изолированном от основной части общества информационном пузыре. Стремительный отъезд из Российской Федерации заметного числа молодых горожан, жителей крупных городов, представителей творческих профессий и IT-сферы, с последующим возвращением подавляющей их части в течение двух-трех месяцев (около 85 % уехавших специалистов IT-сферы вернулись в Россию [8]), свидетельствует о том, что сформированная популярными в этих социальных группах СМИ картина мира мало соответствовала реальности. Следовательно, можно констатировать, что эти люди длительное время находились под интенсивным информационно-пропагандистским воздействием, которое нередко оставалось незаметным даже для их близких. В полном соответствии с реалиями Глобальной деревни, уехавшие подробно информировали оставшихся о перипетиях своей жизни.

Тем не менее, подобные метания, сопровождаемые подробными описаниями, воспринимаются не просто как распространенный казус, а как симптом более широкой проблемы — откровенно враждебной позиции части населения, достаточно многочисленной, чтобы рассматривать происходящее как общественно значимое явление.

Можно долго рассуждать о достоинствах и недостатках советского подхода к построению наднациональной идентичности, этому феномену посвящено немало научных работ. Будучи длительным, насыщенным и интенсивным, этот процесс был неоднородным: в разные периоды он становился объектом разнообразной критики. Его этапы продолжают находиться в фокусе внимания исследователей, выступающих уже с иных позиций и иначе оценивающих как положенные в его основу идеи, так и их реализацию, нежели современники [9; 16–19].

В конце 80-х — начале 90-х годов область исторического прошлого оказалась вне какого-либо контроля: не только власть и администраторы от науки, но и академическое сообщество оказались бессильны противостоять размаху исторического мифотворчества.

Существенную роль в этом процессе сыграли СМИ, которые на этапе перестройки в значительной степени способствовали не столько формированию, сколько трансформации самосознания советского народа, утрачивавшего объединяющие ценности и цели.

Как, в принципе, возможно воздействовать на кадровый состав и идеологическое наполнение СМИ, особенно государственных, с тем чтобы хотя бы минимизировать их негативное влияние на формирование общегражданской идентичности? Пока этот вопрос стоит исключительно в реактивном, а в каком-то смысле — почти бессильном положении: путь к возрождению всегда начинается с самых малых шагов.

Первое. Влияние общественности, различных общественных структур и общественный контроль за СМИ. Да, это реактивные меры: они не формируют повестку, а лишь реагируют на наиболее неадекватные проявления извечной для СМИ тенденции — «погони за сенсациями» со всеми присущими ей неприглядными атрибутами. Более того, такие формы контроля пока недостаточно развиты и нередко воспринимаются молодежью как своего рода «поколенческая узурпация» права контроля над медиасферой.

Кроме того, низкая заметность и ограниченный авторитет подобных структур в медиапространстве остаются серьезным препятствием. СМИ — не только как совокупность конкретных персоналий, но и как система, объективно не заинтересованная в популяризации и укреплении авторитета институтов, осуществляющих контроль над их деятельностью.

Второе. Возрастающая конкуренция с альтернативными средствами медиакommunikации. Если вчера социальные сети и мессенджеры были пространством взаимодействия пропагандистов с профанами, то сегодня с профаном посредством новых медиакommunikаций может говорить воин, эксперт, ученый, влиятельный политик, государственный деятель. Это не ликвидирует пространство коммуникации «аноним — профан», но формирует существенно более приемлемую альтернативу.

Это путь ярких индивидуальностей, это инициатива «снизу», и она очень важна для формирования общественного запроса на изменения «сверху».

Самую важную и сложно преодолимую проблему построения позитивного влияния российских СМИ на формирование общероссийской гражданской идентичности впервые сформулировал ещё до появления старейшей из них — петровской газеты «Ведомости» — великий хорватский богослов, философ и лингвист Юрий Гаспарович Крижанич.

Речь идет не столько о самих СМИ или лидерах общественного мнения, сколько о существующей парадигме гуманитарного знания, в рамках которой происходит воспроизводство как кадров, так и смыслов: «Иные обольщают нас суетными именами академий и высших училищ, степенями докторов, магистров, но всё это пустяки: земля наполняется множеством бездельных писак и книжников. Лучше было бы им в молодости учиться полезным и потребным для народа ремеслам...» [10].

Фактически речь шла о стремлении иностранцев в большей степени влиять на формирование гуманитарного знания, нежели допускать передачу инженерно-технических знаний: «...ни одного знаменитого врача, математика, музыканта или архитектора». Именно так выстроена и современная система научной коммуникации, постепенно складывающаяся, как минимум, с XVII века: импорт гуманитарного знания и экспорт фундаментальной науки (в случае её появления) — та самая «проблема утечки мозгов» и обратная трансляция устойчивого представления об отсталости. С этой ситуацией, среди прочего, пытался бороться и Петр Великий.

Назвав бездумное преклонение перед внешними атрибутами западноевропейской жизни большой бедой для образованных жителей тогдашней Московии и введя для обозначения этого явления термин «чужебесие» (или, на латинский манер, «ксеномания»), Ю.Г. Крижанич уже в XVII веке подчёркивал, что только развитое наднациональное самосознание может стать основой процветания государства, и тем самым ставил вопрос о наднациональной идентичности [10].

Государство, усиливаясь в определенные исторические периоды, стремилось преодолеть эту ситуацию, однако, ослабляя свои позиции в другие времена, оказывалось неспособным противостоять ей. Уже давно была замечена и осмыслена упомянутая выше проблема так называемой «утечки мозгов». Гораздо менее заметной оставалась противоположная тенденция — приток, причем нередко не отдельных специалистов, а своего рода вторжение прогрессивных систем подготовки гуманитарных кадров. Эти системы в последние десятилетия создаются зарубежными или российскими, но при обязательном участии зарубежных научных фондов.

Президент Российской Федерации В.В. Путин отмечает, что «именно средства массовой информации во многом задают духовно-нравственные, ценностные ориентиры, формируют общественное мнение» [4].

Таким образом, нашему государству, если оно сочтёт необходимым развивать позитивную роль российских СМИ в формировании общегражданской идентичности, необходимо в полном соответствии с теорией «модели пропаганды» (но не ограничиваясь ею), научиться быть заказчиком и своего рода «покупателем» гуманитарного знания, наконец потеснив с этого, теперь уже всё более внутри-российского, рынка знания и смыслов иностранных заказчиков и действующих в его интересах агентов.

Только в более широком пространстве воспроизводства и развития гуманитарного знания и смыслов возможна позитивная для общегражданских целей деятельность СМИ, а также её адекватная означенным целям общественная и экспертная оценка.

Отметим, что инструментально сделать это не будет столь уж сложно, но на понимание того, что же заказчик должен в идеале получить, уйдут годы, даже при столь быстром сегодня производстве и накоплении информации. Уже существующий серьёзный общественный запрос и потенциально мощная общественная поддержка, неминуемая конструктивная критика и, порой, даже близкое к

протестному недовольство отдельными решениями — это то, что настоящая общегосударственная нация способна и должна обеспечить в качестве поддержки усилий государства в таком важном направлении общественного развития.

В Республике Казахстан исключительно важное внимание уделяется правовому регулированию статуса и деятельности масс-медиа в контексте воздействия их на формирование гражданской идентичности. Статья 20 Конституции Республики Казахстан провозглашает:

1. Свобода слова и творчества гарантируются. Цензура запрещается.

2. Каждый имеет право свободно получать и распространять информацию любым, не запрещенным законом способом. Перечень сведений, составляющих государственные секреты Республики Казахстан, определяется законом.

3. Не допускаются пропаганда или агитация насильственного изменения конституционного строя, нарушения целостности Республики, подрыва безопасности государства, войны, социального, расового, национального, религиозного, сословного и родового превосходства, а также культа жестокости и насилия» [11].

Данные конституционные нормы являются фундаментом для регулирования общественных отношений в области масс-медиа, установления их правовых основ обеспечения конституционного права на свободу слова и творчества в Законе Республики Казахстан от 19 июня 2024 года «О масс-медиа» [1].

Президент Республики Казахстан К.К. Токаев указывает, что «В конечном счете и государство, и журналисты служат народу, оказывают влияние на жизнь страны. Сейчас, как и прежде, в национальной прессе находят свое отражение национальные интересы. У нас общая цель — построение Справедливого Казахстана, страны равных возможностей для всех» [3].

Одной из важнейших задач СМИ, закрепленных в законодательстве Республики Казахстан, является создание качественного отечественного контента, способствующего гармоничному развитию личности, общества и государства.

Казахстанские СМИ играют ключевую роль в формировании гражданской идентичности, выполняя функции распространения информации, интерпретации событий и формирования ценностных ориентиров. Они способствуют осознанию гражданами не только казахской, но и других разных национальностей своей принадлежности к государству — Республике Казахстан, воспитанию патриотизма и укреплению чувства общности.

В этом контексте казахстанским СМИ отведена одна из ключевых ролей в утверждении общегражданской идентичности, освещении истории, культуры и географии страны, продвижении государственного языка, формировании общественного согласия. СМИ выполняют функции просвещения и мобилизации, влияя на общественное сознание и способствуя объединению народа на основе общих ценностей и представлений.

В научных исследованиях отмечается, что СМИ обладают действенным средством, положительно влияющим на общественные процессы [12; 65–87].

Формируя общее культурное пространство, масс-медиа Республики Казахстан тем самым стремятся к консолидации современного казахстанского общества [13; 56–60].

В Республике Казахстан средства массовой информации в период становления и укрепления независимого государства стали важнейшим инструментом для популяризации культурных ценностей, истории и традиций.

Влияние СМИ на гражданскую идентичность проявляется в продвижении и популяризации казахского языка как ключевого фактора в усвоении культурных норм и идеологии в условиях многонационального общества. Язык — важнейший инструмент, определяющий самоидентичность. Вследствие этого организационно-правовые мероприятия по изучению казахского языка в образовательных учреждениях являются одними из приоритетных для популяризации его в социальных сетях и в иных средствах массовой информации [14].

Одним из первостепенных направлений воздействия СМИ на гражданскую идентичность является освещение важнейших исторических событий и формирование исторической памяти. Незаслуженно забытым или искаженным в угоду тоталитарным или внешним силам историческим событиям Казахстана должно быть уделено надлежащее освещение и разъяснение в СМИ. Эта важнейшая функция СМИ способствует формированию общей исторической памяти, которая является важной составляющей гражданской идентичности. Освещение в казахстанских СМИ событий, основанных на географических, исторических и культурных факторах, способствует формированию высокой оценки

у граждан общих ценностей и взглядов, что объединяет их вокруг идеи гражданской общности, особенно у молодежи. Резонансные события, достижения и другие медиаматериалы, демонстрирующие единство страны и народа, помогают гражданам Казахстана почувствовать свою принадлежность к общему государству. В Республике Казахстан за годы независимости была учреждена Ассамблея народа Казахстана — консультативно-совещательный орган при Президенте Республики Казахстан [15]. Это уникальный институт, созданный для разработки и реализации государственной политики, направленной на обеспечение общественного согласия и общенационального единства в многонациональной стране. Освещение и популяризация деятельности данного института является одним из приоритетных направлений деятельности СМИ в контексте формирования казахстанской гражданской идентичности и содействия развитию государственного языка и других языков народов Казахстана.

В условиях глобализации казахстанские СМИ не могут не испытывать определенное воздействие внешних информационных источников. В этой ситуации отечественным СМИ отводится и определенная защитная функция. Противовесом негативному воздействию информационных потоков, которые могут размывать гражданскую идентичность, является, в первую очередь, надлежащее и профессиональное освещение основных направлений общественно-политической жизни, культурных, исторических, нравственных ориентиров казахстанского общества. Через масс-медиа граждане должны быть осведомлены об организационно-правовых реформах, направленных на улучшение благосостояния народа, социальных реформах и других важных для общества явлениях, что стимулирует общественный диалог и формирует правосознание. Согласно законодательству в Республике Казахстан не допускаются пропаганда или агитация насильственного изменения конституционного строя, нарушения целостности Республики, подрыва безопасности государства, войны, социального, расового, национального, религиозного, сословного и родового превосходства, а также культ жестокости и насилия.

Таким образом, современные СМИ обладают большими возможностями для влияния на общественные процессы в различных сферах. Действуя на правовой основе, используя установленные законодательством возможности, современные казахстанские масс-медиа являются действенным элементом воздействия на общественное мнение, способствующим формированию гражданской идентичности.

Выводы

В современных условиях формирование гражданской идентичности является одной из важнейших задач, стоящих перед государством.

Гражданская идентичность в данной статье рассматривается как свойство и ощущение индивида, заключающееся в принадлежности к народу как единому целому, основанное на общих культурных, исторических, духовных ценностях, а также как правовой статус гражданина, действующего в интересах страны независимо от этнической, культурной или религиозной принадлежности.

Воздействие средств массовой информации на формирование гражданской идентичности в условиях развития информационных технологий значительно возросло. С учетом проводимой информационной политики гражданская идентичность находится в состоянии постоянной трансформации. Актуализируется необходимость правового регулирования общественных отношений в данной сфере, обусловленная процессом информационной интеграции мира, одним из важнейших механизмов которой выступают средства массовой информации.

Особое внимание следует уделять организационно-правовым мерам, направленным на разъяснение и распространение ценностей, ориентиров и традиций, передаваемых с помощью средств массовой информации. Они способствуют консолидации общества, формированию сопричастности к событиям в государстве и общественной жизни, а также укреплению гражданской идентичности.

Влияние СМИ может быть как позитивным, так и негативным. В целях усиления позитивной роли средств массовой информации в формировании общегражданской идентичности необходимо совершенствовать правовые механизмы регулирования вопросов этики, ответственности и достоверности распространяемой информации.

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Азаматтық бірегейлікті қалыптастырудағы бұқаралық ақпарат құралдарының рөлі (Ресей Федерациясы мен Қазақстан Республикасының тәжірибесінде)

Мақалада цифрлық дәуір жағдайында тұлғаны қалыптастырудағы білім беру жүйесінің, бұқаралық ақпарат құралдарының және интернет-ресурстардың рөлі қарастырылған. Авторлар ағарту саласында білім беру жүйесінің маңыздылығына қарамастан, оның әлеуметтік бірегейлікті қалыптастыруда бұқаралық ақпарат құралдары мен интернеттің қуатты ықпалымен толықтай бәсекелесе алмайтынын атап өтеді. Сонымен қатар ақпараттық ресурстар, соның ішінде теледидар, интернет-платформалар мен әлеуметтік медиа, қоғамдық және жеке бірегейліктерге ықпал етудің негізгі құралына айналғаны ерекше көрсетілген. Қазіргі заманғы адамдардың БАҚ ықпалынан аулақ болуға тырысқанның өзінде, күнделікті өмірде кездесетін ақпарат ағынының бір бөлігіне айналуы талданған. Авторлар БАҚ-тың әлеуметтік сәйкестікті қалыптастыруға әсері басым болды және бұл әсерді қазіргі заманғы әлеуметтік құрылым тұрғысынан толығымен елеуге болмайды деген қорытынды жасаған. Ақпараттық технологиялардың қарқынды дамуы мен ақпаратқа қолжетімділіктің артуы аясында БАҚ азаматтық бірегейлікті қалыптастыруда маңызды рөл атқарады. Интернет пен әлеуметтік медианың кеңінен

таралуы әрбір адамды тек ақпарат тұтынушысы ғана емес, сонымен қатар контент жасаушысына айналдырды. Бұл кәсіби журналистика мен қарапайым қолданушылар арасындағы дәстүрлі шекараларды жойып, қоғамдық құндылықтарды қабылдауға және азаматтық бірегейлікті қалыптастыруға әсер ететін жаңа коммуникация түрлерін тудырады. БАҚ тек ақпарат тарату құралы ғана емес, сонымен қатар саяси, мәдени және әлеуметтік мәселелерді талқылайтын алаңға айналып, адамдардың ұлттық және азаматтық идеалдармен ұқсастығын қалыптастыруға ықпал етеді.

Кілт сөздер: азаматтық бірегейлік, Қазақстан Республикасы, Ресей Федерациясы, бұқаралық ақпарат құралдары, ақпараттық ресурстар, мультимедиялық платформалар, тұлға.

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The role of mass media in the formation of civil identity (with reference to the Russian Federation and the Republic of Kazakhstan)

The article explores the role of the education system, mass media, and Internet resources in shaping personality in the digital age. The authors argue that, although education remains important, it cannot fully compete with the powerful influence of mass media and the Internet on the formation of social identity. Particular attention is given to how television, online platforms, and social media have become key tools in shaping both public and individual consciousness. Even those who try to avoid media influence inevitably become a part of the constant information flow of daily life. The media now play a dominant role in forming social identity, especially amid rapid technological development and broad access to information. With the rise of the Internet, individuals have become not only consumers but also content creators, blurring the line between professional journalism and user-generated content. This shift has created new forms of communication that influence the perception of social values and shape civic identity. Media platforms serve not only as sources of information but also as arenas for discussing political, cultural, and social issues, thereby impacting collective consciousness and national identity.

Keywords: civil identity, Republic of Kazakhstan, Russian Federation mass media, information resources, multimedia platforms, personality.

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International experience of legal regulation of nuclear energy use and its development in other countries

This article provides an overview of the global experience in legal regulation in the field of nuclear energy. It focuses on the evolution of legislative approaches in leading foreign countries, analyzing both international legal initiatives and national legislation. The article also considers modern challenges related to nuclear safety, liability, and the development of new technologies aimed at environmental sustainability. The purpose of the study is to analyze various approaches to legal regulation of the nuclear industry, assess the effectiveness of current mechanisms, and identify key trends and principles that contribute to safe and sustainable nuclear energy development at the national and international levels. This forms the basis for recommendations on developing a national regulatory framework based on best international practices and the recommendations of the IAEA. Additionally, we can identify ways to harmonize national legislation with international standards and obligations. The methodological foundation is a comparative analysis of legal institutions, norms, and approaches to nuclear energy regulation in various countries. Through the comparative legal method, the study highlights differences in legislative systems, regulations, and enforcement practices among leading nuclear states. This also allows us to identify common trends and effective regulatory models. As a result, the study identifies key features of global experience in legal regulation of nuclear energy use and outlines main trends in its development abroad. Foreign experience provides us with valuable lessons and examples that can be effectively applied in our national legal framework to ensure the safe, sustainable, and socially acceptable use of nuclear energy.

Keywords: nuclear energy, legal regulation in the field of atomic energy use, nuclear energy, nuclear safety.

Introduction

The modern world is undergoing significant changes in the energy sector, posing new challenges for countries seeking to ensure energy and economic security. Against the backdrop of global climate change, efforts to reduce greenhouse gas emissions, and the digital transformation of the energy market, nuclear energy has once again gained strategic importance as a stable, reliable, and low-carbon energy source. This issue is particularly relevant to the Republic of Kazakhstan, where nuclear power generation is not only a matter of energy security but also a strategic challenge that could ensure energy independence, environmental sustainability, and technological modernization. In this context, nuclear energy is not simply a technical or industrial resource; it is an essential element of national survival, strategic autonomy, and a tool for economic balancing.

The relevance of the research stems from the need to study relevant aspects and features of the legal regulation of nuclear energy. In today's world, there is a growing demand for nuclear power as a clean and reliable source of energy, but its widespread development requires proper legal regulation to prevent threats to nuclear safety and proliferation of nuclear weapons. For Kazakhstan, which is just beginning to implement its nuclear program, it is crucial to study and adopt the best international practices in legal regulation. This is essential for the successful and safe implementation of nuclear technology. However, replicating foreign models should not be an end in itself. It is important to consider the historical, political, economic, and cultural background of a country, as well as its unique legal system, when making decisions.

Based on this goal, the author identified the following specific research objectives: to identify the problems of nuclear safety guarantees and their solutions, areas of cooperation in this area in international and national dimensions; to consider the legal regulation of nuclear energy in certain foreign countries (USA, Canada, EU); to analyze current trends in the development of legal regulation and their relationship with energy and climate policy; to systematize the best practices of building regulatory bodies and legal regimes for countries starting the development of nuclear energy; to formulate proposals on the use of foreign experience

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in order to improve national legislation; to identify priorities for the development of legislation in the field of safety of nuclear energy use in the light of the prospects of the Republic of Kazakhstan.

The issues of the current state and trends of legal regulation in the field of the use of atomic energy at the international level, described in the work of V.V. Romanova, are the peculiarities of the legal regime of individual atomic energy facilities [1]. S.A. Lobanov, A.U. Nazarova, P.I. Chuvakhin [2] emphasize the problems in the effectiveness of international legal norms, various models of legal regulation of the nuclear industry in the USA and France, their advantages and disadvantages. In the works of M.S. Lizikova [3], Yu.V. Chernyakhovskaya, D.L. Korolkova [4], Sarah E. Boslaugh [5], R.A. Kurbanova [6] discusses issues of legal regulation of the nuclear industry in the United States and problems in the field of nuclear energy affecting energy and national security. V.A. Bogonenko [7, 8], considering the legal regulation of nuclear energy in France, notes a system that ensures a high level of safety and transparency, which is extremely important for a country in which nuclear energy occupies a dominant position in the energy industry. R.A. Kurbanov [9] notes the national system of EU requirements for nuclear safety.

Thus, these studies support the strategic priorities of state policy for the development of nuclear energy in foreign countries, considering the recommendations of international organizations, such as the IAEA, OECD/NEA and Euratom, and the practices of leading countries (USA, Canada, France). This makes it possible to develop a strategy as part of a decentralized, flexible and secure energy system. The priorities of nuclear safety and the integration of national legal systems into the global legal framework have been identified. This allows for the harmonization of domestic policies with the requirements of the international nuclear market, contributing to the strengthening of the energy independence of Kazakhstan.

Methods and materials

The methodological foundation of this research derives from the defined topic and the objectives, utilizing historical and dialectical approaches to analyze socio-legal phenomena scientifically. These methods make it possible to examine legal guarantees for nuclear safety in other countries from their social, legal, and institutional aspects. To address specific research questions, the study applies a methodological framework based on the dialectical relationship between the general, the specific, and the particular. Historical and legal methods are used to identify features and trends in globalization processes, their impact on nuclear safety, and the evolution of scientific perspectives and conceptual frameworks in the field. A comparative legal approach is used to compare the legal approaches to nuclear energy regulation in different countries with international standards. Through the use of structural and functional analysis, the trends and patterns in the legal regulation of nuclear energy abroad are systemized. The system-structural approach enables us to classify international legal standards for nuclear energy.

Discussion

The International Atomic Energy Agency's (IAEA) latest report on the status of nuclear reactors around the world as of December 31, 2022, indicates that there are currently 411 operating reactors and 58 additional reactors under construction [10]. This shows not only the significance of nuclear energy as a major trend of the 21st century, but also its continued development at a rapid pace with no signs of slowing down in the near future.

Nuclear power is a clean and efficient energy source that can help reduce carbon emissions and provide a stable and affordable source of electricity. It has the potential to play a significant role in achieving the United Nations' Sustainable Development Goals by 2030 and in combating climate change on a global scale.

The International Atomic Energy Agency (IAEA) and the International Energy Agency (IEA), among other organizations, regularly publish multi-year projections that suggest that the share of nuclear power in the energy mix will increase and remain at this level for the foreseeable future.

Many countries around the world have already gained positive experience in nuclear energy production. They have developed relevant legislation and identified management bodies in this field, as well as their powers and responsibilities. These countries have also developed ways to protect the environment and ensure nuclear safety, including the safe disposal of hazardous radioactive materials.

Given current geopolitical trends, nuclear and thermonuclear energy is becoming one of the most promising industries. In the near future, the number of nuclear power plants around the world will increase, and with it, the number of countries with the necessary knowledge and technology to operate them. This makes the international legal regulation of relations in this area particularly important in modern times [1; 23].

When analyzing global experience in the field of legal regulation of nuclear energy use, we refer to information collected by the World Nuclear Association regarding its development in other countries. As of January 1, 2025, the US leads the world in nuclear energy production with 779.2 billion kilowatt-hours (kWh), followed by significant progress in France (323.8 billion kWh), Japan (77.5 billion kWh), and China (406 billion kWh). Nuclear energy plays a significant role in the overall electricity mix in several countries, including France (64.8 %), Slovakia (61.3 %), Ukraine (50.7 %), Hungary (48.8 %), Belgium (41.2 %), and Switzerland (32.4 %) [11].

Let us explore the experience of legal regulation of nuclear energy in various countries that successfully utilize this type of energy and can provide their best practices for implementation in the Republic of Kazakhstan.

The safety of nuclear energy use is inextricably linked to environmental concerns, as anthropogenic interference with natural processes in the 20th and 21st centuries has taken a new form—nuclear pollution. In the past 30 years, several nuclear accidents have occurred, beginning with Chernobyl in 1986 and culminating in the disaster at the Fukushima-1 nuclear power plant in 2011. As a result, international organizations' recommendations in recent years have primarily focused on improving and strengthening nuclear and radiation safety measures.

The legal regulation of the use of nuclear energy in the United States is of particular interest for several reasons:

First, the United States holds a leading position in the world in the production of nuclear energy, which requires an extensive legislative framework governing all stages of the nuclear cycle—from uranium mining to the disposal of radioactive waste.

Secondly, the use of accident-resistant fuels that reduce the amount of nuclear fuel and waste used; innovative development of nuclear energy; clarity of licensing procedures; compliance with high standards of public health and safety [3].

Thirdly, the United States has a wealth of experience in public-private partnerships in the nuclear energy sector. Owing to these partnerships, the US nuclear power industry accounts for 30 % of the world's total nuclear power generation [4].

The U.S. National Energy Policy is developed and implemented by the Department of Energy, which is responsible for the implementation of national, economic, and energy security of the United States through the implementation of policies in the field of nuclear energy, fossil fuels, and alternative energy sources; responsible for the environmental impacts of energy projects. The key offices of this Ministry are the Nuclear Energy Department, the National Nuclear Safety Administration, the Environmental Management Department, the Uranium Disinfection and Neutralization Fund, the Radioactive Waste Production Department, the Nuclear Waste Technical Inspection Council, the Nuclear Reactor Safety Council, etc.

The United States is one of the states of the so-called “nuclear club”, which significantly affects federal legislation in the field of nuclear energy. First of all, such acts should include the Law on Atomic Energy, the Law on Private Ownership of Nuclear Materials, the Law on Environmental Protection, and the Law on Nuclear Waste Policy.

The Atomic Energy Act 1954 is a U.S. federal law governing both civilian and military applications of nuclear materials. It covers all aspects related to the development, sale and disposal of nuclear materials and facilities in the country.

Within the framework of this law, the Nuclear Energy Commission has been established with the aim of promoting the peaceful use of nuclear energy. The commission ensures compliance with general principles of safety and protection, as well as the protection of public health.

It is important to note that the Law defines the terms of nuclear cooperation between the United States and other countries, which must be respected. Among them, there are particularly important ones: all nuclear materials (for example, uranium, plutonium) and technologies are under the control of the federal government; any activity related to the use of nuclear materials (e.g., the construction and operation of nuclear power plants, nuclear fuel production, research) requires a license; protection of “Restricted Data”, which relate to nuclear technologies. It is prohibited to transfer nuclear materials, technologies or information that can be used to create nuclear weapons without special permission; international cooperation requires the conclusion of special agreements (e.g., Section 123 Agreement), which guarantee that the transferred technologies will be used only for peaceful purposes and will not contribute to the creation of nuclear weapons [12].

The most generalized regulatory legal act in the field of environmental safety in the United States should be considered the National Environmental Policy Act (NEPA) of 1969, which was last supplemented in 2000. NEPA (as currently drafted) provides for the obligation of the US Federal Government to fulfill the following permanent tasks by all available means: to commit itself to preserving the environment for future generations; to provide all Americans with a safe, healthy, productive, aesthetically and culturally satisfying environment; ensure a wide range of useful uses of natural resources while ensuring environmental safety; ensure the safety of historical and cultural heritage while preserving the environment; direct their activities to preserve the natural balance between the population and renewable natural resources to ensure a high standard of living for the population; improve the quality of renewable natural resources and increase the efficiency of processing non-renewable resources [13].

The law defines three levels of activity. If the federal government has decided that a certain activity would not significantly affect the environment, then it belonged to the first level and is exempt from detailed environmental impact analysis. The second level of activity is the one that causes certain environmental consequences, and therefore, federal agencies must first carry out and give a brief environmental assessment of the proposed actions. If an activity could lead to significant environmental impacts, then it should be evaluated in more detail, including a description of the negative impacts, irreversible and alternative solutions, as well as short- and long-term benefits. Such activity belongs to the third level. The disadvantage of this three-level system is not the prohibition of actions that may harm the environment but the search for alternatives [5].

The Nuclear Waste Policy Act of 1982 is a federal law that establishes a comprehensive national program for the safe and permanent disposal of high-level radioactive waste. It establishes the conditions for the use of deep geological storage facilities for the safe storage and/or disposal of radioactive waste, the procedure for evaluating and selecting sites for these facilities, and the interaction between state and federal governments. The act also determines the schedule of key milestones that will be carried out by federal agencies. The Department of Energy (DOE) is responsible for placing, constructing, and operating a deep geological storage facility for high-level waste and spent nuclear fuel. The DOE has the right to use this facility only if it meets the established standards and requirements [14].

In 2001, the United States government developed a strategy to promote the development of nuclear energy with several key goals. These goals included ensuring energy security, promoting economic growth, and environmental sustainability. The main objectives of this strategy were ensuring energy security by reducing greenhouse gas emissions and ensuring long-term energy sustainability. Additionally, large-scale nuclear projects, such as the “Advanced Fuel Cycle” and the “Global Partnership for Nuclear Energy” were initiated.

The 2001 strategy aimed to revive nuclear energy in the United States to address various challenges related to energy security, environmental concerns, and economic factors. While not all goals were fully met, this policy set a foundation for the further development of the industry and increased the role of nuclear energy in the country’s energy mix.

In 2005, the United States passed the Energy Policy Act, which became a significant piece of legislation aimed at addressing a variety of energy challenges in the country. The law included provisions for state guarantees for loans up to \$18.5 billion for the construction of new nuclear power plants, which was intended to reduce financial risk for private investors and promote the development of new nuclear energy sources. Additionally, tax incentives were introduced for nuclear energy producers, making investments in the sector more attractive [15].

This law has made several changes: 1. It divided the powers to regulate the wholesale supply market between the federal government and the states. 2. It created an organization responsible for the reliability of electricity production and distribution—the Electric Reliability Organization. Its tasks include setting standards for the reliability of electricity supply and the right to impose fines on wholesale suppliers who do not comply with these standards [2; 108].

Amendments were also made to other laws, particularly the Public Utility Regulatory Policies Act (PURPA). PURPA played a key role in the development of renewable energy and cogeneration in the United States. Owing to this law:

- conditions were created for the development of small and medium-sized clean energy projects;
- the share of renewable energy sources in the country’s energy balance increased;
- the preconditions for further liberalization of the energy market emerged.

However, over time, PURPA became the subject of criticism, particularly from utilities, who believed that obligations to purchase electricity from independent generators increased their costs. Despite this, the

law remains an important element of the US energy policy and continues to influence the development of renewable energy [6].

An analysis of the US legislation on nuclear energy reveals that its use is subject to strict state control. Not only are the benefits of using nuclear power taken into account but so are the risks. Legal regulation is implemented through both an imperative approach (ensuring nuclear safety) and a dispositive approach (through treaties and agreements in the nuclear field). The legislation also establishes the supremacy of federal law in this area.

Canada is also a nuclear power nation. As of October 2023, there are 19 nuclear reactors operating in the country, located at four nuclear power plants. These reactors contribute significantly to the country's energy supply, particularly in the province of Ontario, where they play a crucial role in meeting the region's electricity needs.

The Canadian Nuclear Safety Commission (CNSC) is Canada's federal regulatory body responsible for ensuring safety in the field of nuclear energy and radiation protection. The CNSC was established in 2000 on the basis of the Nuclear Safety and Control Act, replacing the previous regulatory body, the Atomic Energy Control Board of Canada (AECB).

The Canadian Nuclear Safety Commission (CNSC) is an independent federal agency in Canada responsible for the regulation and control of all aspects related to the use of nuclear energy and radiation materials. This commission, established in 2000, plays a key role in ensuring the safety of society, workers and the environment from potential risks associated with nuclear activities.

The Commission's tasks include: monitoring the operation of nuclear power plants (NPP) and other nuclear facilities; regulation of the production, use, storage and transportation of nuclear materials; supervision of nuclear waste management, including its storage and disposal; the use of radiation sources in medicine, industry and science.

The Commission reports to the Parliament of Canada through the Minister of Natural Resources [16].

The legal regulation of the main issues of nuclear energy in Canada at the federal level is carried out according to the following laws: Transportation of Dangerous Goods Act, Nuclear Safety and Control Act, Radiation Protection Act, Nuclear Fuel Waste Act, Nuclear Liability Act, and others [17].

Let us take a closer look at the main provisions of Canada's nuclear legislation.

The Transportation of Dangerous Goods Act, passed in 1992, is binding on all provinces. This law establishes safety requirements, safety standards, and safety signs that define the prohibition of importing, offering for transportation, processing, or transportation of any dangerous goods. However, there are exceptions to this rule in cases where a person complies with all safety requirements and the rules applied to the goods. The goods must be accompanied by all necessary documents, and the vehicles must meet safety standards and display all necessary safety signs.

The law defines various types of hazardous materials and sets strict requirements for their packaging, transportation, and labeling. It also establishes financial responsibility for carriers in case of violations of safety regulations. The law requires carriers to check vehicles for compliance with safety standards, including opening them, inspecting them, and verifying the quantity of cargo and accompanying documents. In case of violations, carriers are held responsible under the law [18].

The Nuclear Safety and Control Act, passed in 1997, is a crucial document that governs the use of nuclear energy in Canada, ensuring safety, environmental protection, and compliance with international obligations. This law establishes a legal framework to regulate all aspects of nuclear activities, such as the production, use, storage, and transportation of radioactive materials. It also establishes the process of licensing and controlling these activities, which must be done in accordance with strict safety standards. Additionally, the law sets standards for acceptable radiation levels, as well as requirements for monitoring the radiation situation and ensuring compliance. It also defines the responsibilities of legal entities and individuals in case of violations of nuclear safety and security regulations [19].

The Nuclear Fuel Act of 2002 established the Nuclear Waste Management Organization, which operates without discrimination and receives remuneration. Each energy company that deposits funds into a trust fund with a financial institution annually becomes a member or shareholder of the organization. The organization's main goal is to conduct research on effective nuclear waste management methods. It also consults with the public, including indigenous communities, on these issues. After three months have passed since the end of each financial year, the organization submits a report on its expenses. Any violations of the organization's rules, such as late reporting to the minister, inappropriate expenses, or false entries in documents, can

lead to legal action. According to the law, non-profit organizations have the right to participate in the long-term storage of nuclear waste. They can perform advisory and monitoring functions [20].

It is worth noting that Canada has a well-developed nuclear power industry, which accounts for approximately 15 % of the country's electricity supply. With its vast energy potential, Canada is able to not only meet its own domestic needs but also play a significant role in the global energy market. Common features of nuclear energy development and production in Canada and the United States include reforms aimed at restructuring and liberalizing the electricity market and the partial privatization of the industry. The legal framework for nuclear energy in Canada includes federal laws governing the use of nuclear power, ensuring nuclear safety, management of nuclear waste, transportation of hazardous materials, and other related issues.

France is the largest producer of nuclear energy in Europe, has 18 commercial nuclear power plants with 56 operating reactors [7] (receives about 70 % of electricity), and ranks second in the world after the United States in terms of their number. Among the EU member states, France is one of the leading countries in the use of nuclear energy.

They have expertise in the fields of energy consumption, the construction and operation of nuclear power plants, as well as ensuring nuclear safety.

The French Institute of Radiation Protection and Nuclear Safety (Institut de Radioprotection et Sûreté Nucléaire, IRSN) is an independent body that conducts risk assessments and monitors compliance with safety standards throughout the entire life cycle of nuclear facilities. In addition to this, the IRSN plays a role in the development of regulations and standards related to radiation protection.

Agency for Nuclear Safety (Autorité de sûreté nucléaire, ASN) is the regulatory body responsible for issuing licenses for the construction and operation of nuclear installations and monitoring compliance with safety requirements. In case of violations, ASN has the right to suspend the operation of nuclear facilities. ASN reports to the ministers of Environment, Industry, and Health, but major licensing decisions still require government approval.

In February 2023, the Ministry of Energy Transition announced the merger of ASN and IRSN, which, in their opinion, "will strengthen the independence of nuclear safety control within a single independent safety management unit to ensure a high level of safety requirements" [7].

Ministry of Ecology, Sustainable Development and Energy (Ministère de l'écologie, du Développement durable et de l'énergie) is responsible for the development of public policy in the field of energy, including the use of nuclear energy. The Ministry coordinates the activities of various departments and organizations dealing with nuclear safety issues.

France is one of the leading countries in the use of nuclear energy, and it has strict legal regulations in place to ensure safety, environmental protection, and compliance with international obligations in this area.

The law No. 2006-686 of June 13, 2006 "On transparency and safety in the nuclear field" ("Loi relative à la transparence et à la sécurité en matière nucléaire") defines the principles of accessibility of information to the public about the activities of enterprises related to the use of nuclear materials. It obliges government agencies and organizations working in this field to provide the public with information about their work, including information on radiation safety, environmental conditions, and radioactive waste management [8].

At the same time, the Law on Transparency and Safety in the Nuclear Field plays an important role. It:

- requires government agencies and companies operating in the nuclear industry to regularly publish reports and share information with the public about their activities. These reports include data on radiation monitoring, waste management, safety at facilities, and the environmental impact of nuclear power plants.
- establishes strict safety standards for all stages of handling nuclear material, from uranium extraction to waste disposal. It also regulates safety measures at nuclear power plants and other nuclear facilities.
- defines procedures for notifying the public about potential risks and incidents associated with the operation of nuclear installations. The public must be informed promptly about incidents and the measures taken to address them.
- provides for the establishment of a system for regular monitoring and inspections of nuclear facilities by independent experts, ensuring compliance with safety standards and preventing potential threats.
- establishes the responsibility of nuclear plant operators to ensure safety and take prompt action in case of emergencies, taking all necessary measures to minimize consequences and eliminate incidents.
- guarantees citizens' right to access information on nuclear safety and the environmental impact of nuclear facilities, allowing public organizations to request relevant data.

1. The Law on Safety in the Field of the Use of Nuclear Technologies provides for coordination between various government agencies and companies. It is aimed at increasing the level of openness and security in this area, as well as protecting the rights of citizens to access important information [21].

As a result, a significant portion of the regulations aimed at governing relations in the area of nuclear activities, including those that establish the consequences of these activities in relation to environmental protection objectives, is incorporated into the Environmental Code. This choice indicates that the principles of transparency and nuclear safety are recognized as fundamental principles of the legal framework for nuclear activities. The implementation of any form of nuclear activity, including the utilization of atomic energy, must not harm the public or the environment. Regulations governing relations in this area are an integral component of the overall legislation on environmental protection, intended to prevent accidents, the harmful effects of radioactive materials, and other adverse outcomes from such activities [17; 154].

2. Health Code (Code de la santé publique): This code regulates public health issues during the operation of nuclear facilities. It includes standards for the protection of workers and the public from radiation, as well as measures to prevent accidents and eliminate their consequences [22].

3. Decree No. 2017-630 of April 25, 2017 on the establishment of safety rules for nuclear installations: This decree defines the requirements for the design, construction and operation of nuclear reactors, including rules for ensuring the physical protection of facilities and preventing unauthorized access.

4. Law No. 91-1381 of December 30, 1991 on Conducting Research and Experiments in the Field of Nuclear Weapons: This law governs activities related to research and development in the area of nuclear weapons. After signing the Comprehensive Nuclear-Test-Ban Treaty (CTBT), France has chosen not to conduct nuclear weapon tests, but it continues to conduct scientific research in this field.

5. Laws and regulations of the European Union: As a member of the EU, France is obligated to follow the directives and regulations set by the European Union regarding nuclear safety. One such directive is Council Directive 96/29/EURATOM, which was issued on May 13, 1996 and establishes basic standards to protect the health of workers and the general public from the risks associated with radioactive radiation.

The law No. 2006-739 of June 28, 2006, on the sustainable management of radioactive materials and waste, known as Program Act No. 2006-739, established the foundations of France's national policy on the sustainable management and financing of these materials and waste. This law regulates the handling of nuclear and radiation waste and organizes and finances activities and scientific research programs related to these subjects in accordance with its regulations. Many of the provisions in this law have since been incorporated into the Environmental Code [23].

The Law No. 2006-739 and Decree No. 2008-209 established rules for the management of spent nuclear fuel or radioactive waste. These rules:

- 1) prohibit the disposal of nuclear waste from abroad in France.
- 2) permit the production of nuclear waste only in accordance with international agreements, which include a schedule for its reception and processing, as well as the last date for shipping the resulting radioactive waste from France.
- 3) prohibit the storage of spent nuclear fuel in France except for purposes of processing, research, or transfer to other countries.

An analysis of these legislative acts reveals that they regulate some of the most significant aspects of nuclear energy. These include ensuring the safety of nuclear facilities, managing radioactive waste, and adapting to changes in the industry. The laws also aim to exclude outdated regulations and develop new ones, while modernizing existing ones.

Let us consider Sweden's approach to nuclear energy and its regulatory framework.

The country has ten nuclear power reactors, and three of these reactors are continuously being shut down. The remaining ten operating reactors include seven BWR ASEA-ATOM designs, and three PWR Westinghouse designs. Nuclear energy accounts for approximately 45 % of all electricity generated in Sweden each year on average. Swedish reactors have undergone and are undergoing modernization, as well as safety and capacity upgrades. Safety improvement measures related to reactor design and construction have also been implemented.

In June 2010, the Swedish Parliament lifted the ban on the construction of new nuclear power plants, allowing the construction and operation of a new reactor in case of a change in plans for the closure of an existing reactor. They also approved legislation to create conditions for the development of future generations of nuclear power.

The Swedish Radiation Safety Authority (SSM) is a regulatory body responsible for nuclear safety, radiation protection, and the non-proliferation of nuclear weapons in Sweden. It employs more than 300 specialists with expertise in various fields, including engineering, natural sciences, behavioral sciences, law, economics, and communications. The SSM's budget is approximately 400 million Swedish kronor annually. The SSM receives funding from fees and tax revenues. In case of an incident involving radioactive materials or radiation, the SSM coordinates expert assistance from the emergency response center and is responsible for organizing it. Additionally, the SSM plays a crucial role in coordinating national efforts in radiation measurement and analysis [24].

The main laws in the field of nuclear safety and radiation protection are: The Act on Nuclear Activities (1984: 3); The Radiation Protection Act (1988: 220); The Environmental Code (1998: 808); The Ordinance on the Financing of Residual Products of Nuclear Power (2006: 647); The Nuclear Liability Act (1968: 45). All acts are supplemented by a number of other additional regulations containing more detailed provisions on certain aspects of nuclear safety.

The Law on Nuclear Activities defines the term “nuclear activity” and states that such activities may only be carried out in accordance with a license issued in compliance with the legal requirements of this law and the Environmental Code. The license holder is responsible for ensuring the safe operation of each nuclear facility and the secure storage of nuclear waste. They must implement necessary security measures based on the nature of their activities and the conditions in which they operate. These measures include ensuring the safe management and disposal of radioactive waste, as well as the safe decommissioning and dismantling of facilities when nuclear activities are no longer carried out. Safety in nuclear activities is maintained by taking all necessary measures to prevent errors or malfunctions in nuclear equipment or any other situations that could lead to a radiation accident.

The Law on Nuclear Activities primarily addresses nuclear safety issues, while the Environmental Code deals with general aspects of environmental protection and potential consequences of hazardous activities. The Radiation Protection Act includes provisions for the protection of public health (including industrial workers), animals, and the environment, as well as the management of radioactive waste.

The Nuclear Liability Act implements Sweden's obligation to comply with the Paris Convention on Third-Party Liability in the Field of Nuclear Energy and the Brussels Convention additional to it [25].

We believe that some aspects of the legal regulation of the nuclear industry in Sweden could be adapted for the Republic of Kazakhstan. In particular, the experience of legislative regulation of funding for the management of nuclear waste and the creation of conditions for a generation change in nuclear reactors could be useful.

Analyzing the situation of nuclear energy in the European Union, we can see that there is an ambiguous attitude towards this energy source among European countries. For instance, Belgium, Switzerland, Austria, and Italy are opposed to nuclear energy development, while Germany has taken a radical change in its approach to nuclear power. On March 14, 2011, Chancellor Angela Merkel of Germany announced a review of her country's energy policy after the Fukushima nuclear disaster in Japan. This event led to a shift in Germany's approach towards nuclear energy, as the government established the Ethical Commission for Safe Energy Supply and recommended the country to move away from nuclear power by 2021 and shut down its reactors.

Angela Merkel's decision to phase out nuclear energy has been one of the most significant steps in global energy policy. This decision demonstrates how environmental concerns can influence national strategies and public opinion. The German experience also shows that transitioning to renewable energy requires significant investment, time, and infrastructure changes.

Currently, there is an “atomic renaissance” in the European Union, which means a revival of interest in nuclear energy as an important part of an energy strategy to achieve climate goals and ensure energy security. After a period of skepticism about nuclear energy following the Fukushima disaster in 2011, many European countries are once again considering it as a key low-carbon energy source.

The “nuclear renaissance” in the European Union (EU) reflects a growing recognition that nuclear energy can play an important role in the transition to a lower-carbon economy. While there are challenges such as high costs and public opposition, many EU countries are investing in nuclear energy as a key part of their strategy to achieve climate goals and ensure energy security.

Conclusion

The foreign experience of legal regulation in the field of nuclear energy is a set of legislative, administrative and international measures aimed at ensuring the safety, non-proliferation of nuclear materials and the development of nuclear energy for peaceful purposes. Different countries, depending on their economic, political, and environmental priorities, are developing unique approaches to regulating this area.

Thus, the experience of legal regulation of public relations in the field of nuclear energy accumulated in the USA, Canada and some European countries deserves attention and can be used for the following reasons: 1) a comprehensive system of laws and regulations that covers all aspects, from licensing and safety to waste management and liability for damage; 2) the practice of constant adjustment of regulatory legal acts; exclusion of outdated legal provisions or their modernization and development of new ones; 3) long-term nuclear waste management strategies have been developed, including the creation of deep geological storage facilities (for example, the Yucca Mountain project in the USA. Their experience can be used in the development of national programs for the management of radioactive waste, including technologies for their storage and disposal; 4) have extensive experience in licensing, which includes assessment of safety, environmental risks and compliance with technical standards. Their regulatory approaches, including independence and transparency, can be adapted to improve the effectiveness of national regulatory authorities; 5) The legal regulatory system provides for public participation in the decision-making process. Public hearings are held on key issues such as the construction of new facilities or the renewal of licenses; much attention is paid to the physical security of nuclear facilities and protection against cyber attacks. Strict security requirements are established, including protection against terrorist threats. This experience can help to increase public confidence in nuclear energy and reduce social tensions.

All of the above mechanisms of legal regulation in the field of nuclear energy contribute to improving the safety of this industry, diversifying sources of support, and reducing dependence on internal constraints. The Republic of Kazakhstan's comprehensive involvement in global initiatives is transforming the industry's development model towards an export-oriented and innovative one, ensuring financial stability, technical modernization, and long-term strategic sustainability.

Cooperation with international organizations and partners plays a crucial role in maintaining the stability of the nuclear energy sector in the face of high levels of external and internal uncertainty. This cooperation promotes the introduction of innovative solutions, enhances safety measures, provides access to preferential financial resources, and opens up opportunities for Kazakhstan to export its expertise.

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Атом энергиясын пайдалану саласындағы құқықтық реттеудің әлемдік тәжірибесі және оның шет елдерде дамуы

Мақалада атом энергиясын пайдалану саласындағы құқықтық реттеудің әлемдік тәжірибесіне шолу берілген. Жетекші шет елдерде қолданылатын заңнамалық тәсілдердің эволюциясына ерекше назар аударылады. Автор халықаралық құқықтық бастамалар мен ұлттық заңнамалық актілерді де талдаған. Сонымен қатар, ядролық қауіпсіздікті қамтамасыз етуге, экологиялық тұрақтылыққа қол жеткізуге бағытталған жаңа ядролық технологиялардың жауапкершілігі мен дамуына байланысты заманауи сын-қатерлер қарастырылған. Зерттеудің мақсаты ядролық саланы құқықтық реттеудің әртүрлі тәсілдеріне жан-жақты талдау жүргізу. Қолданыстағы механизмдердің тиімділігін бағалау және ұлттық және халықаралық деңгейде атом энергетикасының тиімді, қауіпсіз және тұрақты дамуына ықпал ететін негізгі тенденцияларды, принциптер мен механизмдерді анықтау. Бұл бізге Атом энергиясы бойынша халықаралық агенттіктің (МАГАТЭ) үздік халықаралық тәжірибелері мен ұсынымдарына сүйене отырып, ұлттық нормативтік-құқықтық базаны құру бойынша ұсыныстарды тұжырымдауға мүмкіндік береді. Сондай-ақ ұлттық заңнаманы халықаралық стандарттар мен міндеттемелермен үйлестіру жолдарын анықтай аламыз. Жұмыстың әдіснамалық негізі әртүрлі елдердегі ядролық энергияны реттеудің құқықтық институттарын, нормалары мен тәсілдерін салыстыру. Салыстырмалы құқықтық әдіс жетекші ядролық мемлекеттердің заңнамалық жүйелеріндегі, нормативтік актілеріндегі және құқық қолдану практикасындағы айырмашылықтарды анықтауға, сондай-ақ реттеудің жалпы тенденциялары мен тиімді модельдерін анықтауға мүмкіндік береді. Зерттеу нәтижесінде атом энергиясын пайдалануды құқықтық реттеудің әлемдік тәжірибесінің негізгі ерекшеліктері және оның шет елдерде дамуының негізгі тенденциялары анықталды. Шетелдік тәжірибе бізге ядролық энергияны қауіпсіз, тұрақты және әлеуметтік тұрғыдан қолайлы пайдалануды қамтамасыз ету үшін ұлттық құқықтық жүйемізге тиімді енгізуге болатын құнды сабақтар мен модельдерді ұсынады.

Кілт сөздер: атом энергетикасы, атом энергиясын пайдалану саласындағы құқықтық реттеу, атом энергиясы, ядролық қауіпсіздік.

Мировой опыт правового регулирования в сфере использования ядерной энергии и его развитие в зарубежных странах

В данной статье представлен обзор мирового опыта правового регулирования в сфере использования ядерной энергии. Особое внимание уделяется эволюции законодательных подходов, применяемых в ведущих зарубежных странах. Анализируются как международные правовые инициативы, так и национальные законодательные акты. Кроме того, рассматриваются современные вызовы, связанные с обеспечением ядерной безопасности, вопросами ответственности и развитием новых ядерных технологий, направленных на достижение экологической устойчивости. Цель исследования — провести всесторонний анализ различных подходов к правовому регулированию ядерной отрасли, оценить эффективность существующих механизмов и выявить ключевые тенденции, принципы и механизмы, способствующие эффективному, безопасному и устойчивому развитию атомной энергетики на национальном и международном уровнях. Это позволяет сформулировать рекомендации по созданию национальной нормативно-правовой базы с учетом лучших международных практик и рекомендаций МАГАТЭ. Кроме того, можно определить пути гармонизации национального законодательства с международными стандартами и обязательствами. Методологическую основу исследования составляет сравнительный анализ правовых институтов, норм и подходов к регулированию использования ядерной энергии в различных странах. Применение сравнительно-правового метода позволяет выявить различия в законодательных системах, нормативных актах и правоприменительной практике ведущих ядерных государств, а также определить общие тенденции и эффективные модели регулирования. В результате проведенного исследования выделены ключевые особенности мирового опыта правового регулирования использования ядерной энергии и определены основные тенденции его развития в зарубежных странах. Зарубежный опыт представляет собой ценную базу знаний и практических решений, которые могут быть эффективно адаптированы в национальную правовую систему для обеспечения безопасного, устойчивого и социально приемлемого использования ядерной энергии.

Ключевые слова: ядерная энергетика, правовое регулирование в области использования атомной энергии, ядерная энергия, ядерная безопасность.

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Acts of the Constitutional Court as sources of law of the Republic of Kazakhstan

Constitutional Court of the Republic of Kazakhstan has a significant role in overseeing observance of the country's law and regulation in accordance with the Constitution. Its acts have an effect on law enforcement practice, influencing law and its creation. However, the question of exactly how the acts of the Constitutional Court have an effect on the country's legal system and up to what extent they may be regarded as sources of law is still subject to research. The acts of the Constitutional Court play a significant role in strengthening and improving the legal system. The research task is to determine and understand the legal nature and role of acts of the Constitutional Court of the Republic of Kazakhstan as a source of law. The research employed systematic and content analyses of normative legal acts, constitutional and judicial acts, and comparative legal method. The study determined that acts of the Constitutional Court possess strong legal force and have strong influence on processes of lawmaking and enforcement. Their acts are binding for everyone who are subjects of public authority and are legal guidelines for constitutional understanding. The acts proved to be definite sources of law and perform a role in ensuring constitutional order and human rights protection. The study stresses further development for applying these acts and for expanding a role of the Court in Kazakhstan's legal system. The study results are operable during legislative development and during legal practice.

Keywords: Constitutional Court, Kazakhstan, legal system, sources of law, legal force, judicial practice, law-making, human rights, legal interpretation, constitutional order.

Introduction

One of the elements of the evolving constitutionalism in sovereign Kazakhstan is the Constitutional Council, which plays a key role in ensuring that all normative legal acts comply with the Constitution. Enhancing its effectiveness is a key priority in building a legal, democratic, and social state. For a long time, there has been ongoing discussion as to whether the decisions of the Constitutional Council and constitutional courts in other countries constitute sources of law. This issue continues to provoke debate in specialized legal literature [1].

In legal theory, the concept of a "source of law" refers to the form in which legal norms are enshrined. The sources of constitutional law are legal documents through which the legal norms of constitutional law are established and acquire binding legal force; these norms regulate social relations that underlie the constitutional order [2; 27].

Documents issued by central executive authorities, such as ministries, state committees, federal services, as well as by heads of local administrations and executive bodies of the Republic's constituent entities, are referred to as subordinate acts. All legally significant acts concerning the rights and obligations of citizens must be published; otherwise, they cannot be applied in practice.

The system of constitutional law sources in the Republic of Kazakhstan reflects the historical and political characteristics of the state's development, as well as the specifics of its legal system. In this context, a special role is played by the Constitution of the Republic of Kazakhstan and constitutional laws, which occupy the top position in the hierarchy of sources of law. They serve as the foundation of the entire legal system and provide the basis for the development and adoption of other normative legal acts.

The Constitution of the Republic of Kazakhstan, adopted by national referendum on August 30, 1995, is based on the fundamental principles of state power and the legal system. It contains the main provisions on the rights and freedoms of individuals and citizens, the structure of state authorities, their powers, and inter-relations. Constitutional laws specify and develop the norms of the Constitution, regulating various aspects

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of public life, such as the protection of human rights, the procedure for conducting elections, the judicial system, and others.

The purpose of this study is to analyze the legal nature of subordinate acts in the system of sources of law of the Republic of Kazakhstan, their significance for regulating social relations, as well as to examine the mechanisms of their application and mandatory publication to protect the rights, freedoms, and obligations of citizens.

Research objectives:

- 1 To study the legal nature of the acts of the Constitutional Court of the Republic of Kazakhstan.
- 2 To determine their place and significance in the system of sources of law.
- 3 To develop proposals for improving the legal regulation of the acts of the Constitutional Court in Kazakhstan.

Methods and materials

The main way to conduct research is through an examination of formal legal acts of Kazakhstan, including the Constitution, the law, and normative acts. The main provisions of the Constitution and the Law “On Legal Acts”, through which the adoption and publication procedures for lower-level legal acts are defined, were studied through text analysis.

Systematic analysis was conducted in order to comprehend the position of the acts of a lower tier within the system of legal sources in Kazakhstan. The use of this method enabled the identification of how lower tier acts work in relation to the law and the areas and issues involved in their implementation in everyday practice. For information from official publications of lower tier acts and for the legal literature, content analysis was utilized. Through it, the trends in regulating social relations using lower tier acts and how they affect citizens’ rights were analyzed.

This study involved the analysis of subordinate acts of the Republic of Kazakhstan in terms of their legal nature and impact on society. The primary materials for analysis included the Constitution of the Republic of Kazakhstan, the Law “On Legal Acts”, and various government resolutions, ministerial orders, and other official documents.

The research included the analysis of both legal documents and judicial practice in order to understand how subordinate acts are applied in practice and what problems may arise in their implementation. Specific examples of subordinate acts were examined, including a government resolution on taxation and an order of the Minister of Health on sanitary standards, to analyze their impact on citizens’ rights and the functioning of various sectors of society.

In addition, the study included official publications from various government bodies, which provided additional context for analyzing the functioning of subordinate acts in Kazakhstan.

Results

A unique system of sources of constitutional law has been established in the Republic of Kazakhstan, which has led to an increase in the number of normative acts regulating constitutional relations and to the strengthening of the influence of universal values. This process is driven by changes in the content of existing sources of law and the emergence of new ones.

The acts of the Constitutional Court of the Republic of Kazakhstan possess a special status within the country’s legal system. According to the Constitution, the decisions of this body are binding on all state bodies, organizations, and citizens (Article 74 of the Constitution of Kazakhstan). This underscores their significance and binding force, which, in turn, allows them to be considered a specific source of law with unique characteristics.

In the field of jurisprudence, active debates are taking place regarding the degree of formal recognition of these normative acts as fundamental sources of law. Certain experts express the opinion that the acts of the Constitutional Court possess a precedent-based nature and may serve as grounds for decisions by courts of general jurisdiction. This assertion is based on the fact that the legal positions expressed in the acts of the Constitutional Court contribute to the formation of a general legal context and promote greater consistency in law enforcement [3].

This raises the question: can the decisions of the Constitutional Court be used as independent grounds for judicial proceedings? In most cases, the acts of the Constitutional Court serve as a starting point for the interpretation and understanding of legal norms, yet they are rarely incorporated directly into legislative acts. This means that the influence of such decisions on the legal system is more generalized and interpretative

rather than normative. Nevertheless, their importance in the context of protecting human and civil rights and freedoms, as well as ensuring of the stability of the constitutional legal order, cannot be denied.

The primary role of the Constitutional Court is to exercise constitutional oversight. This involves verifying the compliance of laws, normative acts, and international treaties with the Constitution. Requests for such review may be submitted by the President of Kazakhstan, the Government, members of Parliament, courts of general jurisdiction, as well as by citizens whose constitutional rights have been violated. In rendering decisions, the Constitutional Court relies not only on the text and spirit of the Constitution but also on Kazakhstan's international obligations, which helps align national laws with international standards.

The actions of the Constitutional Court hold precedent value, as their legal stance is obligatory for all governmental bodies, organizations, and citizens. The decisions of the Court are not subject to appeals and are bound to be enforced. This is in line with the highest authority of the Court and its pivotal position in upholding legality and justice. The Constitutional Court, on the other hand, is not involved in politics, and at the same time, it remains an independent entity that ensures the safeguarding of the principles of the constitution.

As an indicator of the significance of the decisions of the Constitutional Court, note that they tend to become a point of departure for the elaboration of new legislations and the amendment of current ones. Moreover, the actions of the Court serve to reinforce democracy and human rights. Therefore, we may say that the Constitutional Court of Kazakhstan is among the central institutions ensuring the stability and progress of the legal system of the country.

As noted by the well-known Kazakhstani scholar Aitkhozhin K.K., the main feature of the current constitutional process is that legislation is intended to reflect the fundamental goals and characteristics of a transforming Kazakhstani society, in accordance with the provisions of the Basic Law, and to actively contribute to the formation of a democratic and rule-of-law state [4].

According to Article 71 of the Constitution of the Republic of Kazakhstan, the Constitutional Court is the highest body overseeing compliance with the Constitution throughout the country. Its decisions have the highest legal force and are mandatory for execution by all state bodies, organizations, and citizens.

According to Article 74 of the Constitution of the Republic of Kazakhstan, the decisions of the Constitutional Court are final and not subject to appeal or review. This gives them a special legal status, placing them above ordinary court decisions and equating them with normative legal acts of the highest legal force.

The acts of the Constitutional Court not only resolve specific disputes but also include general legal principles and interpretations of constitutional norms. According to Article 4 of the Constitution of the Republic of Kazakhstan, it has the highest legal force, is directly applicable, and is enforced throughout the country.

The main document regulating the legal status of subordinate acts is the Constitution of Kazakhstan and the Law "On Legal Acts" dated April 6, 2016, No. 480-V LRK. According to these documents, subordinate acts include acts of central executive bodies, ministries, state committees, federal services, as well as acts of local administrations and executive bodies of the Republic's constituent entities.

According to Article 4 of the Constitution of Kazakhstan, normative legal acts of various levels are included in the system of law sources of the country. The highest level is occupied by the Constitution and laws of Kazakhstan, which have the greatest legal force. Subordinate acts are on the second level and are adopted for the implementation of specific legal provisions and their practical application [2].

An example of a subordinate act is a Resolution of the Government of the Republic of Kazakhstan, aimed at implementing laws in specific areas.

In order for subordinate acts to be applied, they must be officially published. This requirement is established in the Law of the Republic of Kazakhstan "On Legal Acts". According to Article 43, normative acts affecting the rights, freedoms, and obligations of citizens must be published in the mass media or on official internet resources for public access. Acts that have not undergone the publication procedure cannot be applied and are considered invalid.

According to the Law of the Republic of Kazakhstan "On Legal Acts" dated April 6, 2016, No. 480-V LRK, the acts of the Constitutional Court are normative legal acts of direct effect. This confirms their status as sources of law that must be taken into account in the drafting and application of laws.

According to Article 78 of the Constitution of the Republic of Kazakhstan and the Law "On the Constitutional Court of the Republic of Kazakhstan" dated November 5, 2022, No. 153-VII LRK, the following may apply to the Constitutional Court:

- 1 The President of the Republic of Kazakhstan.

- 2 The Chairperson of the Senate of Parliament.
- 3 The Chairperson of the Mazhilis of Parliament.
- 4 No less than one-fifth of the total number of deputies of Parliament.
- 5 The Prime Minister.
- 6 Courts in matters arising during judicial proceedings.

Figure 1 shows the stages of constitutional proceedings.

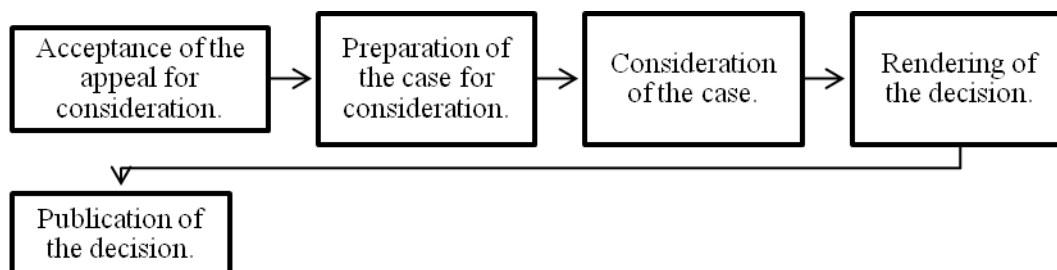


Figure 1. Stages of Constitutional Proceedings

According to Article 74 of the Constitution of Kazakhstan and Article 37 of the Law “On the Constitutional Court”, the decisions of the Constitutional Court are binding on all state bodies, organizations, officials, and citizens.

After the Constitutional Court issues a decision, the legislature is obligated to amend normative legal acts to ensure their compliance with the Constitution and the Court’s decisions. This process contributes to the improvement of legislation and the elimination of contradictions in normative acts.

Let us consider an example: the Constitutional Council (which performed the functions of the Constitutional Court until 2022) reviewed the constitutionality of certain provisions of the Criminal Procedure Code of the Republic of Kazakhstan that restricted the right to defense. It was recognized that these norms contradicted the Constitution, which led to their removal from legislation and the strengthening of the rights of the accused.

Another example concerns the issuance of a decision. After the re-establishment of the Constitutional Court in 2022, one of its first decisions was to declare certain provisions of a law restricting freedom of speech unconstitutional. This decision contributed to the enhanced protection of the constitutional right to freedom of expression and required the legislature to introduce corresponding amendments to normative acts. The Court’s precedent-setting decisions encourage lawmakers to more thoroughly analyze new draft laws for their compliance with the country’s Basic Law.

Active participation of the Constitutional Court in the protection of citizens’ rights and freedoms strengthens public trust in the legal system and state institutions. The publication and discussion of the Court’s decisions contribute to increasing the level of legal culture among the population and to public awareness of the importance of law compliance. The acts of the Constitutional Court have a direct impact on legal practice. Judicial and other state bodies are obligated to follow the legal positions expressed in the decisions of the Constitutional Court. This helps ensure consistency in judicial practice and adherence to constitutional principles in the work of state institutions.

Figure 2 shows the problems and shortcomings in the application of subordinate acts.

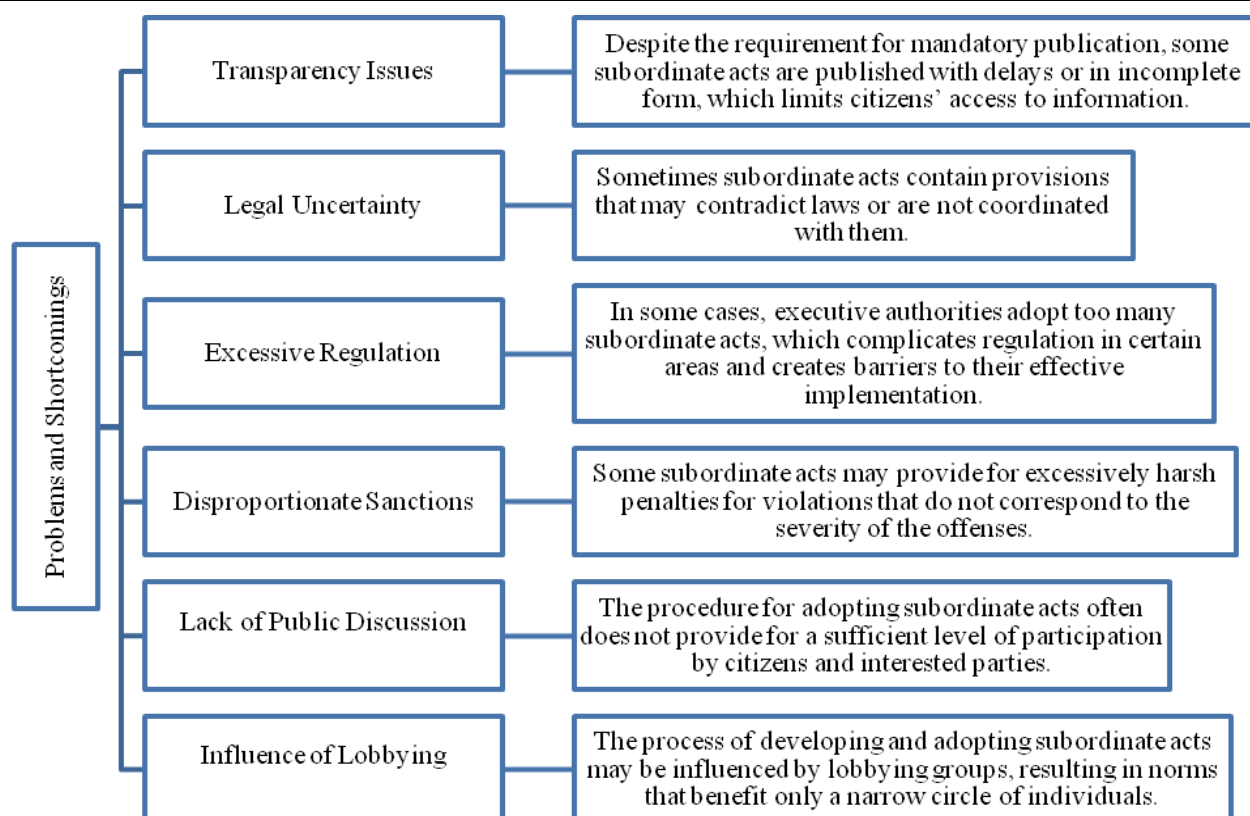


Figure 2. Problems and Shortcomings in the Application of Subordinate Acts

To improve the clarity and effectiveness of the use of subordinate acts, it is necessary to establish a system of control and monitoring over the timeliness and compliance of their publication with established standards. It is also important to improve mechanisms for public participation in decision-making and to limit the influence of lobbying. Fair and proportionate sanctions for violations of the law must be established, avoiding excessive regulation.

Let us analyze how constitutional courts in the United States, the United Kingdom, France, Germany, and Spain exercise oversight functions. We will conduct an analysis of the features and similarities in the approaches to the implementation of the supervisory powers of these courts.

Modern scholars have struggled to define comparative constitutional law and related terms such as comparative constitutionalism. In his book *Comparative Methodologies*, Professor Ran Hirschl of the University of Toronto writes: “From its inception, comparative constitutionalism has struggled with questions of identity. There is much confusion regarding its aims and objectives, as well as what exactly it encompasses—constitutional systems, constitutional jurisprudence, constitutional courts, or constitutional governance and politics. It is also unclear whether comparative constitutional law should be considered part of comparative law, a branch of constitutional law, or a fully autonomous field of study” [5].

However, more recently, Professor Madhav Khosla of Columbia University suggested that comparative constitutional law “has undoubtedly emerged as a distinct field of study”, though “much remains to be settled” [6].

The contemporary rise of constitutional law in a comparative context has occurred in legal and judicial practice, as well as in academia. Professor Monica Claes (also from Maastricht University) associates this surge of interest with several factors: the global rise in constitutional activity; the growing importance of constitutions and constitutional law in public life (including constitutional adjudication); the increasing interest in national identity; and the trend toward constitutionalization in European and international governance [7].

According to her colleague, Professor Heringa, the advantages of the practice of comparing constitutions are as follows:

1. This process helps to assess and understand the researcher’s own constitutional system;
2. It provides useful material for constitutional design and constitutional engineering;

3. It establishes a foundation for the creation and development of international organizations and their institutions (such as the EU and the Court of Justice of the European Union (CJEU)) [8].

In the course of the study, a book was analyzed that examines the role of the concept of constituent power in the history of the constitution, with a focus on the legal and institutional consequences that theorists, politicians, and judges have derived from it. It shows that constituent power, although historically associated with extra-legality and disruptions of constitutional order, has played important functions in decisions concerning legal reality. Constitutional courts have used it to justify their jurisdiction in invalidating constitutional amendments that alter the fundamental structure of the constitution and, thus, constitute a constitutional exercise. Some governments have invoked it to legitimize the transformation of the constitutional order through procedures not provided for in the constitutional amendment rule but considered sufficiently participatory to be viewed as equivalent to the “people in action”, and such attempts have sometimes been sanctioned by courts [8].

The legal system of the United States is structured to protect individual rights and prevent their violation by public officials. The Constitution of the United States is the supreme source of law. It establishes and governs the structure of the legal system. All other laws are evaluated against and must comply with the Constitution. The Constitution establishes two main levels of law: state and federal. At the federal level, the Constitution establishes three sources of law: the executive branch, the legislative branch, and the judicial branch (the legislative branch is governed by Article I; the executive branch is governed by Article II; the judicial branch is governed by Article III) [9].

All states have adopted a state constitution that establishes the structure of state government. Often, a state constitution resembles the Constitution of the United States and, accordingly, establishes the state executive, legislative, and judicial branches. However, the details of state constitutions vary by state. State law also establishes and regulates local law, including the laws of counties, cities, townships, and villages [9].

The U.S. Constitution does not describe a specific method for reviewing laws for compliance with the Constitution, so the country uses a traditional system of control. However, the Constitution itself does not preclude such a possibility. According to Article VI, if federal laws or international treaties conflict with the Constitution or state laws, state courts are obliged to follow the U.S. Constitution, federal laws, and treaties.

The U.S. Supreme Court is authorized to interpret the Constitution, review the constitutionality of laws, and monitor whether government actions comply with it. It also creates judicial precedents that can be relied upon in future rulings. Due to this important role of the Supreme Court, the U.S. judicial system has become a significant element in the development and transformation of the national legal system.

In the United Kingdom, it is often believed that the concept of constitutional review is absent, although this is not entirely true. It does exist but has its own characteristics. Unlike many countries, the United Kingdom does not have a traditional written constitution. Constitutional legal norms in the country are divided into four groups: statutes, judicial precedents, constitutional conventions, and doctrinal sources [10].

In the United Kingdom, the doctrine of parliamentary sovereignty is in effect, which excludes the preliminary review of laws by the courts. Parliament holds the exclusive right to enact laws and regulate their application. However, following reforms in the early 21st century, courts were granted the authority to conduct subsequent constitutional review of laws.

The concept of constituent power, especially due to its significance in French revolutionary thought, focuses on two key aspects that remain relevant despite the ambiguous development of this idea. First, constituent power is traditionally associated with the political foundation of the state; second, many scholars continue to link it to issues of popular sovereignty in the context of unitary democracies.

The French system of judicial constitutional review is composed of two institutions: the Council of State and the Constitutional Council. Their jurisdiction is varied according to the legal force of the acts in question. The constitutionality of ancillary acts and administrative rules published by the executive is examined by the Council of State, whereas the Constitutional Council examines the conformity of the law with the Constitution.

In Germany, the Federal Constitutional Court’s central position in constitutional review is guaranteed by the Basic Law and stands out among other institutions of the state including the Bundestag, the Bundesrat, the Federal President, and the Government. Articles 93, 94, 99, and 100 of the Basic Law specify the structure of the court, the nature of the power it holds, and govern fundamental areas of settling constitutional conflicts.

In Spain, the constitutional review system is analogous to those of other European states. The Spanish Constitution gives the power of checking for observance of the Basic Law to the Constitutional Court. There

are 12 judges in the Court, chosen by the King for nine years. The Congress (4 judges), the Senate (4 judges), the Government (2 judges), and the General Council (2 judges) propose the candidates. One third of the Court is replaced every three years. The Prime Minister, the Ombudsman, deputies and senators (at least 50), the regional authorities, the courts, and the citizens, organizations, and prosecutors when their constitutional rights are infringed, may file an appeal to the Constitutional Court.

By analyzing the institutions of constitutional review in the aforementioned countries, two fundamental models can be identified: the American and the European models.

The European system is most notable for a great level of autonomy in the operation and constitution of the system. In the European system, there is a separate institution that has the sole jurisdiction to exercise constitutional review and examine related legal issues. The process enables constitutional issues to be independently addressed regardless of individual cases. Constitutional review bodies utilize a number of judicial processes and render decisions based on all the dimensions of a particular case.

In this design, the Constitutional Court is a special institution that checks the constitutional conformity of all laws irrespective of their legal force. The court also has the power to deem actions of the people and organizations as being against the Constitution. One of its key mandates is to hear grievances by the citizens about encroachment upon their constitutional rights.

Discussion

After studying examples from five foreign countries, it can be concluded that the European model of constitutional review, as seen in Germany and Spain, is more effective. A distinctive feature of this model is the existence of a specialized body—the Constitutional Court—which deals exclusively with constitutional review.

Table 1 demonstrates the place of subordinate acts in the system of legal sources of the Republic of Kazakhstan.

Table 1

The Place of Subordinate Acts in the System of Legal Sources of the Republic of Kazakhstan

Level of the Legal Sources System	Examples of Legal Acts	Legal Force
Constitution of the Republic of Kazakhstan	Constitution	Highest legal force
Laws of the Republic of Kazakhstan	Codes (Civil Code, Criminal Code), special laws	Secondary level in relation to the Constitution
Subordinate Acts	Government resolutions, ministerial orders, local acts	Lower level in relation to laws
Local Normative Acts	Company charters, internal regulations	Lowest level in the hierarchy

Table 2 shows additional regulations and articles.

Table 2

Additional Normative Acts and Articles

No.	Name of the Law	Articles
1	Law of the Republic of Kazakhstan “On the Constitutional Court of the Republic of Kazakhstan” dated November 5, 2022 No. 153-VII LRK	Article 4. Principles of activity of the Constitutional Court. Article 22. Powers of the Constitutional Court regarding the consideration of appeals. Article 33. Procedure for the enforcement of decisions of the Constitutional Court.
2	Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V LRK	Article 78. Court appeal to the Constitutional Court in the course of case consideration. Article 295. Binding nature of decisions of the Constitutional Court for courts.
3	Criminal Code of the Republic of Kazakhstan dated July 3, 2014 No. 226-V LRK	Article 3. Principles of legality and justice. Article 6. Application of the criminal law in time and space.

During the course of the study, the following recommendations were developed:

1. To ensure the effective operation of subordinate acts, it is necessary to improve mechanisms for monitoring their publication. The development of special procedures and tools that guarantee the timely and complete publication of all subordinate acts on official internet resources will enhance the accessibility of legal information for citizens and increase the level of transparency in legislative activities.

2. Subordinate acts need to have strengthened control over their contents in order to enhance the consistency of their acts with legislations. Legal reviews during the development of subordinate acts prevent the adoption of provisions incompatible with legislation and support legal system unification.

3. Streamlining the number of ancillary acts and reducing legal regulation in some spheres of public administration will remove unnecessary and disproportionate normative acts.

4. Frequent periodical examination of the existing sub-ordinate acts for their relevance and consistency with law is a requisite to avert the build-up of obsolescent provisions and to check their relevance in a dynamic legislative system.

For Kazakhstan, in accordance with a comparative examination of models for judicial constitutional review in a number of other countries, a number of propositions for strengthening the system of constitutional review can be advanced. To effectively protect constitutional rights, an independent Constitutional Court with clearly specified competencies, which would exclusively address issues related to the Constitution, needs to be set up. Thus, professionalism of the judiciary will be improved, delays in the consideration of cases will be minimized, and redundancy in functions with ordinary courts will be eliminated, and the constitutional dispute resolution process will be more effective.

A key step would be to give citizens and institutions the right to bring a direct action to the Constitutional Court in case of infringement of their constitutional rights. Demonstrated by the experience of states like Spain, this would support more effective protection of human rights and enhance the confidence of the populace in the judiciary. Preliminary examination of draft legislation for conformity with the Constitution prior to its adoption would prevent the creation of unconstitutional law and lower the number of legal controversies upon enactment.

Second, enhancing legal literacy through education and improving legal information accessibility would allow individuals to more actively protect their rights. It would make the activity of the Constitutional Court more effective. Lastly, to secure fair operation of the Court, the guarantee of its independence from outside, particularly political, influence is necessary. Open procedures for judge appointments and their activities will guarantee objectivity and reinforce confidence in the Constitutional Court in Kazakhstan.

The implementation of these recommendations would allow Kazakhstan to improve its system of constitutional review by aligning with advanced European models. The establishment of a specialized Constitutional Court, the expansion of citizens' access to justice, the development of preliminary review mechanisms, and the strengthening of judicial independence will create the necessary conditions for reinforcing the rule of law and protecting the constitutional rights of citizens.

As for the suggested steps to enhance the implementation mechanism for decisions of the Constitutional Court, we will examine each:

1. Amending the Law "On the Parliament of the Republic of Kazakhstan and the Status of Its Deputies" to introduce a procedure for parliamentary control over the implementation of decisions of the Constitutional Court will improve the guarantees for observance of the constitutional regime and of Court decisions.

2. Developing an online portal for ease of access to Constitutional Court rulings will enhance transparency and facilitate greater access to the legal positions of the Court for both the common citizen and legal practitioners.

3. Adherence to a regular training program for lawyers and judges on implementation of decisions by the Constitutional Court will enhance professional competency and foster a common knowledge of legal principles.

4. Publishing official commentaries on decisions of the Constitutional Court will facilitate better and more precise understanding of the substance and application of the decisions.

5. Establishment of a mechanism for overseeing the implementation of Court decisions by Parliament and the President will facilitate better enforcement of the acts of the Court.

6. Making the activities of the Constitutional Court more transparent and giving the public greater access to its materials will enhance confidence in the institution of constitutional justice.

7. Encouraging scientific and pragmatic examination of Court verdicts will stimulate discussion of legal principles and the stand of the Court, which will improve the effectiveness of law enforcement in the nation.

Thus, the recognition of the Court's decisions as sources of law and efforts to ensure their effective application are important for strengthening the rule of law and a democratic society in Kazakhstan.

Accordingly, the findings of the present study, which investigates the legal status of the acts of the Constitutional Court of the Republic of Kazakhstan as sources of law, are corroborated by a number of domestic and international scholarly works. These studies emphasize the significance of constitutional oversight and the normative authority of decisions rendered by apex judicial bodies. Notably, the works of R. Hirschl, M. Claes, and M. Khosla reflect a comparable understanding of the role of constitutional courts as key institutions in safeguarding the supremacy of the constitution and shaping the evolution of the legal system. This alignment suggests that the patterns identified in this study are consistent with global trends.

A commonality is evident in the recognition of the binding nature of constitutional court rulings and their capacity to establish authoritative legal positions for all branches of government. However, a distinguishing feature of the Kazakhstani model lies in the insufficient normative regulation of the status of Constitutional Court acts within the formal hierarchy of legal sources. Unlike European countries, such as Germany or Spain, where constitutional court decisions hold an explicitly codified legal status, the Kazakhstani legal framework lacks clear regulation in this regard, resulting in a degree of legal uncertainty.

Certain foreign approaches—most notably the American precedent-based model—underscore the judiciary's role as an autonomous source of law. Nevertheless, this model is only partially applicable in the context of Kazakhstan's predominantly continental legal system. While the relevance of this perspective may be limited, it remains partially valid in the face of an evolving constitutional environment, where judicial law-making, including through Constitutional Court rulings, is increasingly influential despite traditional doctrines.

The study's results demonstrate that the acts of the Constitutional Court possess *de facto* legal force and help establish stable legal positions applicable in both legislative and enforcement contexts. This is supported by documented cases in which decisions of the Constitutional Council and Constitutional Court prompted subsequent amendments to existing legislation, thereby affirming their substantive impact on the normative legal framework.

From a theoretical standpoint, these findings are best interpreted through an institutional lens, which views constitutional courts as fundamental institutions that ensure the balance of power, uphold the legitimacy of legal norms, and protect the constitutional order. This perspective allows for the conceptualization of Constitutional Court acts not only as legal instruments but also as elements of broader political and legal significance.

The reliability of the results is ensured by a multi-tiered analysis encompassing normative legal acts, judicial practice, and comparative legal assessment, grounded in verified academic sources. The methodological rigor and representative examples drawn from the Court's practice reinforce the credibility of the conclusions reached.

In sum, the research findings are valid and align with prevailing scholarly perspectives. They illuminate the distinctive features of Kazakhstan's model of constitutional adjudication and underscore the necessity for further formalization of Constitutional Court acts as authoritative sources of law.

Conclusion

The position of the Constitutional Court in the hierarchy of sources of constitutional law may be examined from two points of view: first, by regarding the nature of this institution, and, second, by considering the process of decision-making and the legal effects of its decisions. In Kazakhstan, the hierarchy of sources of constitutional law is based on the Constitution of 1995, the fundamental legal document of the Republic.

Because of its tasked mandate to establish the constitutionality of legislative acts, the Constitutional Court has a privileged position. The decisions it renders have a special value in the legal field since they are binding, final, immediate, and irrevocable. Such decisions are endowed with a great legal force, at times superior to other acts of a normative character, including constitutional amendments and ordinary laws. Based on Paragraph 3 of Article 4 of the Constitution, international treaties signed by the state have greater legal force compared to the country's laws, and in this process of constitutional review of international treaties, the Constitutional Court plays a central role. The rulings by the Constitutional Court have greater legal status than the country's ordinary and constitutional laws in cases where an international treaty is declared to be unconstitutional.

Internationally accepted instruments, including the Universal Declaration of Human Rights and other human rights treaties, also have a privileged legal status and precedence over national law, including the

Constitution itself. The legal status of the Constitutional Court is conferred by the Law “On the Constitutional Court of the Republic of Kazakhstan”, which gives it the mandate to scrutinize laws adopted by Parliament for conformity with the Constitution before they are signed by the President. It is this system that gives the Court the mandate to block the application of conflicting law, once more re-emphasizing its supremacy within the legal hierarchy.

The rulings of the Constitutional Court are of great significance in the regulation of social relations, particularly if they are related to issues of constitutionality. These decisions become sources of constitutional law, yet rank below the Constitution and those amendatory laws. These rulings are, however, of greater force than regular laws and carry profound legal implications for the legal framework of Kazakhstan.

The types of sources of national law in Kazakhstan are established by the Constitution and the 2016 Law “On Legal Acts”. Interestingly, the normative rulings of the Constitutional Court are not explicitly included in the hierarchy of legal acts, although they have a significant impact on the application and interpretation of the law. The Court’s decisions are primarily protective in nature and aimed at annulling unconstitutional provisions rather than creating new normative regulations. The Court’s role in declaring unconstitutional norms invalid and preventing the enforcement of laws or international treaties that contradict the Constitution highlights its essential function in maintaining the integrity of the legal system.

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Д.Б. Қалмағанбетова, А.М. Есентемирова

Конституциялық соттың актілері Қазақстан Республикасының құқық көздері ретінде

Қазақстан Республикасының Конституциялық соты Конституцияға сәйкес елдің заңдары мен нормативтік актілерінің сақталуын бақылауда маңызды рөл атқарады. Конституциялық соттың

шешімдері заңнамаға және оның дамуына әсер ете отырып, құқық қолдану практикасына әсер етеді. Алайда, Конституциялық сот актілерінің құқықтық жүйеге қандай салдары бар және оларды құқық көзі ретінде қарастыруға болатындығы туралы мәселе одан әрі зерттеуді қажет етеді. Конституциялық соттың актілері құқықтық жүйені нығайту мен жетілдіру процесінде маңызды рөл атқарады. Зерттеудің мақсаты — Қазақстан Республикасы Конституциялық сотының актілерінің құқықтық табиғаты мен олардың құқық көздері ретіндегі рөлін анықтау. Зерттеу барысында жүйелі және мазмұндық талдау әдістері, сондай-ақ салыстырмалы-құқықтық әдіс қолданылды. Зерттеу нәтижесінде Конституциялық сот актілерінің жоғары заңды күшке ие екендігі және олар заң шығару мен құқық қолдану үдерістеріне елеулі ықпал ететіні анықталды. Бұл актілер мемлекеттік билік субъектілері үшін міндетті сипатқа ие және конституциялық нормаларды түсіндіруде бағдар болып табылады. Конституциялық соттың актілері нақты құқық көздері ретінде танылып, конституциялық тәртіпті сақтау мен адам құқықтарын қорғауда маңызды рөл атқаратыны көрсетілді. Сонымен қатар, осы актілерді тиімді қолдану тетіктерін жетілдіру және Конституциялық соттың елдің құқықтық жүйесіндегі рөлін күшейту қажеттігі атап өтілді. Зерттеу нәтижелері заңнаманы жетілдіру және құқықтық тәжірибеде қолдану үшін практикалық маңызға ие.

Кілт сөздер: Конституциялық сот, Қазақстан, құқықтық жүйе, құқық көздері, заң күші, сот практикасы, заң шығару, адам құқықтары, құқықты түсіндіру, конституциялық тәртіп.

Д.Б. Калмаганбетова, А.М. Есентемирова

Акты конституционного суда как источники права Республики Казахстан

Конституционный суд Республики Казахстан играет важную роль в контроле за соблюдением законов и нормативных актов страны в соответствии с Конституцией. Решения Конституционного суда оказывают влияние на правоприменительную практику, воздействуя на законодательство и его развитие. Однако вопрос о том, какие именно последствия имеют акты Конституционного суда для правовой системы и в какой мере они могут рассматриваться как источники права, требует дальнейшего изучения. Акты Конституционного суда играют важную роль в процессе укрепления и совершенствования правовой системы. Целью данного исследования является определение правовой природы и роли актов Конституционного суда Республики Казахстан как источников права. В работе использованы методы системного и контент-анализа нормативных правовых актов, актов конституционной и судебной практики, а также сравнительно-правовой метод. В результате исследования установлено, что акты Конституционного суда обладают высокой юридической силой и существенно влияют как на право-творческий процесс, так и на правоприменение. Эти акты являются обязательными для исполнения всеми субъектами публичной власти и служат ориентиром в толковании конституционных норм. Установлено, что акты Конституционного суда представляют собой самостоятельные источники права и играют значительную роль в обеспечении конституционного порядка и защите прав человека. Отмечена необходимость дальнейшего совершенствования механизмов реализации данных актов и укрепления институциональной роли Конституционного суда в правовой системе Казахстана. Результаты исследования имеют практическую значимость при разработке законодательства и в юридической практике.

Ключевые слова: Конституционный суд, Казахстан, правовая система, источники права, юридическая сила, судебная практика, законотворчество, права человека, толкование права, конституционный порядок.

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A critical legal analysis of General Comment No. 4 on Article 24 (Education) of the Convention on the Rights of Persons with disabilities

The article examines the international and national legal frameworks governing the right to inclusive education, with a particular focus on the interpretation and application of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities. The objective of the study is to examine the nature and scope of state's legal obligations. The study adopts a comparative legal analysis and interpretation of international legal documentation, with a particular emphasis on General Comment No. 4 of the Committee on the rights of persons with disabilities. The study identifies legal and practical contradictions, particularly with regard to the transformation of special educational institutions and the role of parents in choosing their child's educational form. The findings of the study provide substantiation for the perspective that inclusive education ought to be recognised not solely as a pedagogical or social paradigm but also as an individual right. The article concludes with a recommendation that inclusive and special education should be legally coordinated, and that learning environment should be created in the best interests of the child. Inclusion should be conceptualised as a complementary component of an integrated education system, rather than a complete replacement for special education.

Keywords: inclusion, right to education, special educational institutions, Convention on the Rights of Persons with Disabilities, right to inclusive education, rights of the child, Convention on the rights of the child, best interests of the child, special educational needs, human rights.

Introduction

The establishment of an inclusive society has been identified as a strategic priority for the United Nations (hereinafter — UN) and other international institutions, signifying a global commitment to the development of systems founded upon human rights and social justice. A fundamental objective of this initiative is to guarantee equal access to quality education for all individuals, irrespective of their health status, social position, or other characteristics. The fourth goal of the UN 2030 Agenda for sustainable development goals, which was adopted in 2015, explicitly calls for “ensuring inclusive and equitable quality education for all” [1]. Nevertheless, data from international organisations indicates that progress in this area remains limited. It is estimated that 251 million children worldwide are currently out of school, with only a marginal 1 % decrease since 2015 [2]. Contemporary international frameworks are placing greater emphasis on a more extensive approach to inclusion. This approach encompasses active social integration and the establishment of educational environments that are customised to meet the individual needs of learners [3].

The primary objective of this article is to provide a comprehensive legal analysis of the international right to inclusive education, with particular attention to the legal contradictions associated with the transformation of special education institutions and the role of parents or legal guardians in selecting the form of education. The objective of the research is to analyse the international obligations set out in Article 24 of the Convention on the Rights of Persons with Disabilities (hereinafter — CRPD), to critically assess General Comment No. 4 in 2016 of the Committee on the Rights of Persons with Disabilities (hereinafter — Committee) and to identify legal and institutional gaps within the Republic of Kazakhstan's (hereinafter — Kazakhstan) education system. A fundamental area of theoretical contention pertains to the relationship between inclusive and special education. There is a debate among scholars regarding the extent to which inclusive education should replace special forms of education, such as special schools or home-based instruction or alternatively whether these systems can coexist as flexible, adaptive options. Another unresolved issue pertains to the rights of legal guardians in relation to the selection of their child's educational format. In this context, the Committee's General Comment No. 4 (paragraph 10) asserts that the right to education is an individual entitlement of the child, rather than a right of the parent. It also states that the role of parents must

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be subordinate to the child's rights [4]. This position demands meticulous legal examination, especially regarding its accordance with broader international law, its legal accuracy, and the balance between competing rights and obligations. The relevance of the problem lies in the fact that despite the proclaimed international policy of inclusion, a number of countries continue to maintain and even expand their network of special schools, which indicates a contradiction between official strategies and educational practice [5]. This fact highlights the need to rethink the role of special schools and find the optimal balance with an inclusive model that ensures equal access to education for all children.

Methods and materials

The concept of inclusive education was established in 1994 with the adoption of the Salamanca statement and the framework for action, which reflected basic provisions aimed at safeguarding the rights of vulnerable groups of learners [6]. The adoption of the CRPD in 2006 signified a pivotal moment in the academic discourse on inclusive education. In 2016, the United Nations Committee published General Comment No. 4 on Article 24 of CRPD. Following this, a new wave of academic research has emerged, focusing on exploring inclusive education through legal, social, and political lenses. A paradigm shift in the focus of research is evident, with earlier studies concentrating on pedagogical and social approaches, and recent research increasingly focusing on the recognition of inclusive education as a fundamental human right. CRPD established new international legal standards, elevating inclusive education to the level of legal obligations binding on all state parties. Inclusive education should not be regarded solely as a pedagogical concept, but as a fully recognised subjective legal right [7; 45].

Kazakhstan has incorporated the development of an inclusive society into its long-term national development strategy. In accordance with Article 1 of the Constitution of Kazakhstan, the country is defined as a democratic, rule-of-law and social state, with the individual, his rights and freedoms recognised as the highest value. The principle of social justice is reflected in major political and programmatic documents, including the President's address "For All and for Each. Now and always" and the concept of Inclusive Policy in Kazakhstan for 2025–2030. These documents emphasise the imperative of ensuring the equal participation of persons with disabilities in the social, economic, and cultural life of society [8]. Nevertheless, for an extended period, the medical model prevailed as the prevailing paradigm within Kazakhstan's educational system. Substantial reform was initiated in 2011 with the introduction of the concept of inclusive education within Kazakhstan's legislation, specifically within the "On Education" law. This development signified the initiation of a procedure aimed at revising the prevailing legal framework governing this domain [9]. Kazakhstan has undergone a gradual transition from a medical and correctional approach to a rights-based model that is aligned with international legal instruments. Following the ratification of the CRPD in 2015, the Government of Kazakhstan undertook to ensure equal access to education for persons with disabilities, and to initiate the harmonization of its national legislation with international standards. In 2021, significant amendments were made to the Law "On Education". These included state guarantees for the provision of special conditions for children with special educational needs at all levels of education, as well as the regulation of procedures for assessing students' educational needs and mechanisms for their psychological and pedagogical support [10]. Moreover, the legislation has established the legal obligation for school administrators who violate admission procedures or fail to create appropriate conditions for inclusive education [11]. Consequently, the amendments to the legislation are intended to enhance inclusive mechanisms within the Kazakhstan's education system. Nevertheless, the advancement of inclusive education is contingent on the sustained efforts to refine the regulatory framework, augment the competencies of educators, and establish the requisite conditions for customizing the educational process to cater to the distinct requirements of students. This assertion is corroborated by the observation of the UN Committee in April 2024, which highlighted the persistent enrolment of children with disabilities in special educational institutions, special classes in schools, or home-based education [12]. It was observed that inclusive education in Kazakhstan has not yet attained the requisite level of quality, and the government should reconsider its approach.

The study uses a theoretical and legal analysis method, which allows for a deep understanding of the legal nature of reasonable accommodation as a key mechanism for realizing the right to inclusive education.

Results

The right to inclusive education is regarded in this study as one of the most progressive achievements of international law in the field of human rights. Article 24 of the CRPD holds particular significance, stating:

“States parties recognize the right of persons with disabilities to education... and ensure an inclusive education system at all levels and lifelong learning” [13].

The drafters of the Convention conducted a review and formally recognized a novel interpretation of the right to education for persons with disabilities. Even though the process of rethinking the concept of «right to education» commenced prior to the formal adoption of the Convention, this international legal instrument served to clearly establish the goal of inclusive education as an international legal standard in the field of human rights. This issue was then the subject of a resolution by the UN Human Rights Council in 2014. The issue was the subject of increased attention following the publication of General Comment No. 4 on the right to inclusive education by the CRPD Committee in 2016. Paragraph (b) underlines the necessity of ensuring the territorial accessibility of inclusive education for persons with disabilities, thereby underscoring the obligation of State Parties to provide equal access to quality and free primary and secondary education in the places of residence of learners. Consequently, the right to education is interpreted not solely as the right to be included in the general education system, but also as the right to be educated in conditions that are as close as possible to the child’s social and cultural context. This approach involves the transition from the placement of children with disabilities in specialized institutions, located remotely from their place of residence to the transformation of proximate general education schools into inclusive learning environments that are capable of catering to the diverse needs of all students. Paragraph 40 of this document stipulates that the maintenance of two education systems (mainstream and special/segregated) is incompatible. The Committee recommends that states parties reallocate financial and material resources from segregated educational institutions to inclusive schools. In this regard, countries which have ratified the CRPD are advised to be guided by these principles and to implement an inclusive model of education at all levels. Paragraph 40 of General Comment No. 4 is subject to criticism for several reasons.

Firstly, in the case of some children with severe multiple developmental disabilities, complex medical or behavioral needs, the necessity for specialized assistance is evident. However, within the current circumstances, this assistance often cannot be provided within the mainstream school system. Special educational institutions, frequently possessing the appropriate equipment, are staffed by specially trained personnel, and offer individualized programs that are tailored to the needs of such students. To date, the CRPD has been formally ratified by 192 states and the European Union, and its provisions are binding on state parties. While numerous countries have adopted favourable policies and incorporated inclusive education norms into their legal systems, in practice, the implementation of certain obligations remains inconsistent. As has been noted by the Committee on numerous occasions, this issue has been brought to their attention in the concluding observations and recommendations they have issued. For instance, statistical data from England in May 2017 showed an increase in the proportion of students with individual education, health, and care plans attending publicly funded special education institutions. Despite this, the proportion of children enrolled in special schools in England decreased from 37.9 % to 35.8 % by 2024, albeit at a gradual rate [14]. In Germany, the proportion of children with disabilities studying in special education institutions has remained significantly higher than in other countries for many years. In this regard, the UN Committee has expressed concern over the continued prevalence of an education system in which the majority of students with disabilities are enrolled in segregated schools [15]. By ratifying the CRPD in 2015, Kazakhstan assumed international legal obligations regarding the transformation of special schools. However, official data demonstrate that in 2023, 16,898 children were educated in special schools in Kazakhstan, representing an increase of 1,082 compared to the previous year [16]. The primary reason for parents opting for special schools is their desire to ensure that their child’s special educational needs are effectively met. These institutions offer adapted curricula and methodologies, and provide regular support from qualified specialists (e.g., special education teachers, speech therapists, psychologists), which is a significant advantage for many families. Research conducted in Kazakhstan indicates that general education schools often face shortages of special educators and support staff [17].

Secondly, an inadequate transition from special to inclusive education has the potential to result in a scenario in which a child with a disability is formally included in a mainstream classroom yet remains excluded from active participation in the educational and social life of the school. This model, in which the student is physically present in the classroom but does not receive adequate support, is often accompanied by forms of discrimination that are not immediately apparent, social isolation and psychological discomfort. Empirical studies reveal that, in numerous cases, parents express resistance to inclusive practices both explicitly and implicitly within the daily functioning of schools. This resistance constitutes a significant barrier to fostering inclusive environments [18]. Specifically, stigma is most frequently reported among individuals

with mental health conditions (67 %), intellectual, social, or behavioural and learning disabilities (67 %), memory impairments (62 %), fine motor impairments (54 %), and stamina or respiratory difficulties (51 %). Alarming, nearly 40 % of respondents within these groups reported feeling perceived as a burden by others, further illustrating the pervasive impact of social stigma on educational equity and inclusion [19]. A persistent issue pertains to the inclusion of children with disabilities in mainstream schools in some region of Kazakhstan, arising from inadequate environmental adaptation, societal prejudices, and a low level of tolerance [20].

Another critical issue in inclusive education relates to the relationship between the child's right to education and the parents' duties in raising and developing the child. The CRPD affirms the primacy of the best interests of the child and the child's right to participate in decision-making. Specifically, Article 7(2) of the CRPD requires that all actions concerning children with disabilities be guided by the child's best interests, which implies recognition of individual educational needs. Article 7(3) obliges states to ensure that children with disabilities have the right to express their views on matters affecting their rights, and that these views be given due weight in accordance with the child's age and maturity. However, paragraph 10 of the Committee's General Comment states: "Inclusive education must be regarded as a fundamental human right for all learners. In particular, education is an individual right of the child, not a right of the parent or guardian. In this regard, parental responsibilities must be subordinate to the rights of the child". This interpretation raises critical questions regarding the balance between the requirements of international legal norms, legal certainty, and fundamental legal principles.

First, the assertion that the right to education belongs exclusively to the child, without reference to the rights of parents, presents an absolutist view. This approach contradicts the provisions of several international agreements. Notably, Article 18 of the Convention on the rights of the child recognizes parents as the primary duty-bearers for the upbringing and development of the child [21]. Therefore, ignoring the parental role in ensuring the child's rights particularly by fully subordinating their responsibilities to the child's rights is problematic. The UN Committee on the Rights of the Child, in its General Comment No. 1, also underscores the crucial role of parents in realizing children's rights, including the right to education [22]. While parents have the right to choose the educational path for their child, this choice must align with the child's best interests. Ultimately, the state bears the obligation to ensure and protect this interest.

Secondly, this interpretation may also conflict with the principle of the best interests of the child, as enshrined in Article 3 of the Convention on the Rights of the Child and Article 7 of the CRPD. While inclusive education is recognized as the preferred model, it cannot be assumed to be a universal solution suitable for every child. For example, for children with severe sensory impairments or complex multiple disabilities, inclusive environments may not be adequately adapted to meet their needs. In such cases, the views of parents as legal representatives should be duly considered, and they should be recognized as key actors capable of accurately assessing the specific needs and capacities of their child. A fundamental component of inclusive education is the collaborative decision-making process, which involves respecting and incorporating the perspectives of learners, their families, and legal representatives in determining the most appropriate educational pathway.

Moreover, one of the fundamental principles of international law is the principle of priority of more favorable norms. According to Article 41 of the Convention on the Rights of the Child, if national legislation or other international obligations of a state provide for higher standards of protection of the child's rights, those standards must prevail. In legal doctrine, this principle is interpreted as the requirement to implement the most favorable solutions in the best interests of the child in each specific case [23]. It is particularly relevant to the realization of the right to education. If the national education system offers several forms of instruction, priority should be given to the one that meets best the child's interests and ensures the fullest realization of their rights.

Discussion

The Standard rules on the equalization of opportunities for persons with disabilities were adopted prior to the CRPD. The UN General assembly approved these rules in 1993, and they represented a significant international document. They sought to establish a coordinated approach to ensuring the rights of persons with disabilities, including in the field of education. These Standards underscored the imperative to transition towards an inclusive educational framework. However, they acknowledged that during the transitional phase, special education institutions could assume a pivotal role in preparing students for further education within the general education system. It can be extrapolated from the provisions of the document that special educa-

tion should not be considered a final or permanent solution, but rather should be oriented towards gradual integration into an inclusive educational environment. Paragraph 6.8 underscores the following: it is imperative that the quality of special education meets the same standards and requirements as general education and that there is a close link between the two [24]. The fundamental principle underpinning the agenda is the equitable allocation of educational resources to students with and without disabilities. It is acknowledged that, in certain instances, special education may constitute the optimal educational modality for specific categories of students. A comparable approach is delineated in the legal positions of the Committee. In particular, it emphasized that if full implementation of inclusive education is not feasible in the immediate future, states parties must ensure the continuity of educational services and provide alternative educational programmes. This wording reflects a realistic and flexible approach to building an inclusive system that takes into account the varying degrees of readiness and resource availability of education systems in different countries. Moreover, the Committee on economic, social and cultural rights acknowledges the admissibility of specific forms of education in General comment No. 13, “The Right to Education”. Paragraph 33 states: in certain circumstances, the establishment of separate educational systems or institutions for groups defined in accordance with the category specified in Article 2(2) should not be considered a violation of the Covenant [25]. This provision serves to affirm that the existence of specialised forms of education does not, in itself, contradict international obligations, provided that the principles of non-discrimination and equal access are observed.

During the course negotiations on the draft CRPD, the issue of the admissibility of the parallel existence of general and special education systems was actively discussed [26]. Maintaining the capacity for both systems to function was proposed, with consideration given to the needs of children with severe sensory and multiple impairments. Conversely, there was a demand to recognize inclusive education as a universal model, within which reasonable accommodations and specialized support measures are provided. Following eight rounds of negotiations, on 13 December, 2006, the UN General assembly formally endorsed CRPD [27; 439]. Consequently, the right of persons with disabilities to education was enshrined as an international legal norm. This standard was further developed in the 2014 resolution of the UN Human rights Council and then in General comment No. 4, published by the Committee in 2016. Paragraph 40 of the document is of particular relevance in this regard, as it explicitly states that the maintenance of two parallel systems general education and special (segregated) education is incompatible with the provisions of the Convention. The Committee recommended that states reallocate financial and material resources in favour of inclusive schools, gradually reducing institutionalised forms of education.

Nevertheless, during the period under review, scientific approaches to inclusive and special education remained ambiguous. For instance, Hellahan and Kaufman proposed a model of a continuum of educational services in their study. This model posits that the education system should vary from full inclusion to special programs depending on the individual needs of students. The authors emphasized that it is impossible to educate all children with disabilities exclusively in an inclusive environment without adequate support [28]. In contrast, other researchers emphasized the imperative for comprehensive coverage of all students by general education schools, perceiving any form of isolation as a transgression against human rights. Consequently, the notion of “supportive schools” emerged as a response, with the objective of mitigating social isolation and enhancing the quality of inclusion. The concept of “reasonable accommodation” as an element of ensuring the right to education began to be defined in scientific and legal literature. Also, an inclusive education is a universal system that recognizes the uniqueness of each learner and removes barriers to learning. The role of special education is transforming as it should support inclusion by promoting the creation of an accessible and equitable educational environment that reflects the values of equality and is consistent with SDG 4 [29]. These debates continue to be relevant in the contemporary academic field. Of particular importance are the recommendations of the UN with regard to Germany. The Committee proposed a gradual reduction in the number of special schools to promote integration. It also emphasized the need for legislative and policy-level guarantees ensuring that mainstream schools admit children with disabilities without obstacles and in accordance with their own preferences [30]. In this context, the key point lies in the phrase “in accordance with their preferences”, which reflects the child’s right to freely choose their mode of education, emphasizing their autonomy in the learning process.

The issue of the relationship between the right to inclusive education and parental rights became a subject of criticism from certain organizations during the debate over the ratification of the CRPD in the United States. As Arlene S. Kanter notes, opponents of ratification expressed concern that the “best interests of the child” standard set forth in Article 7, as well as the provisions of Article 24 on the right to inclusive educa-

tion, might undermine parental autonomy in making decisions about the education of their children with disabilities. In particular, the Homeschooling legal defense association argued that the CRPD would restrict the right of parents to determine the form and setting of their child's education. However, according to Kanter, such concerns are unwarranted, as the Convention is aimed at protecting the rights of children with disabilities themselves, rather than interfering with parental authority and it does not override national regulatory mechanisms in the field of education [31]. The right of the child to express their own opinion, which is enshrined in Article 12 of the UN Convention on the Rights of the Child, emphasizes two key concepts. Firstly, it recognizes the uniqueness of the child's personality and ability to make decisions. Secondly, it acknowledges the potential risks associated with excessive freedom, highlighting the need for balance in decision-making processes that consider the best interests of the child [32].

Conclusion

A legal analysis of Article 24 of the CRPD and General Comment No. 4 allowed for the identification of both conceptual contradictions and practical limitations in global efforts to transform educational systems. Based on the conducted research, the following conclusions can be drawn:

First, inclusive education should be viewed not only as a pedagogical goal or a direction of public policy but also as a protectable individual human right. Such a status imposes legal obligations on States Parties to the CRPD for the progressive realization of an inclusive educational system that ensures accessibility, quality, and individualized support for all learners. At the same time, the text of the Convention does not explicitly prohibit the existence of special schools, which grants states a certain degree of flexibility in adapting their systems, taking into account local capabilities and social, cultural conditions. It is essential to emphasize that the quality of special education must meet the same standards and requirements as general education to ensure equal opportunities for all learners, regardless of their individual characteristics. Second, despite the fact that General Comment No. 4 promotes a model of a unified inclusive system, its categorical rejection of the parallel existence of special education and the limitation of parents' roles in choosing the form of education raise a number of legal and ethical questions. In particular, the principle of the best interests of the child a cornerstone of both the CRPD and the Convention on the Rights of the Child should be interpreted to consider both the child's opinion and the informed position of parents or legal representatives. Ignoring this balance could lead to a reduction in the effectiveness of parental involvement and an inability to meet the complex individual needs of children with disabilities. Third, the implementation of inclusive education requires considering the national context and systemic transformation. The example of the Republic of Kazakhstan demonstrates that formal legal reforms including constitutional guarantees, national strategies, and amendments to the Law "On Education" must be accompanied by tangible improvements in infrastructure, staff training, and the implementation of inclusive practices. In countries with transitioning education systems, inclusive and special education should not be viewed as opposing forces. Instead, they should be coordinated to ensure flexibility, non-discrimination, and equal educational opportunities for all children.

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Н. Сайранқызы

«Мүгедектер құқықтары туралы» Конвенцияның 24-бабына (Білім беру) қатысты № 4 жалпы ескертпеге құқықтық сыни талдау

Мақалада Біріккен Ұлттар Ұйымының «Мүгедектердің құқықтары туралы» Конвенцияның 24-бабының түсіндірілуін және қолданылуын ерекше назарға ала отырып, инклюзивті білім беру құқығын қамтамасыз етуге қатысты халықаралық және ұлттық құқықтық негіздер талданған. Зерттеудің басты мақсаты — инклюзивті білім беру жүйесін қалыптастыру жөніндегі мемлекеттердің құқықтық міндеттемелерінің ауқымы мен сипатын зерделеу. Зерттеу халықаралық құқықтық құжаттарды, оның ішінде Біріккен Ұлттар Ұйымының Мүгедектердің құқықтары жөніндегі комитеттің № 4 жалпы ескертуін салыстырмалы құқықтық талдау және интерпретациялау әдістеріне сүйенеді. Арнайы білім беру мекемелерін трансформациялау және ата-аналар, заңды өкілдердің баланың білім алу нысанын таңдаудағы рөліне қатысты құқықтық және іс жүзіндегі қайшылықтар көрсетілген. Зерттеу нәтижелері инклюзивті білім беруді тек педагогикалық немесе әлеуметтік тұжырымдама ретінде емес, сонымен қатар қорғалуға тиіс жеке адам құқығы ретінде тану қажеттігін дәлелдейді. Мақалада инклюзивті және арнайы білім беруді құқықтық тұрғыда үйлестіру, сондай-ақ баланың мүдделерін ескере отырып, бейімделген білім беру ортасын қалыптастыру қажеттігі жөніндегі ұсыныс жасалды. Инклюзия арнайы білімге толық балама ретінде емес, білім беру жүйесін өзара толықтыратын бір бөлік ретінде қарастырылуы керек.

Кілт сөздер: инклюзия, білім алу құқығы, арнайы білім беру мекемелері, «Мүгедектер құқықтары туралы» Конвенция, инклюзив білім беру құқығы, бала құқықтары, «Бала құқықтары туралы» Конвенция, баланың ең жақсы мүддесі, ерекше білім беру қажеттіліктері, адам құқықтары.

Н. Сайранқызы

Критический правовой анализ общего комментария № 4 к статье 24 (Образование) «Конвенции о правах инвалидов»

Настоящая статья посвящена анализу международных и национальных правовых рамок, регулирующих право на инклюзивное образование, с особым акцентом на толкование и применение статьи 24 Конвенции о правах инвалидов Организации Объединённых Наций. Цель исследования заключается в определении характера и объёма юридических обязательств государства по созданию инклюзивной системы образования. В работе применяются методы сравнительно-правового анализа и интерпретации международных правовых документов, в частности Общего замечания № 4 Комитета по правам инвалидов Организации Объединённых Наций к указанной Конвенции. Исследование выявляет как юридические, так и практические противоречия, особенно в вопросах трансформации специальных образовательных учреждений и определения роли родителей при выборе формы образования для ребёнка. Полученные результаты обосновывают подход, согласно которому инклюзивное образование следует рассматривать не только как педагогическую или социальную концепцию, но и как индивидуальное право. В заключение статьи представлена рекомендация о необходимости правового согласования инклюзивного и специального образования, а также создания адаптированной образовательной среды в наилучших интересах ребёнка. Инклюзия должна пониматься как взаимодополняющий элемент интегрированной системы образования, а не как полная альтернатива специальному образованию.

Ключевые слова: инклюзия, право на образование, специальные образовательные учреждения, Конвенция о правах инвалидов, право на инклюзивное образование, права ребёнка, Конвенция о правах ребёнка, наилучшие интересы ребёнка, особые образовательные потребности, права человека.

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Practical aspects of Kazakhstan's interaction with the UN in the field of cybersecurity

To enhance the security of its digital environment, the Republic of Kazakhstan closely cooperates with the UN and other international organizations, applying a variety of strategic methods and regulatory instruments to create and implement effective international cybersecurity standards. The increasing risks associated with cyberterrorism, cyberintelligence, and interference in the sovereignty of states through cyberspace necessitate expanded international cooperation. Consequently, the UN's role in coordinating efforts to establish common principles and rules of conduct for states in the cyber environment is growing, reflected in the adoption of new resolutions and the expansion of the mandate of the Open-Ended Working Group on Cybersecurity. Structural, logical, and dialectical approaches were used to analyze Kazakhstan's cybersecurity legislation. The theoretical foundation of the study was formed by examining international law, academic papers, and materials from international organizations. International commitments, particularly within the United Nations, are key to the development and evolution of Kazakhstan's cyber policy. Active engagement in international projects, aligning national legislation with international standards, and implementing strategic programs contribute to enhancing the state's cybersecurity and its integration into the global digital community. A significant factor in this process is the incorporation of international law into national legislation.

Keywords: cybersecurity, UN, cyber threats, international cyber regulation, international law, information law.

Introduction

The relevance of this study stems from the dynamics of recent global trends. The period 2022–2024 was marked by a wave of large-scale cyberattacks targeting both public and private entities in many countries, including the Republic of Kazakhstan. There is an alarming increase in cyberterrorism, cyberespionage, and attempts to destabilize national processes through cyberspace, highlighting the need for intensified international cooperation.

In this context, the UN's role as a coordinator in developing universal principles and norms for state behavior in the digital environment is growing, as reflected in the adoption of new resolutions and the expansion of the mandate of the Open-Ended Group on Cybersecurity. Furthermore, the legal regulation of cybersecurity faces additional challenges associated with the rapid development of artificial intelligence, the Internet of Things, and automated systems. These innovations are generating new types of threats while transforming existing risks. In response to these changes, states are increasingly turning to bilateral and multilateral agreements aimed at strengthening cooperation in the cyberspace domain. This makes an in-depth study of the international legal framework for cybersecurity particularly important, especially in the context of increasing global competition in the technological sphere. Recognizing the scale of threats in cyberspace, states are actively developing national cybersecurity strategies. They are also adopting legislative measures to prevent, detect, and combat cyberthreats, as well as to protect critical infrastructure and guarantee the rights of citizens in the digital space.

In the 21st century, cyberspace has become a new arena for international interaction, where digital technologies play a key role in economics, security, and diplomacy. Amid the rapid growth of cyber threats, the global community faces the need to develop internationally recognized norms and standards of conduct in the information space. The United Nations, as a universal intergovernmental body, serves as the coordinating center for these processes, including through the platforms of the Group of Governmental Experts (GGE) and the Open-Ended Working Group (OEWG).

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International experience in interacting with the UN in this area provides important guidance for states developing their own cybersecurity strategies. Particularly illustrative is the experience of the European Union and the Russian Federation: two actors representing different legal, political, and technological approaches to international information security.

Further research requires examining the experiences of other countries in interacting with the UN and other international bodies responsible for cybersecurity. This can be achieved by analyzing case studies of various countries, which will reveal different strategies and approaches to building both their own cybersecurity and legal policies related to cybersecurity in national and international law.

The study draws on the work of Sh. Zabikh, S.A. Shulgin, E. Tikk and M. Kerttunen, identifying problems that, despite the development of the digital economy in Kazakhstan, there is a growing dependence on information technology. This creates new vulnerabilities in cyberspace, requiring additional security measures.

As part of the “Digital Kazakhstan” national program, the country is actively pursuing digital transformation, necessitating the continuous updating of cybersecurity legislation and active international cooperation. These factors underlie the importance of this topic.

The findings of this study will be useful for legal professionals and policymakers. The results can be used to develop state policy in the area of cybersecurity, shape Kazakhstan's foreign policy, and draft international treaties. They can also serve as the foundation for educational and analytical materials on international law and ICT security.

The purpose of the study is to identify practical aspects of Kazakhstan's interaction with the UN in the field of cybersecurity, as well as to develop recommendations for improving the legal framework for international cooperation.

Research objectives:

- to study existing international legal norms governing cybersecurity;
- to analyze Kazakhstan's participation in international agreements and UN initiatives on this topic;
- to consider mechanisms of cooperation between Kazakhstan and other countries with international organizations in the field of information security;
- to identify ways to improve international legal regulation of cyber threats.

The object of study is the scope of international legal regulation of cybersecurity, with particular attention to the forms and content of interaction between the Republic of Kazakhstan and the United Nations and other international organizations in the context of ensuring digital security.

The subject of research is legal instruments and processes that ensure the implementation of international norms and obligations in the national cybersecurity policy of the Republic of Kazakhstan. Specifically, the adaptation of international standards, the country's participation in UN initiatives, and their cumulative impact on the evolution of domestic legislation and the development of information security infrastructure are analyzed.

Methods and materials

This study included an in-depth analysis of the theoretical and legal aspects of cybersecurity in Kazakhstan, encompassing both international and national norms. The methodological basis of the work was a systemic-structural, logical, and dialectical approach to studying scientific and legal literature. Key sources of information included regulatory legal acts of the Republic of Kazakhstan, as well as academic works, including monographs, dissertations, and educational materials. Information provided by the United Nations was used to form the theoretical basis of the article.

Results

The United Nations has consistently affirmed the applicability of international law to cyberspace. The UN Charter, along with fundamental principles such as state sovereignty, non-interference in internal affairs, the prohibition of the use of force, and respect for human rights, also apply to the field of information and communications technology [1–3]. These provisions were recognized in the 2013 and 2015 reports of the Group of Governmental Experts (GGE), as well as in the 2021 report of the Open-Ended Working Group (OEWG). Consequently, states are obliged to comply with international legal norms when conducting cyber operations.

Resolution A/RES/79/243: UN Convention against Cybercrime

Resolution A/RES/79/243, adopted on December 24, 2024, endorsed the first-ever global, legally binding UN Convention against Cybercrime. This international instrument aims to prevent and combat cybercrime, as well as strengthen cooperation between states in this area [4].

The development of the Convention dates back to 2019, when an intergovernmental expert group was established to analyze cybercrime issues. In 2021, the General Assembly established an Ad Hoc Committee to draft a comprehensive convention. A series of sessions was held in New York and Vienna from 2022 to 2024, culminating in the adoption of the final text in August 2024.

The Convention comprises nine chapters addressing key aspects of the fight against cybercrime. It establishes provisions for the criminalization of acts, such as unauthorized access to information systems, interference with data, the use of malware, and the commission of crimes using ICTs, including fraud and extortion. Procedural rules provide for effective methods of investigation and collection of digital evidence while respecting human rights. Significant attention is paid to international cooperation: extradition procedures, legal assistance, and joint investigations are regulated. Furthermore, the text of the Convention contains provisions on providing technical assistance to developing countries and measures to build their capacity [4].

The document represents an important step towards the development of universal standards and the harmonization of national legislation by providing minimum mandatory legal provisions to be implemented by participating States. This helps eliminate legal conflicts in cross-border cybercrime investigations and increases the level of cooperation between jurisdictions [4].

The Convention places particular emphasis on the protection of human rights. It prohibits the arbitrary collection and transfer of personal data, requires legal oversight of law enforcement actions, upholds the principle of proportionality in the application of investigative measures, and draws on the International Covenant on Civil and Political Rights. This ensures a balance between the interests of law and order and the fundamental rights of the individual [4].

An important aspect is the establishment of technical support mechanisms for developing countries. The Convention provides financial and expert assistance in drafting legislation, training personnel, and establishing national cyber incident response teams. It also promotes technology transfer and the development of resilient digital infrastructure [4].

The document will be opened for signature in 2025 at a ceremony in Hanoi, and then at UN headquarters in New York until the end of 2026. To enter into force, the Convention must be ratified by 40 states. A Conference of States Parties will subsequently be established to monitor its implementation and consider possible amendments [4].

Thus, the UN Convention against Cybercrime represents a significant achievement in institutionalizing the global fight against digital crime. It strengthens norms of international cooperation, promotes greater legal certainty, and emphasizes the need to respect human rights in the context of digital transformation.

Discussion

The Group of Governmental Experts (GGE): History and Contributions

The Group of Governmental Experts on Developments in the Field of Computer Science in the Context of International Security (GGE) was established by the UN General Assembly in response to growing concern among states about the risks associated with the use of information and communications technologies (ICT) for purposes threatening international security. The reasons for the creation of the GGE were the lack of generally accepted rules of conduct for states in cyberspace, the increasing number of cross-border cyber incidents, and the need to interpret the applicability of existing international law to action in the digital environment, as well as the desire to prevent an arms race in cyberspace.

Since its inception, the GGE has conducted seven working cycles. The first group (2004–2005) did not reach consensus but laid the foundation for subsequent discussions [1]. The second GGE (2009–2010) recognized the need to apply international law and norms to the ICT sphere [1]. The third GGE (2012–2013) formally reaffirmed for the first time the applicability of the UN Charter and the principles of international law in cyberspace [5]. The fourth GGE (2014–2015) developed 11 voluntary norms of responsible state behavior. The fifth GGE (2016–2017) concluded without a final report due to disagreements among participating states [2]. The sixth GGE (2019–2021) presented a new final report with clarifications on international law, norms, and confidence-building measures [3]. The seventh GGE (2023–2024) focused on transparency measures, capacity building and conflict prevention in the digital environment; its report is expected in 2025 [6].

Among the key documents of the GGE, the 2013 GGE Report (A/68/98) recognized the application of international law to cyberspace, the 2015 GGE Report (A/70/174) contained 11 norms of responsible behavior of states, and the 2021 GGE Report (A/76/135), which developed approaches to international law, confidence-building measures, and technical cooperation. These documents formed the basis of the normative architecture in the field of international cybersecurity and serve as a guide for subsequent work within the UN [5][3].

Thus, the GGE has played a fundamental role in legitimizing the application of international law to cyberspace, shaping basic norms of state behavior, and promoting confidence-building measures between states.

Open-Ended Working Group (OEWG): Rationale, Documents, and an Inclusive Approach to Cybersecurity

The Open-Ended Working Group on ICTs and International Security (OEWG) was established by UN General Assembly Resolution 73/27 in 2018 in response to criticism of the GGE's limited membership and the need for an inclusive approach. Its creation was prompted by demands from developing countries for broader representation in the development of international cyber rules, a desire to ensure transparency and legitimacy in negotiations, and the need to discuss cybersecurity issues in a multilateral format, rather than solely among experts.

The OEWG became the first UN platform open to participation by all Member States. Its key documents were the OEWG Final Report (A/75/816) of March 2021, which reaffirmed the applicability of international law and proposed recommendations for confidence-building, technical assistance, and cooperation, as well as the OEWG Interim Report for the 2023–2025 Cycle (A/78/350), which assessed progress in implementing previously agreed measures [7]. In addition, an Action Plan was developed until 2025, which includes holding global workshops, supporting national incident response centers (CSIRT/CERT), and implementing ICT security standards [8].

Important achievements of the OEWG have included stimulating the development of national cybersecurity strategies, recommending the establishment of computer incident response teams, confidence-building measures (including state-to-state communication channels, joint exercises, and technical information sharing), and promoting the development of developing countries' digital security capabilities.

The OEWG format has significantly strengthened the engagement of countries in the Global South in the dialogue on digital security and has become an important platform for coordinating positions, developing common approaches, and increasing transparency in international cyber policy.

Key provisions of the ITU standards in the field of cybersecurity

One of the key players in shaping the global cybersecurity architecture is the International Telecommunication Union (ITU), a specialized UN agency coordinating standards and initiatives in the field of information and communications technology (ICT). The ITU's strategic instrument for global regulation is the Global Cybersecurity Agenda (GCA), launched in 2007 [9–11]. The GCA is a framework platform aimed at strengthening international cooperation to enhance trust and security in the use of ICTs. This initiative covers five mutually reinforcing areas:

Legal measures — the ITU emphasizes the importance of developing and harmonizing legislation aimed at combating cybercrime and ensuring cybersecurity. This includes the creation of model legislation that can be adapted by member countries to create an effective legal framework. Such measures promote international cooperation and provide a basis for prosecuting cybercrime.

Technical Measures — the ITU actively develops and promotes technical standards and procedures aimed at enhancing the security of ICT infrastructure. This includes recommendations on risk management, data protection, and incident response. The organization also collaborates with other standardization bodies and industry groups to ensure the consistency and effectiveness of technical measures.

Organizational Structures — the establishment and strengthening of national and international institutions responsible for the coordination and management of cybersecurity is a key focus of the GCA. This includes the formation of national Computer Incident Response Teams (CIRTs), the development of crisis management strategies, and the protection of critical information infrastructure.

Capacity Development — the ITU places great importance on the education and training of cybersecurity professionals. The organization conducts training events, such as CyberDrills, and provides methodological recommendations to raise awareness and develop skills. Particular attention is paid to supporting developing countries and promoting the participation of women in international cybersecurity processes.

International Cooperation — The GCA promotes international cooperation in cybersecurity by encouraging information sharing, joint exercises, and the development of common standards. This includes participation in international fora, cooperation with other organizations, and support for countries in developing and implementing national cybersecurity strategies [11, 9, 10].

The GCA's significant regulatory and institutional framework is complemented by ITU resolutions aimed at specifying the functions and objectives of the state and the international community in ensuring digital security. Resolution No. 130 (Bucharest, 2022) emphasizes the need to strengthen the role of the ITU as the central international mechanism for trust and security in the use of ICTs. Resolution No. 174 (Busan, 2014) expands this agenda by establishing ITU's competence in international policy to prevent the illicit use of ICTs. Of particular significance is Resolution No. 179 (Bucharest, 2022), which establishes standards for the protection of children in the digital environment, emphasizing the social responsibility of participants in digital interactions [12].

To monitor and benchmark the cybersecurity status of ITU member states, the ITU developed the Global Cybersecurity Index (GCI). The GCI methodology includes five criteria: the presence of a legal framework, technical measures, organizational structure, capacity development programs, and participation in international cooperation. Published every two years, the GCI rankings enable countries to identify gaps in their national cybersecurity systems and adopt effective practices from more advanced states. According to recent reports, Kazakhstan has demonstrated positive dynamics, moving up the GCI rankings, demonstrating the effectiveness of its measures and adherence to international benchmarks [12].

Along with assessment tools, ITU actively assists countries in developing national cybersecurity strategies and establishing Computer Incident Response Teams (CIRTs). As part of this work, the organization:

- develops methodological recommendations for building cybersecurity strategies and architecture;
- conducts training courses and cyber exercises (CyberDrills) for specialists;
- provides assistance in the creation and modernization of national CIRTs, including readiness diagnostics, planning and technical support [13; 57].

The UN demonstrates a systematic and consistent approach to developing the international legal regime for cyberspace. Through the GGE and OEWG mechanisms, as well as through the development of global treaties, such as the Convention against Cybercrime, the organization is developing universal norms to ensure both international security and the protection of human rights in the digital age. Kazakhstan's participation in these initiatives strengthens its position on the international stage and develops an effective national cybersecurity policy.

ITU's activities also encompass all key aspects of cybersecurity, from international normative initiatives to direct technical and institutional support for states. For Kazakhstan, which is actively involved in these processes, participation in ITU programs contributes to enhancing the resilience of its digital infrastructure and integrating it into the global cybersecurity system [14; 95, 15; 33].

With the rapid development of digital technologies and the growth of cyber threats, international cooperation between states is becoming critical to ensuring global and national cybersecurity. The United Nations (UN) plays a key role in developing universal norms and approaches in this area, creating a platform for dialogue and cooperation between countries. Kazakhstan, recognizing the importance of a multilateral approach to cybersecurity issues, actively participates in UN initiatives aimed at strengthening international information security and developing agreed standards for state behavior in cyberspace. This subchapter examines Kazakhstan's interactions with the UN, including its areas, achievements, and existing challenges.

Examples of interaction between the Republic of Kazakhstan and the UN and international organizations in the field of cybersecurity

The Republic of Kazakhstan actively participates in the activities of the UN Open Working Group on Promoting Responsible State Behavior in the Cyberspace. During the ninth session of the OEWG (2021–2025), Kazakhstan proposed developing standardized templates for classifying cyber threats and post-incident communications to improve the effectiveness of the Global Point of Contact Directory. Furthermore, Kazakhstan emphasized the need to develop global guidelines for ensuring the security of emerging technologies, such as artificial intelligence, quantum computing, and machine learning, and proposed conducting cyber exercises and attack simulations to strengthen states' cybersecurity capacity [16].

Close cooperation with the ITU on various cybersecurity initiatives is also noted. In September 2022, an interregional cyber training seminar for the CIS and Arab States was held in Almaty, organized by the ITU jointly with the Ministry of Digital Development, Innovation, and Aerospace Industry of Kazakhstan and the

Cyberattack Analysis and Investigation Center (CAAC). Participants discussed the role of national computer incident response teams (CIRTs/CSIRTs) and measures to protect critical information infrastructure [17].

In addition, Kazakhstan participated in the global GIGA initiative, together with ITU and UNICEF, with the aim of connecting all schools to the internet and providing young people with access to information and opportunities.

Within the framework of this project, Kazakhstan provided high-speed Internet to 446 rural schools, planning to expand coverage to 1,342 schools [18].

Kazakhstan is implementing the national cybersecurity concept “Kazakhstan Cyber Shield”, which includes measures to enhance the legal and industrial culture in the field of cybersecurity, improve preparedness for preventing and responding to incidents, and raise public awareness of cyber threats [19].

In 2024, a regional project on digital transformation of the public sector, funded by the Government of the Republic of Korea and implemented with the support of UNDP, was launched in Almaty. The project aims to develop digital governance in 12 countries of Central Asia, the Caucasus, and the Asia-Pacific region, including Kazakhstan [19].

Kazakhstan also presented innovative solutions in the field of digital transformation of social protection, including the “Digital Family Card” project, at the Asia-Pacific Ministerial Conference on Digital Inclusion and Transformation. The project aims to ensure equal access of citizens to state support in the social sphere and was highly praised by the international community [19].

Kazakhstan actively participates in regional cybersecurity initiatives. In September 2023, interagency consultations of SCO member states were held in Almaty on the establishment of an information security center based at the Regional Anti-Terrorism Structure in Tashkent. Kazakhstan presented a concept for creating such a center that would promptly respond to emerging cyber threats and protect the information space of the SCO region [20].

In addition, in November 2023, Kazakhstan and Azerbaijan signed a memorandum of understanding in the field of information security, aimed at increasing the level of cooperation in responding to information security incidents, exchanging best practices and information on current cyber threats [20].

Kazakhstan, with the support of UNICEF and the European Union, launched the “CYBER TUMAR” information and educational campaign aimed at protecting children online. The campaign includes information materials, practical advice from experts, and educational videos to help children navigate cyberspace safely [21].

In May 2023, a sub-regional training on ICT security for representatives of Central Asian countries and Mongolia was held in Astana, organized by the OSCE, together with the Ministry of Digital Development, Innovation, and Aerospace Industry of Kazakhstan, with support from the United Kingdom, has provided a significant platform for international cooperation aimed at strengthening cybersecurity and ICT development in the region [22].

Thus, Kazakhstan actively participates in international and regional cybersecurity initiatives, cooperates with key international organizations, implements national projects and programs aimed at strengthening cybersecurity, and actively participates in educational and awareness-raising initiatives. These efforts contribute to strengthening national and international security in the digital space.

The Republic of Kazakhstan considers cybersecurity as a key area of national and international security, while recognizing the important coordinating role of the United Nations in the development of global legal standards in this area [5; 7; 6]. In the context of active digital development, Kazakhstan is consistently integrating the provisions of international documents developed within the UN into its own regulatory framework.

One of the most important areas of cooperation with the UN has been Kazakhstan's participation in the Open-Ended Working Group (OEWG) and the Group of Governmental Experts (GGE) on International Information Security. Kazakhstan officially supports the core principles developed by these formats, including respect for state sovereignty in cyberspace, the prohibition of interference in the internal affairs of states, the principle of non-discriminatory access to ICTs, and the need for international cooperation to prevent cyber conflicts [6; 8; 11; 22].

In the context of adapting international norms, Kazakhstan has taken a number of steps to reform its legislative system. Thus, articles aimed at combating cybercrime were introduced into the Criminal Code of the Republic of Kazakhstan (2014 and subsequent amendments) (e.g., Article 205 “Unauthorized access to information”, Article 207 “Creation, use, or distribution of malicious software”, etc.). These provisions largely correlate with international standards enshrined in the Budapest Convention of the Council of Eu-

rope, as well as UN recommendations, despite the fact that Kazakhstan has not officially acceded to the convention [5; 23].

The European Union: An Integrative Approach to International Cybersecurity

The EU actively participates in the development of international norms and standards, positioning itself as a leader in promoting the principles of the rule of law, human rights protection, and international cooperation in the digital environment. Although the European Union itself is not a state and does not have formal membership in the UN, its participation in international platforms is carried out both through member states and directly as a regional subject of international law [24].

Within the OEWG and GGE, EU representatives consistently promote the application of existing international law to cyberspace. Particular emphasis is placed on the applicability of the UN Charter, international humanitarian law, and the principle of the inadmissibility of aggression, including in digital form. The EU also emphasizes the need for confidence-building measures, transparency, and accountability, which are the foundation for building a stable cyber environment [25].

At the institutional level, the EU has taken a number of steps to consolidate its cybersecurity efforts internally. A central role here is played by the European Union Agency for Cybersecurity (ENISA), whose mandate was significantly strengthened following the adoption of the Cybersecurity Act in 2019. ENISA has become not only an analytical and technical center but also a link between the national structures of EU Member States and international partners, including UN agencies [26].

Another important element of EU policy has been the introduction of a cybersecurity certification system. This system, based on three levels of trust, serves as a tool for harmonizing the assessment of ICT products and services, reducing digital market fragmentation and promoting trust both within the EU and beyond. It is particularly important that these certification approaches are becoming the subject of international dialogue, being promoted within the UN and ITU platforms.

A key feature of the EU's strategy is its attempt to combine domestic legal regulation and external diplomatic activity. For example, in November 2024, the EU Council adopted a declaration on the applicability of international law in cyberspace, thereby reaffirming its commitment to existing legal regimes and its willingness to promote these norms in international forums. Thus, the EU is effectively exporting its legal approaches to the global level, facilitating the institutionalization of international cybersecurity.

Russia: Digital Sovereignty and Legal Universalization

The Russian Federation exemplifies a different approach to cybersecurity, centered on the principles of state sovereignty, the equality of states, and the inadmissibility of interference in internal affairs. Since the late 1990s, Russia has actively shaped the UN agenda on international information security. Among the first initiatives were UN General Assembly resolutions, beginning with A/RES/53/70, initiated by Russia and forming the basis for the creation of the Global Geographic Environment (GGE).

At the OEWG, Russia emphasizes the need to develop legally binding international documents regulating the behavior of states in cyberspace. In 2021, an initiative was introduced to develop an international convention on information security, enshrining principles, such as digital sovereignty, the prohibition of cyber aggression, and the inadmissibility of using ICTs for military and destabilizing purposes [27].

Along with its efforts within the UN, Russia is actively working within the UN Office on Drugs and Crime (UNODC), promoting the idea of a comprehensive Convention on Cybercrime. At the same time, contacts are developing with the ITU, where Russia is promoting initiatives to strengthen the role of states in the governance of the internet and technical resources such as DNS and IP addressing [28].

At the national level, Russia implements a multi-layered cybersecurity policy, including the Information Security Doctrine (2016), Federal Law No. 187-FL "On the Security of Critical Information Infrastructure" and the National Digital Transformation Strategy. These documents define the regulatory framework for state control over the digital space and measures to reduce dependence on foreign technologies [29].

International cooperation is also pursued within the SCO, CSTO, BRICS, and through bilateral agreements. Particularly significant is the Memorandum of Understanding between Russia and China (2015), which commits both parties to preventing cyberattacks from each other's territory. Similar agreements have also been signed with Kazakhstan, India, Iran, and several other countries.

The United States: International Law and Digital Stability

The United States of America is a key participant in the development of a global cybersecurity architecture, emphasizing the applicability of existing international legal norms in cyberspace and promoting the principles of openness, transparency, and accountability. Since the early 2000s, the United States has con-

sistently participated in the development of norms for state behavior in the digital environment at the UN [30].

US initiatives within the Group of Governmental Experts (GGE) and the Open-Ended Working Group (OEWG) aim to reaffirm the applicability of the UN Charter, international humanitarian law, and principles of international responsibility to actions in cyberspace. The US insists that fundamental norms, including the prohibition of the use of force, sovereignty, non-interference, and the need to respect human rights, should apply regardless of the technological environment [16].

Particular attention is being paid to the development of voluntary, yet politically significant, norms. The United States supported the development of 11 norms of responsible state behavior, as outlined in the 2015 GGE report (A/70/174), including:

- refraining from causing damage to critical infrastructure;
- assistance to states affected by cyberattacks;
- vulnerability notification and threat information sharing [3].

At the OEWG, the United States actively promotes the idea of engaging all stakeholders—including the private sector, academia, and NGOs—in the process of shaping international cyber policy. This approach, according to the United States, ensures a more resilient and flexible system for global digital risk management.

In 2017, amid a growing number of cyber incidents, the American company Microsoft introduced the Digital Geneva Convention, which received support from expert and diplomatic circles. The document envisaged the introduction of international obligations similar to the Geneva Conventions, aimed at protecting citizens from the consequences of interstate cyberattacks. Proposed measures included a ban on cyberattacks on critical infrastructure, a ban on the introduction of backdoors into products, and the creation of an independent attribution mechanism [26].

The United States also actively opposes alternative concepts of cyber regulation, particularly those promoted by Russia and China under the term “information security”. In its speeches at the UN, US officials also emphasize that these concepts replace cybersecurity goals with issues of internal control, undermine freedom of speech, and create risks of internet fragmentation. Thus, during the OEWG discussions in 2021–2022, the US directly rejected the initiative to develop a legally binding convention on information security, proposed by the Russian Federation, citing the lack of broad consensus and the risks of restricting digital rights [31].

At the national level, US cyber policy is based on strategic documents: the Cyberspace Solarium Commission Report (2020), the National Cybersecurity Strategy (2023), and a series of presidential directives and orders, such as Executive Order 14028 “Improving the Nation’s Cybersecurity”. These documents define the principles of public-private partnerships, incident liability, and deterrence strategy in cyberspace [32].

US international cooperation is implemented through bilateral agreements (e.g., with the UK, Israel, Japan, Australia, etc.), as well as through the Quad initiative, the NATO Cyber Defense Pledge, the Clean Network, and the Paris Call for Trust and Security in Cyberspace.

Conclusion

The European Union emphasizes regionalism, institutionalization, and the promotion of soft law. The EU actively develops and implements regulations and directives that are binding on member states and focuses on the use of structural and administrative mechanisms to ensure cybersecurity within the region. An example is the EU Network and Information Systems Security Directive (NIS Directive), which requires member states to implement national cybersecurity strategies and establish national incident response centers. The EU is also actively engaged in the creation of new norms and standards within the European Cybersecurity Agency (ENISA), providing member states and private companies with recommendations and best practices. This approach encourages coordination and cooperation within the region but generally has limited impact beyond its borders.

Russia, on the contrary, emphasizes the need for global universalism and legal rigor. Russia seeks to transform soft law into hard law, insisting on the adoption of international conventions regulating the behavior of states in cyberspace. Russia’s most important initiative is the proposal to develop an international convention on information security within the UN. This convention should include mandatory norms that will ensure protection from cyberattacks and define the rules of conduct for states in cyberspace. Russia emphasizes the importance of creating universal international norms that will be binding on all countries. Also, unlike the EU, Russia emphasizes a legal platform with investigation and coordination mechanisms within the

UN, such as the Group of Governmental Experts (GGE) and the Open-Ended Working Group (OEWG), with the aim of creating global mechanisms for legal assistance and investigation of incidents.

The United States, as a leading global power, actively participates in international debates, proposing its approaches to cybersecurity regulation. The United States favors international cooperation and a liberal approach, often focusing on soft law and flexibility in cyberspace regulation. An example is the Digital Geneva Convention initiative, proposed in 2017, which aims to establish international norms of conduct in cyberspace but is not legally binding. The United States actively participates in UN forums, such as the Group of Governmental Experts (GGE), where it promotes the concept of establishing norms and standards for regulating cyber threats, while emphasizing the importance of the private sector and states in coordinating efforts.

Kazakhstan actively participates in the work of the UN Open-Ended Working Group (OEWG), presenting initiatives that address the digital needs and priorities of developing countries. This includes proposals for technical support, exchange of expertise and specialists, and the development of standards to ensure sovereign control of data. The country promotes the creation of a Central Asian Cyber Coordination Center to strengthen cooperation between regional countries, international organizations, and businesses in the field of cybersecurity, accelerates the process of unifying cybersecurity terminology and procedures at the national level, using International Telecommunication Union (ITU) standards and UN recommendations. It is also important to integrate soft law documents into educational programs and regulations. Kazakhstan also develops a system for international evaluation and certification of domestic information security (IS) solutions. It ensures their recognition abroad and compliance with international requirements, which is especially important for IT product exports. Along with it, the country integrates digital diplomacy into the activities of the Ministry of Foreign Affairs and expand the functions of digital attachés in diplomatic missions in key international organizations and countries (UN, EU, ASEAN, etc.).

As noted by Satbaeva A.M. et al. (2023), an important step in rapprochement with international practices was the adoption of the “Kazakhstan Cyber Shield” Cybersecurity Concept aimed at creating a unified legal and organizational approach to protecting digital infrastructure [6; 29]. The concept was developed based on an analysis of best international practices and contains provisions harmonized with UN General Assembly resolutions on ICT in the context of international security.

Furthermore, from 2022 to 2024, Kazakhstan actively developed bilateral and multilateral cooperation with relevant UN agencies, such as the International Telecommunication Union (ITU) and the United Nations Office on Drugs and Crime (UNODC). With the support of these agencies, Kazakhstan participated in training sessions, conducted cyber incident response exercises, and promoted initiatives to provide legal training to specialists and law enforcement officers [2; 7].

Adaptation of international norms is also taking place at the institutional level. For example, the Republic of Kazakhstan has established a State Technical Service (STS) responsible for monitoring cyber threats, a functioning Information Security Coordination Center, and adopted by laws regulating the processing and storage of personal data, user identification, and provider obligations. These measures are aligned with legal practices in force within the European Union and recommended by the UN [10; 14].

Thus, Kazakhstan’s interaction with the UN in the area of cybersecurity is characterized by a comprehensive approach, combining participation in international consultations and working groups with the active adaptation of international law into the national legal system. This demonstrates Kazakhstan’s commitment to integrating into global cyberspace based on international legal responsibility, transparency, and mutual trust.

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Қазақстанның БҰҰ-мен киберқауіпсіздік саласындағы өзара іс-қимылының практикалық аспектілері

Қазақстан Республикасы өзінің цифрлық ортасының қорғалуын арттыру мақсатында Қазақстан Республикасы киберқауіпсіздіктің пәрменді халықаралық нормаларын жасау және іске асыру үшін әртүрлі стратегиялық әдістер мен реттеуші құралдарды қолдана отырып, БҰҰ-мен және басқа да халықаралық құрылымдармен тығыз ынтымақтасады. Кибертерроризмге, кибербарлауға және киберкеңістік арқылы мемлекеттердің егеменді істеріне араласуға байланысты тәуекелдердің артуы байқалады, бұл халықаралық өзара іс-қимылды кеңейту қажеттілігін туғызады. Осыған байланысты БҰҰ-ның кибер ортада мемлекеттердің тәртібінің жалпы қағидаттары мен ережелерін қалыптастыру жөніндегі іс-қимылдарды үйлестірудегі маңыздылығы артып келеді, бұл жаңа қарарлар қабылдауда және кибернетикалық қауіпсіздік мәселелері бойынша ашық құрамдағы жұмыс тобының өкілеттіктерін кеңейтуде көрінеді. Киберқауіпсіздік саласындағы қазақстандық заңнаманың ережелерін талдау үшін құрылымдық, логикалық және диалектикалық тәсілдер қолданылды. Зерттеудің теориялық негізі халықаралық құқық нормаларын, ғылыми жұмыстар мен халықаралық ұйымдардың материалдарын зерделеу негізінде қалыптасты. Қазақстан кибер саясатының қалыптасуы мен эволюциясында, атап айтқанда, Біріккен Ұлттар Ұйымы шеңберіндегі халықаралық міндеттемелер шешуші мәнге ие. Халықаралық жобаларға белсенді тарту, ұлттық заңнаманы халықаралық стандарттарға сәйкестендіру және стратегиялық бағдарламаларды жүзеге асыру мемлекеттің киберқауіпсіздік деңгейін арттыруға және оның әлемдік цифрлық қоғамдастыққа интеграциялануына ықпал етеді. Бұл үдерістегі маңызды фактор халықаралық құқық нормаларын ұлттық заңнамаға енгізу.

Кілт сөздер: киберқауіпсіздік, БҰҰ, киберқауіптер, халықаралық кибер реттеу, халықаралық құқық, ақпараттық құқық.

Л.К. Амандықова, С.Н. Сарсенова

Практические аспекты взаимодействия Казахстана с ООН в области кибербезопасности

Республика Казахстан, в целях повышения защищенности своей цифровой среды, тесно сотрудничает с ООН и другими международными структурами, применяя различные стратегические методы и регуляторные инструменты для создания и реализации эффективных международных норм кибербезопас-

ности. Наблюдается рост рисков, связанных с кибертерроризмом, киберразведкой и вмешательством во внутренние дела государств через киберпространство, что обуславливает необходимость расширения международного взаимодействия. В связи с этим возрастает роль ООН в координации действий по формированию общих принципов и правил поведения государств в киберсреде, что выражается в принятии новых резолюций и расширении полномочий Рабочей группы открытого состава по вопросам кибернетической безопасности. Для анализа положений казахстанского законодательства в сфере кибербезопасности применялись структурный, логический и диалектический подходы. Теоретический фундамент исследования сформирован на основе изучения норм международного права, научных работ и материалов международных организаций. Ключевое значение в становлении и эволюции киберполитики Казахстана имеют международные обязательства, в частности, в рамках Организации Объединенных Наций. Активное вовлечение в международные проекты, приведение национального законодательства в соответствие с международными стандартами и осуществление стратегических программ способствуют повышению уровня кибербезопасности государства и его интеграции в мировое цифровое сообщество. Существенным фактором в данном процессе является внедрение норм международного права в национальное законодательство.

Ключевые слова: кибербезопасность, ООН, киберугрозы, международное киберрегулирование, международное право, информационное право.

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МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ МЕН ТАРИХЫ ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА THEORY AND HISTORY OF STATE AND LAW

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Теоретико-правовые подходы к пониманию и природе информационных обязанностей в условиях цифрового общества

Актуальность темы исследования определена отсутствием комплексных исследований по вопросам обязанностей субъектов информационных правоотношений. Акцент сделан именно на правах и интересах, тогда как проблема обязанностей не нашла должного отражения в научной литературе. Расширение сфер информационного обмена определяет разнообразие взаимодействий различных субъектов, тогда как эти субъекты имеют права и, соответственно, должны иметь правовые обязанности. Законодательство зачастую регламентирует информационные обязанности на уровне подзаконных актов, что вызывает определенные вопросы как практического, так и теоретического характера. Приходится констатировать отсутствие исчерпывающих ответов на имеющиеся вопросы, что доказывается теоретической или практической значимостью темы. В процессе работы над темой исследования был изучен существенный объем научной литературы и законодательство Республики Казахстан и зарубежных стран. Сравнительный анализ действующего законодательства позволил выделить общие и отличительные тенденции развития подходов к содержанию и политике информационного права, выделить перспективы и проблемы. В результате исследования были сделаны конкретные выводы о состоянии научной мысли по вопросам информационных обязанностей, необходимости активизации исследования данного вопроса в свете развития информационного общества и актуализации угроз и рисков, связанных с оборотом информации. Дано понятие информационной обязанности и общие контуры их классификации. Обосновано, что информационные обязанности подлежат глубокому научному анализу как определенная правовая категория, обеспечивающая реализацию информационных интересов.

Ключевые слова: информация, информационные правоотношения, субъект информационных правоотношений, информационные права, информационные обязанности, информационная правосубъектность.

Введение

Цель исследования заключается в анализе различных подходов к понятию информационных обязанностей как составной части информационно-правового статуса субъекта информационных правоотношений.

Основной Закон, провозглашая стремление Казахстана к построению демократического, светского, социального и правового государства, определяет высшими ценностями человека, его жизнь, права и свободы (статья 1 Конституции) [1].

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Конституция является основой правового статуса человека и гражданина. В ней закреплены основные права, свободы и обязанности личности, определены основания разграничения статуса граждан и иных лиц, установлен механизм их гарантирования, обеспечения и защиты. Конституцией также определены основные принципы взаимодействия между основными субъектами конституционного права, а именно гражданами, государством и обществом. При этом достижение равенства и согласия между ними является одной из важнейших задач, что прямо указано в преамбуле Основного Закона страны.

Оптимальная гармония во взаимодействии между основными субъектами конституционно-правовых отношений достигается путем поиска баланса между их правами и обязанностями. В Конституции этому уделено особое внимание. В частности, в отношении человека и гражданина установлено, что в Республике Казахстан признаются и гарантируются права и свободы человека в соответствии с Конституцией, а также то, что осуществление этих прав и свобод не должно нарушать права и свободы других лиц, посягать на конституционный строй и общественную нравственность (пункт 1 и 5 статьи 12). На наш взгляд, именно это положение является основой всех конституционных и иных обязанностей личности. Проживание в обществе предполагает не только наличие прав, но и выполнение обязанностей, которые ограничивают возможность посягательства на права и свободы других людей, а также на интересы общества в целом.

Данное положение нашло свое толкование в Нормативном постановлении Конституционного Суда РК от 18 мая 2023 года № 14-НП: «Установление для каждого данной обязанности является необходимым инструментом защиты конституционного строя, общественного порядка, исполнения государством своих социально-экономических, политических и иных функций, обеспечения верховенства права. Нарушение норм Конституции и законодательства Республики Казахстан в зависимости от характера и степени тяжести совершенного деяния влечет юридическую ответственность с возложением определенных лишений и ограничений личного или имущественного характера» [2].

Анализ конституционных норм показывает, что практически каждая конституционная норма, устанавливающая право личности, устанавливает и ограничения и запреты, но при этом Основной Закон закрепляет также: «Права и свободы человека и гражданина могут быть ограничены только законами и лишь в той мере, в какой это необходимо в целях защиты конституционного строя, охраны общественного порядка, прав и свобод человека, здоровья и нравственности населения. Признаются неконституционными любые действия, способные нарушить межнациональное и межконфессиональное согласие. Не допускается ни в какой форме ограничение прав и свобод граждан по политическим мотивам. Ни в каких случаях не подлежат ограничению права и свободы, предусмотренные статьями 11, 13-15, пунктом 1 статьи 16, статьями 17, статьями 19, статьями 22, пунктом 2 статьи 26 Конституции» (статья 39) [1].

Возвращаясь к вопросам обязанностей, следует отметить, что они, наряду с правами и свободами выступают неотъемлемым элементом правового статуса человека и гражданина, составляя важную часть его правосубъектности.

Научные исследования в области прав человека немногочисленны. Среди них можно выделить работы Н.И. Матузова, в частности: «Правовая система и личность» [3], «Социалистическая демократия как единство прав, обязанностей и ответственности личности» [4], «Юридические обязанности и ответственность как элементы правового статуса личности» [5], «О сущности, содержании и структуре юридической обязанности. Вопросы теории государства и права» [6]. Отдельного внимания заслуживает диссертационное исследование Э.А. Юнусова, посвященное вопросам теории юридических обязанностей: «Правовые обязанности человека и гражданина: вопросы теории» [7]. Существуют также отдельные работы, рассматривающие юридические обязанности в гражданско-правовой сфере, однако они не затрагивают проблематику информационных обязанностей.

В отечественной науке вопросы конституционных обязанностей нашли отражение в трудах профессоров Д.М. Баймахановой и А.Е. Жатканбаевой, которые исследовали их значение для развития конституционализма в Республике Казахстан [8].

Анализ конституционных обязанностей представлен также в Научно-практическом комментарии к Конституции Республики Казахстан 2018 года под редакцией И.И. Рогова [9].

Отдельные аспекты информационных обязанностей изложены в диссертации А.Е. Жатканбаевой «Теоретические проблемы конституционно-правового обеспечения информационной безопасности в Республике Казахстан» [10].

Иных исследований не наблюдается, что актуализирует научную работу в данной области.

Методы и материалы

Следует указать, что предмет исследования обосновывает примененные методы. В качестве основного философского метода представленного исследования был применен метод диалектики, позволивший выявить логические ошибки в рассуждениях о юриспруденции.

В качестве основного общенаучного метода применен метод правового анализа, а именно были проведены исследования от общего к частному, а именно от понятия информационного права и информационного правоотношения к понятию и содержанию информационной обязанности.

Сравнительный анализ действующего законодательства позволил выделить общие и отличительные тенденции развития подходов к содержанию и политике информационного права, а также перспективы и проблемы.

Результаты

Правосубъектность — это понятие, которое в Основном Законе занимает особое место. Конституция гарантирует, что «каждый имеет право на признание его правосубъектности и вправе защищать свои права и свободы всеми не противоречащими закону способами, включая «необходимую оборону», более того, «Каждый имеет право на судебную защиту своих прав и свобод» (пункты 1 и 2 статьи 13). И, как правильно отметил профессор Е.В. Порохов: «Вопрос правосубъектности любых лиц отнюдь не праздный вопрос в любом обществе. Достаточно назвать человека рабом, и он по законодательству рабовладельческого государства из разряда субъектов права переходит в разряд объектов права, перестаёт быть лицом и становится вещью. В этой связи не случаен тот факт, что вопрос правосубъектности лиц регламентируется, в первую очередь, на конституционном уровне» [11].

С точки зрения теории права, правосубъектность — это свойство лица, его общественно-юридическое состояние, способность иметь и самостоятельно осуществлять права и обязанности, мера участия в правовых отношениях [12; 527]. Обязанность — это важная составная часть свойства лица, необходимый атрибут его способности выступать в правоотношениях в качестве самостоятельного субъекта. Обязанности необходимы для поддержания правопорядка и функционирования государства, и, как было уже отмечено выше, — это показатель способности проживания в социуме, обеспечивающий баланс между свободой личности и интересами общества.

Если в пункте 2 статьи 12 Конституции отмечено, что права и свободы человека определяют содержание и применение законов и иных нормативных правовых актов, то подпункт 1 пункта 3 статьи 61 закрепляет, что правосубъектность физических и юридических лиц, гражданских прав и свобод, обязательств и ответственности физических и юридических лиц относится к важнейшим общественным отношениям, основополагающие принципы и нормы которых Парламент регулирует на уровне законов.

Понятно, что права и свободы человека и гражданина определяют содержание законов, но их исполнение обеспечивается наличием обязанностей, которые также представляют собой отдельный пласт, отдельное содержание правового статуса личности. Реализация любого права во всех случаях предполагает исполнение корреспондирующих ему обязанностей. Ни одно право не существует без вытекающих из него обязанностей, также как и любая обязанность предполагает наступление соответствующих прав.

Всеобщая декларация прав человека также соотносит обязанности каждого с общественными интересами, обосновывая это тем, что свободное и полное развитие личности возможно только в обществе (статья 29) [13]. Эта же позиция проходит в положениях Международного пакта о гражданских и политических правах через установление возможных ограничений, указанных в них прав, как, например, право каждой личности на свободное выражение своего мнения налагает особые обязанности и особую ответственность и сопряжено с некоторыми ограничениями, которые, однако, должны быть установлены законом и являться необходимыми, а именно — уважение прав и репутации других лиц и для охраны государственной безопасности, общественного порядка, здоровья или нравственности населения (статья 19) [14]. Такой же подход просматривается и в иных международных документах.

Как отмечают некоторые исследователи, «международное право более рационально и лаконично. Оно называет основные права и свободы человека, предусматривает возможные способы их реализации и формы контроля над ними. И где-то в одной-двух статьях, указывая на связь между права-

ми и обязанностями и на возможные случаи ограничения первых, подчеркивает абсолютность прав и относительность ограничений» [15; 205].

Таким образом, обязанность представляет собой не что иное, как условие реализации права. При этом следует подчеркнуть, что речь идет об условии полноценного осуществления собственного права, реализация которого напрямую зависит от социума. Общество, в свою очередь, должно быть уверено как в собственной безопасности от возможных последствий реализации прав отдельного индивида, так и в гарантированности осуществления этих прав посредством установления определенных ограничений для других участников социальных отношений, нарушающих чужие права. Подобное взаимное регулирование можно рассматривать как форму социальной ответственности и общественной гарантии прав человека.

Кроме того, нельзя не согласиться с мнением о том, что «отдельно взятая юридическая обязанность ограничивает в известной мере свободу индивида, его волю, желания; она может внешне восприниматься им как нечто стесняющее его действия, как форма принуждения. Тем не менее обязанность наряду с правом — предпосылка свободы и в конечном счете выражает свободные интересы ее носителя, даже если он этого не осознает» [16].

Вместе с тем анализ норм международного и национального законодательства показывает, что правам и свободам уделяется огромное внимание. Возникает ощущение их превалирования. Точно такая же мысль возникает и при изучении научных трудов. Это объясняется, на наш взгляд, рядом исторических, социальных и иных аспектов. А именно, провозглашение прав, их формирование, установление обязанности государств и их сообществ соблюдать эти права, требование гарантий — это был важный и очень длительный этап развития человечества, которое относительно недавно стало на путь человеколюбия. Отмечается, что «этот продолжительный и сложный процесс можно охарактеризовать как борьбу людей и их сообществ за право признания естественных прав и обретение новых прав человека» [17].

Во-вторых, права совершенно справедливо рассматриваются как основа для обеспечения справедливости и защиты личности, в то время как обязанности, на наш взгляд, ошибочно считаются ограничивающей категорией. И в условиях общества, которое все еще находится на стадии борьбы за права и свободы, это пока не так актуально.

И, в-третьих, наиболее существенным, на наш взгляд, является то, что права имеют более четкое юридическое закрепление и в большей степени поддаются судебной защите. Так, авторы учебника «Права человека» отмечают, что «в большинстве новейших конституций закрепляются не только права и свободы, но и обязанности граждан, хотя регламентация прав и свобод является более полной и детальной, а их перечень — значительно шире» [18; 115].

Вместе с тем, тематика обязанностей личности должна получить должный научный анализ и правовую детализацию. Законодательство, конечно, закрепляет круг прав и обязанностей субъектов права, в противном случае есть риск дисбаланса и даже анархии. Но вместе с тем, они «завуалированы» уровнем регулирования, как правило, это подзаконные акты детализирующего характера. В правовом государстве обязанности представляют собой комплекс морально-правовых требований, предъявляемых к личности и вытекающих из объективных потребностей развития и совершенствования общества, самой личности [19]. Данное понимание обязанности с точки зрения не только права, но и нравственности очень ценно.

Конечно, в основании признания любой обязанности личности и тем более вознесения ее на уровень конституционных обязанностей лежат моральные ценности, которые в совокупности образуют долг человека перед обществом. А.В. Прокофьев отмечает, что «в обобщенных теоретических моделях морали моральные требования наделяются двумя взаимосвязанными свойствами: универсальностью и высокой степенью общности. Типичная моральная обязанность — это обязанность, которую имеет каждый человек по отношению к каждому человеку. Для обладателей общераспространенных моральных представлений специальные обязанности являются неотъемлемой частью долга». [20; 110]. В свою очередь, моральный долг — это обязанность в равной мере учитывать интересы любого другого человека, оказывать любому другому человеку равную помощь, демонстрировать равную заботу. [21; 18]

Так или иначе, моральные ценности формируются и реализуются в социуме. В свою очередь, жизнь в социуме создает предпосылки и моральные установки, которые, как правило, не существуют в чистом виде и сами по себе, а являются компонентами и аспектами экономических, политических, религиозных и других отношений. На моральные установки влияют культура, религия, характер

взаимоотношений между личностью и обществом и т.д. Но в условиях правового государства закон обязан прописать, как можно более детально. Самые важные обязанности возводятся в ранг конституционных и, соответственно, прописываются в статьях Основного закона страны. Так, Конституция Республики Казахстан разграничивает:

Обязанности человека:

а) соблюдение Конституции и законодательства Республики Казахстан, уважение прав, свобод, чести и достоинства других лиц (пункт 1 статьи 34);

б) уважение государственных символов Республики (пункт 2 статьи 34);

в) уплата законно установленных налогов, сборов и иных обязательных платежей (статья 35).

И обязанности граждан Республики Казахстан дополнительно:

а) обязанность защищать Республику Казахстан и нести воинскую службу в порядке и видах, установленных законом (подпункты 1 и 2 статьи 36);

б) обязанность заботиться о сохранении исторического и культурного наследия, беречь памятники истории и культуры (статья 37);

в) обязанность сохранять природу и бережно относиться к природным богатствам (статья 38).

Такой подход закреплен в статье 12 Конституции РК, где отмечено, что гражданин Республики в силу самого своего гражданства имеет права и несет обязанности, а иностранцы и лица без гражданства пользуются в Республике правами и свободами, а также несут обязанности, установленные для граждан, если иное не предусмотрено Конституцией, законами и международными договорами [1].

Обязанность, как правовая категория, обозначает должное поведение субъекта, которое исходит из определенных ситуаций и оговаривается в нормативно-правовых актах надлежащего уровня в соответствии с общественными или индивидуальными интересами. Это означает лишь то, что у обязываемого нет иного выбора, кроме как осуществить ожидаемые от него действия, что и называется должным поведением. В противном случае со стороны государства могут быть применены санкции.

Обсуждение

Исследование природы конституционных обязанностей так или иначе проводится в различных научных работах, посвященных тем или иным сферам жизнедеятельности. Особое значение актуализации анализа природы обязанностей субъектов права на сегодняшний день видится в свете появления и развития новых отраслей, подотраслей и институтов права. В этом нельзя не согласиться с мнением С.С. Алексеева, который пишет о том, что «настало... время оценить существующие рубежи и потенции в науке права... внимательно приглядеться к праву с тех же общенаучных позиций, которые характерны для естественных и технических наук» [22; 2]. Именно быстрое развитие естественных и технических наук привело к появлению целого блока новых отраслей права, которые требуют не только научного анализа, но и адекватного правового регулирования возникающих и быстро меняющихся отношений.

Особенно остро стоит вопрос определения подходов к обязанностям субъектов правоотношений в сфере информационного права.

Информационное право в современном обществе стало играть очень важную роль, так как его жизнедеятельность неразрывно связана с информационными потоками. Информационное или уже даже цифровое общество возможно только при гарантированном свободном обороте информации, все большем развитии IT-технологий, но при жестком условии правовой регламентации общественных отношений, возникающих в процессе информационного оборота.

Информационное право, как система норм права, призвано обеспечить баланс между свободой информации и безопасной информационной средой, где будут защищены права граждан, общества и государства.

Безопасная информационная среда — это цель и объект исследования целого ряда естественных и социальных наук, но все исследователи согласны с тем, что только право способно в той или иной степени обеспечивать и гарантировать выполнение прав и свобод как отдельных граждан, так и групп людей, в том числе и путем наложения определенных обязанностей. Это поможет избежать конфликтных ситуаций, а также направить споры в конструктивное русло.

Современное общество обеспокоено целым рядом рисков и угроз в информационной среде, поскольку значительная часть жизни личности, общества и государственных структур перенесена в цифровую среду. К таким рискам относится либо неконтролируемый, либо ограниченный доступ к

информации и вытекающие из этого проблемы с защитой персональных данных, неправомерного использования информации и прочее.

Установление обязанностей является одной из важнейших составляющих механизма реализации функций права. Вопрос обязывания и обязанностей в настоящее время особо актуален в сфере информационного права.

Под функцией права принято понимать либо его социальное назначение, либо его правовое воздействие на общественные отношения, либо и то, и другое вместе взятое [23].

Все специальные функции права, такие как регулятивная, охранная, оценочная и воспитательная, направлены на установление и определение правил поведения людей в различных ситуациях, конфликтах и прочее. Это возможно только путем определенного правового воздействия. По мнению ряда современных ученых, именно посредством механизма государственно-правового воздействия происходит реализация функций государства и права [24; 98].

Обязывание в этом механизме занимает важную роль, так как оно означает определенный процесс установления обязанности, а именно возложение на лицо обязанности совершить определенные действия. Следует отметить, что обязывание — это достаточно сложный процессуальный процесс, требующий наличия субъекта, который имеет право не только устанавливать, но и требовать исполнения возложенной обязанности.

При этом следует разграничивать позитивное и негативное обязывание.

Обязанности, так же как и права, разграничиваются на определенные уровни в соответствии с их значимостью для развития тех или иных общественных отношений. Выше мы привели конституционные обязанности личности. Вместе с тем, Конституция как основной закон содержит круг обязанностей и самого народа, государства, его должностных лиц и органов, общественных организаций. Например, государство гарантирует своим гражданам защиту и покровительство за ее пределами (пункт 2 статьи 11) или то, что народ Казахстана обязуется быть приверженным идеалам свободы, равенства и согласия (преамбула Конституции).

Иные обязанности устанавливаются законодателем на уровне кодексов, законов, а также уполномоченными должностными лицами и органами на уровне подзаконных актов или актов общественных организаций и прочего.

Значимость обязанностей в сфере информационного права уже доказана тем, что Основным законом страны на конституционный уровень отнесены такие обязанности, как обязанность государственных органов, общественных объединений, должностных лиц и средств массовой информации обеспечить каждому гражданину возможность ознакомиться с затрагивающими его права и интересы документами, решениями и источниками информации (пункт 3 статьи 18 Конституции) [1]. Это показательно уже тем, что данной обязанностью Основной закон подтверждает и гарантирует право каждого на информацию и проводит прямую связь между правом на информацию и правом на защиту своей чести и достоинства.

В целом информация играет все более значимую роль в современном мире, поскольку сфера потенциального возникновения информационных правоотношений постоянно растет. Вместе с тем правоотношения — это, прежде всего, урегулированные нормами права общественные отношения, в рамках которых их участники (субъекты) обладают субъективными правами и несут юридические обязанности.

Таким образом, вопросы юридических обязанностей должны вызывать не меньший научный интерес, чем вопросы прав, поскольку именно их соотношение обеспечивает баланс в правовой системе. Однако на практике проблема обязанностей остается недостаточно разработанной, особенно в контексте новых условий развития современного мира.

В самом общем виде, обязанность — это определенная необходимость совершить некоторые действия или воздержаться от их совершения. Перечень, последовательность, условия их совершения, либо запреты на их совершение в правовых отношениях обозначаются и устанавливаются законом или договором.

Специфика обязанностей, в отличие от специфики прав, заключается в том, что их исполнение или неисполнение носит императивный характер и определяется, главным образом, потребностями, интересами, правами и свободами, из которых эти обязанности вытекают. Аксиома взаимной зависимости прав и обязанностей является одной из фундаментальных аксиом права: объем прав соответствует объему обязанностей. Наличие права у одного субъекта предполагает наличие обязанностей по его реализации у другого субъекта. Иными словами, — «Во всяком праве есть две стороны — лицо,

управомоченное, которое может требовать, и лицо (или лица) обязанное, которое должно исполнять требование». Так, собственник вправе требовать от других лиц уважения к своей собственности; аналогично, кредитор может предъявлять требования к должнику, а власть — к подчиненному [25; 10].

Соответственно, обязанности человека, как и его права, являются естественными и неотъемлемыми. Без них невозможно существование упорядоченных социальных связей и правоотношений. Диалектика прав и обязанностей человека состоит в том, что обеспечение прав одного индивида обусловлено выполнением другим своих обязанностей, и, наоборот, выполнение обязанностей возможно лишь при гарантированности прав [26; 111].

Анализ обязанностей в сфере информационного права следует начать с понятия информационных правоотношений, а, по сути, с осмысления самого понятия информации и ее свойств.

Информация, понимаемая как данные или сведения о ком-либо или о чем-либо, обладает определенными признаками и характеристиками, которые позволяют рассматривать ее как особую, специфичную данность.

В.А. Копылов выделяет следующие основные особенности информации: свойство физической неотчуждаемости. Информация как знание неотчуждаема от человека; свойство обособленности выраженности информации в виде слов, символов, знаков и иных форм представления; свойство информационного объекта (информационной вещи), или свойство двуединства информации и ее носителя; свойство тиражируемости (распространяемости) информации; свойство организационной формы; свойство экзemplарности информации [27; 32-33].

Перечисленные свойства информации обуславливают такое явление, как информационный оборот (или цикличность информации), который включает процессы создания, передачи, обработки, хранения и использования информации, а также процедуры по обеспечению ее доступности и безопасности. Именно эта способность информации к обороту, улучшению, разрастанию, а также сохранности на носителях и прочее определяет как организационные, так и технические аспекты, связанные с управлением ею. Кроме того, в ряде стран, например в Российской Федерации, существует расширенный подход к понятию «Оборот информационной продукции».

Федеральный закон от 29 декабря 2010 № 436-ФЗ «О защите детей от информации, причиняющей вред их здоровью и развитию» под оборотом информационной продукции понимает предоставление и/или распространение информационной продукции, включая её продажу (в том числе распространение по подписке), аренду, прокат, раздачу, выдачу из фондов общедоступных библиотек, публичный показ, публичное исполнение (в том числе посредством зрелищных мероприятий), распространение посредством эфирного или кабельного вещания, информационно-телекоммуникационных сетей, в том числе сети «Интернет», и сетей подвижной радиотелефонной связи [28].

И эта тенденция вполне объяснима. Наблюдается стремительное переосмысление информации уже как продукта, результата определенной деятельности, имеющего свою цену, спрос и прочие атрибуты. И это вполне объяснимо с учетом того, что в век информационного общества информация — это самый ценный товар безотносительно организации ее носителя.

Способность информации также определяет и круг субъектов информационных правоотношений.

В целом, под информационным правоотношением понимается отношение, урегулированное информационно-правовой нормой, стороны которого выступают в качестве носителей взаимных прав и обязанностей, установленных и гарантированных соответствующей нормой права.

Круг субъектов информационных правоотношений достаточно разнообразен и определен предметом и объектом правоотношений. Так, Закон РК «Об информатизации» от 24 ноября 2015 года выделяет таких субъектов: собственник, владелец, оператор, национальный координатор, субъект получения информационных услуг, пользователь, услугополучатель и другие. Но это далеко не полный перечень субъектов. Так, следует выделять информационные правоотношения частноправового характера, то есть имущественные отношения на информацию либо личные неимущественные отношения, возникающие в результате оборота информации и прочее.

Они определяются возникшими правоотношениями, и объединяющим фактором является непосредственно создание и последующий оборот информации.

Классификация информационных правоотношений — это вопрос, который все еще находится в стадии исследования. Они становятся все более разнообразными. В самом общем виде, исходя из специфики оборота информации, выделяют:

1. Правоотношения, возникающие при осуществлении поиска, получения и потребления информации, информационных ресурсов, информационных продуктов, информационных услуг.
2. Правоотношения, возникающие при производстве, передаче и распространении информации, информационных ресурсов, информационных продуктов, информационных услуг.
3. Правоотношения, возникающие при создании и применении информационных систем, их сетей, средств обеспечения [27; 168-177].
4. Правоотношения, возникающие в результате нарушения действующих информационных правовых норм, а именно гражданско-правовая, административно-правовая, уголовно-правовая и конституционно-правовая ответственность.

Еще одним актуальным вопросом современного права являются проблемы правового режима информации (информационных ресурсов), который во многом определяет объем прав и обязанностей субъектов. Правовое регулирование оборота информации осуществляется посредством системы ее правовых режимов.

Г.Г. Камалов отмечает, что: «Правовой режим информации представляет собой отраслевой правовой режим, то его можно определить как особый порядок правового регулирования, выраженного в системе юридических средств, характеризующихся особым сочетанием взаимодействующих между собой методов правового регулирования и создающих особую направленность регулирования — желаемое социальное состояние информационных общественных отношений и конкретную степень благоприятности (неблагоприятности) для достижения цели режима — удовлетворение законных интересов субъектов права в информационной сфере» [29].

Именно правовой режим информации определяет круг субъектов, а также их права и обязанности.

Вместе с тем, анализ научных исследований в области информационного права, а также в области гражданского права о информации как товаре, продукте и продукции показывает практически их полное отсутствие. Вместе с тем, именно выполнение обязанностей выходит на первый план в связи с наличием и ростом рисков и угроз именно в информационной сфере.

Заключение

В результате исследования вопросов информационных обязанностей приходим к следующим выводам:

1. Информационные обязанности — это один из важнейших элементов правового статуса личности в информационной среде;
2. Информационные обязанности человека так же естественны и неотъемлемы, как и его права;
3. Контур информационных обязанностей обозначен положениями Конституции Республики Казахстан и вытекает из общего объема конституционных прав и интересов личности, общества и государства;
4. Только единство прав и обязанностей и возможность их полной реализации являются залогом обеспечения справедливости, законности, общественной безопасности и правопорядка, в том числе в информационной сфере;
5. Информационные обязанности есть результат возникающих информационных правоотношений и определяются спецификой этих правоотношений, а также статусом информации, оборот которой и породил эти правоотношения;
6. Информационные обязанности подлежат глубокому научному анализу как определенная правовая категория, обеспечивающая реализацию информационных интересов, при этом недооцененная учеными.

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А. Исаханкызы, Г.А. Алибаева

Цифрлық қоғамдағы ақпараттық жауапкершіліктің мәні мен табиғатын түсінуге теориялық және құқықтық тәсілдер

Зерттеу тақырыбының өзектілігі ақпараттық құқықтық қатынастар субъектілерінің міндеттері бойынша кешенді зерттеулердің болмауымен анықталады. Атап айтқанда, құқықтар мен мүдделерге баса назар аударылып, ал жауапкершілік мәселесі ғылыми әдебиеттерде жеткілікті түрде қарастырылмаған. Ақпарат алмасу салаларының кеңеюі әр түрлі субъектілердің өзара әрекеттесуінің әртүрлілігін анықтайды, ал бұл субъектілердің құқықтары бар және сәйкесінше заңды міндеттері болуы керек. Заңнама көбінесе заңға тәуелді актілер деңгейінде ақпараттық жауапкершілікті реттейді, бұл практикалық және теориялық сипаттағы белгілі бір мәселелерді тудырады. Тақырыптың теориялық немесе практикалық маңыздылығымен дәлелденген қолданыстағы сұрақтарға толық жауаптардың жоқтығын айту керек. Зерттеу тақырыбы бойынша жұмыс барысында ғылыми әдебиеттердің едәуір көлемі және Қазақстан Республикасы мен шет елдердің заңнамасы зерделенді. Қолданыстағы заңнаманы салыстырмалы талдау ақпараттық құқықтың мазмұны мен саясатына көзқарастарды дамытудың жалпы және ерекше тенденцияларын анықтауға, перспективалар мен проблемаларды анықтауға мүмкіндік берді. Зерттеу нәтижесінде ақпараттық жауапкершілік мәселелері бойынша ғылыми ойдың жай-күйі, ақпараттық қоғамның дамуы және ақпарат айналымына байланысты қауіптер мен тәуекелдерді өзектендіру тұрғысынан осы мәселені зерттеуді жандандыру қажеттілігі туралы нақты тұжырымдар жасалды. Ақпараттық жауапкершілік ұғымы және оларды жіктеудің жалпы контуры берілген. Ақпараттық жауапкершілік ақпараттық мүдделердің іске асырылуын қамтамасыз ететін белгілі бір құқықтық категория ретінде терең ғылыми талдауға жатады.

Кілт сөздер: ақпарат, ақпараттық құқықтық қатынастар, ақпараттық құқықтық қатынастар субъектісі, ақпараттық құқықтар, ақпараттық жауапкершілік, ақпараттық құқықтық субъектілік.

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Theoretical and legal approaches to understanding and the nature of information obligations in a digital society

The relevance of the research topic is determined by the lack of comprehensive research on the responsibilities of subjects of information legal relations. The emphasis is on rights and interests, while the problem of responsibilities has not been adequately reflected in the scientific literature. The expansion of the spheres of information exchange determines the diversity of the interaction of various subjects, whereas these subjects have rights and, accordingly, are obliged to have legal duties. Legislation often regulates information obligations at the level of by-laws, which raises certain questions of both practical and theoretical nature. It should be noted that there are no exhaustive answers to the existing questions, as evidenced by the theoretical or practical significance of the topic. During the study, a significant amount of scientific literature and legislation of the Republic of Kazakhstan and foreign countries was studied. A comparative analysis of the current legislation has made it possible to identify common and distinctive trends in the development of approaches to the content and policy of information law, to identify prospects and problems. As a result of the research, specific conclusions are drawn about the state of scientific thought on information responsibilities, the need to intensify research on this issue in the light of the development of the information society and the actualization of threats and risks associated with information trafficking. The concept of information responsibilities and the general outlines of their classification are given. It is demonstrated that information responsibilities are subject to in-depth scientific analysis as a certain legal category that ensures the realization of information interests.

Keywords: information, information legal relations, subject of information legal relations, information rights, information duties, information legal personality.

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The impact of climate change on internal migration in Kazakhstan: socio-legal challenges and solutions

Climate change has become one of the major factors driving internal migration in Kazakhstan, exerting a considerable influence on people's living conditions. This article examines the social and legal challenges associated with climate-induced migration and explores potential solutions. Particular attention is given to the impact of environmental factors, such as prolonged droughts, frequent floods, land degradation, and declining agricultural productivity, on population movements. The findings are based on the results of a sociological survey conducted in five regions of Kazakhstan, which identified the primary reasons behind migration decisions. Among the key motives were worsening health conditions, economic instability, and limited access to clean water and sufficient food resources. At the same time, the analysis shows that, despite facing significant consequences of climate change, many residents do not necessarily perceive migration as the only or the best way to address these challenges. The article suggests a range of measures to enhance legislation aimed at safeguarding the rights of climate migrants, strengthening regional adaptation strategies, and creating government programs to provide social and economic assistance to affected communities. The study highlights the importance of adopting an integrated approach that combines legal, economic, and social mechanisms in order to manage internal migration effectively in the context of ongoing climate change.

Keywords: climate migration, environment, climate change, internal migration, legal regulation, environmental issues, drought, floods, population adaptation, state policy.

Introduction

Climate change and environmental degradation are becoming increasingly significant factors influencing migration processes both in Kazakhstan and globally. The intensification of global warming has led to an increase in the frequency and severity of natural disasters and extreme weather events. As a result, a growing number of individuals and entire communities are being forced to leave their places of residence in search of safety, stability, and better living conditions. This phenomenon, commonly referred to as climate-induced migration, is particularly relevant in regions where environmental vulnerability is exacerbated by political instability, economic crises, armed conflicts, and ineffective governance. These factors collectively create serious challenges for government institutions as well as society at large [1].

Under these changing conditions, rural areas—particularly those located in agricultural and arid regions—are disproportionately affected. Residents of these territories are often compelled to relocate to more favorable areas, primarily large urban centers, where socioeconomic conditions and employment opportunities are more stable. In Kazakhstan, climate-induced migration is especially prevalent in regions vulnerable

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to droughts, such as Mangystau, Kyzylorda, and Atyrau, as well as in territories where the shortage of water resources is becoming increasingly critical [2; 40].

Additional drivers of internal population displacement include environmental disasters, among which the following are particularly significant:

- Desiccation of the Aral Sea, which has resulted in the loss of water sources and widespread land degradation;
- Radiation contamination in the territory of the former Semipalatinsk nuclear test site;
- Industrial emissions and air pollution in regions of intensive mining and processing industries [3; 395].

From a demographic perspective, the highest vulnerability is observed in small geographic zones with high population density, especially in suburban areas surrounding major cities. In these regions, adverse climatic phenomena can trigger severe socioeconomic consequences, including rising poverty levels, reduced access to water and food, and deterioration of public health. These factors call for urgent measures aimed at enhancing the resilience of territories, improving adaptation systems, and ensuring a more rational distribution of natural resources.

At the same time, in certain rural areas experiencing significant depopulation, the influence of climate change on migration processes remains considerably weaker [4; 5].

Climate change is becoming one of the drivers of internal migration in Kazakhstan, making the issue relevant from both legal and social perspectives. Desertification, water shortages, and natural disasters are forcing people to leave rural areas and move to cities. This places a strain on infrastructure and highlights the need for legal regulation of the status of climate migrants.

There is a need to establish legislative frameworks and carry out sociological studies to evaluate the scope of the issue and to propose effective strategies for migrant social adaptation, rights protection, and the sustainable development of affected regions.

The aim of the study is to examine the impact of climate change on internal migration in Kazakhstan, identify key socio-legal challenges, and develop recommendations for improving legal regulation and social adaptation of climate migrants.

The purpose of the research is to examine public opinion on climate-induced migration through a population survey conducted in five regions of Kazakhstan, analyzing individuals' willingness to relocate and their expectations from the government; to identify major environmental disasters and assess their impact on population displacement within the country; to conduct a comparative analysis of Kazakhstan's legislation in the fields of migration, environmental protection, and social security of migrants, identify gaps, and propose ways to address them; to develop legal and social measures aimed at minimizing the negative consequences of climate migration, enhancing regional resilience, and supporting migrant adaptation to new living conditions.

Methods and materials

The study employed comprehensive analytical methods that enabled an in-depth examination of the impact of climate change on internal migration in Kazakhstan, as well as the identification of key socio-legal challenges and potential solutions.

An analysis of Kazakhstan's regulatory and legal framework in the fields of migration, environmental protection, and the rights of displaced persons. was conducted. A comparison with international standards helped to identify gaps and possible directions for improving the legal regulation of climate migration.

A sociological survey was carried out among the population of five regions of Kazakhstan: Abai, East Kazakhstan, Kyzylorda, North Kazakhstan, and Akmola regions. The study included 1,000 respondents representing various socio-demographic groups. The survey provided insight into public perception of climate change, its influence on migration processes, and identified the most vulnerable groups in need of legal and social support.

Statistical analysis was used to process data on migration flows, climate change, living standards, and the socio-economic situation across Kazakhstan's regions. The use of statistical methods made it possible to determine trends in internal migration driven by environmental factors.

This methodological approach ensured a comprehensive study of the issue and made it possible to propose effective solutions for helping the population adapt to changing climatic conditions and minimizing the negative consequences of internal migration.

In this article, the topic of climate migration is considered from multiple scientific perspectives—sociological, economic, environmental, and legal. For the comprehensive analysis, the works of researchers such as S.V. Ryazantsev, E.M. Moiseeva, V. Clement, G. Baykushikova, G.Sh. Zhaksybaeva, Z.S. Gelmanova, M.K. Ibatov, A.A. Smailova, D.M. Rakhmatulina, L.T. Isova, A.D. Samay, A.S. Lukyanets, V.Yu. Ledeneva, R.J. Nawrotzki, and D. Bektleeva were used. Their scholarly approaches provided a deeper understanding of the causes and consequences of climate migration and emphasized the need to develop effective legal and institutional mechanisms to respond to the challenges associated with population displacement due to climate change.

Results

The Impact of Climate Change on Migration Processes in Kazakhstan: Results of a Sociological Study

As part of the conducted study, a sociological survey was carried out among residents of five regions of Kazakhstan: Abai, East Kazakhstan, Kyzylorda, North Kazakhstan, and Akmola regions. A total of 1,000 respondents representing various age categories and social groups participated in the survey. The questionnaire focused on several key aspects, including public perception of climate change over the past 5–10 years, the impact of climate-related factors on health and living conditions, and respondents' intentions to migrate to other regions due to climate change. The analysis of the results revealed that a significant proportion of respondents reported an increase in extreme weather events, such as droughts, floods, and sharp temperature fluctuations. These findings indicate growing public awareness and concern regarding climate change and its potential socio-economic implications. The obtained results make it possible to visualize the dynamics of changes in the perception of climate factors through diagrams illustrating how the population assesses the impact of climate change on their lives and makes decisions regarding potential migration. These findings confirm the existing trend of increasing climate-induced migration in Kazakhstan, which is consistent with the results of international studies [5; 36].

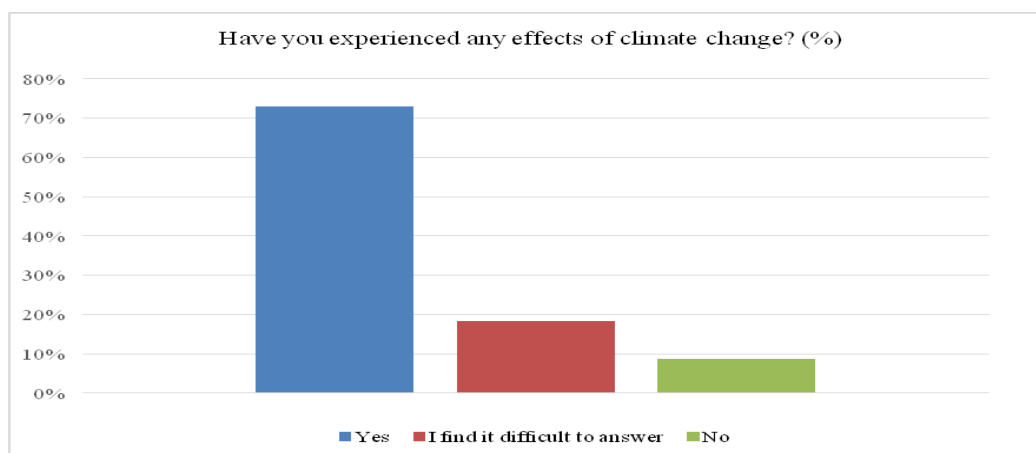


Figure 1. To What Extent People Notice Climate Change

The survey findings indicate that 72.94 % of respondents reported noticing climate changes over the past 5–10 years, highlighting a relatively high level of public awareness and suggesting that climate-related factors have a considerable influence on daily life. Meanwhile, 18.41 % of participants found it difficult to provide an answer, which may point to limited access to information or the fact that climate changes are less evident in their specific regions. This group may either not have experienced significant environmental shifts or may not directly associate observed anomalies with broader climate change processes. The remaining 8.66 % of respondents stated that they had not noticed any climate changes, which could be explained by living in areas less affected by climatic variations or by personal perceptions that prevent linking local environmental fluctuations to global climate change (Figure 1).

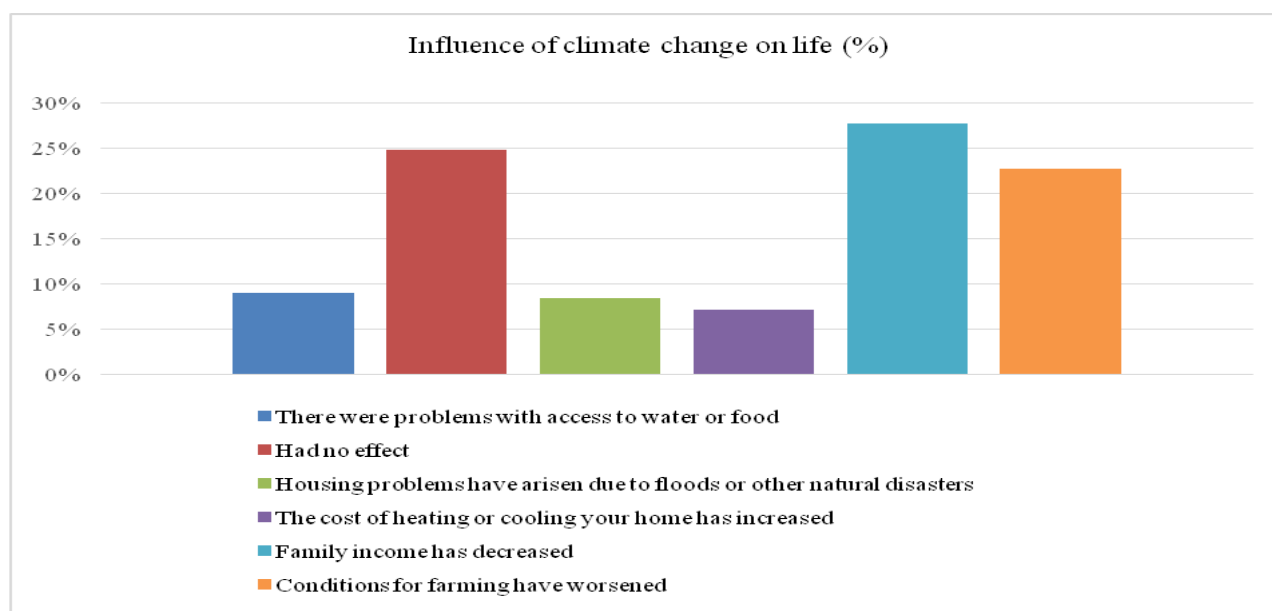


Figure 2. The impact of climate change on people's lives

The findings of the sociological survey reveal the substantial influence of climate change on the living conditions of the population in Kazakhstan. One of the most frequently reported consequences is the decline in household income (27.77 %), largely associated with economic instability, reduced agricultural productivity, and rising food prices. A considerable proportion of respondents (24.88 %) reported no noticeable negative effects to date, which may reflect either local environmental stability or insufficient awareness of the long-term impacts of climate change. At the same time, agriculture has been significantly affected (22.78 %), posing potential risks to the country's food security.

Challenges related to access to water (8.99 %) and housing (8.39 %) indicate increasing environmental vulnerabilities, while the rise in heating costs (7.19 %) reflects growing exposure to extreme weather conditions and seasonal temperature fluctuations (Figure 2).

The data suggest that the most pronounced consequences of climate change for Kazakhstan's population are linked to economic hardships, falling incomes, land degradation, and reduced agricultural capacity. Many respondents also reported limited access to clean water and food, coupled with exposure to natural disasters, such as droughts and floods. In addition, rising costs for heating and cooling homes further demonstrate the escalating risks posed by environmental instability. However, almost one-quarter of participants have not yet experienced significant impacts, which could be explained by regional climatic differences or limited awareness of indirect effects [6].

This research further aims to assess the health-related implications of climate change for Kazakhstan's population, based on a survey conducted across five regions of the country. The study highlights a growing prevalence of respiratory and cardiovascular diseases, increased allergic reactions, and rising cancer incidence rates—all potentially linked to prolonged exposure to extreme climatic conditions, air pollution, and environmental degradation.

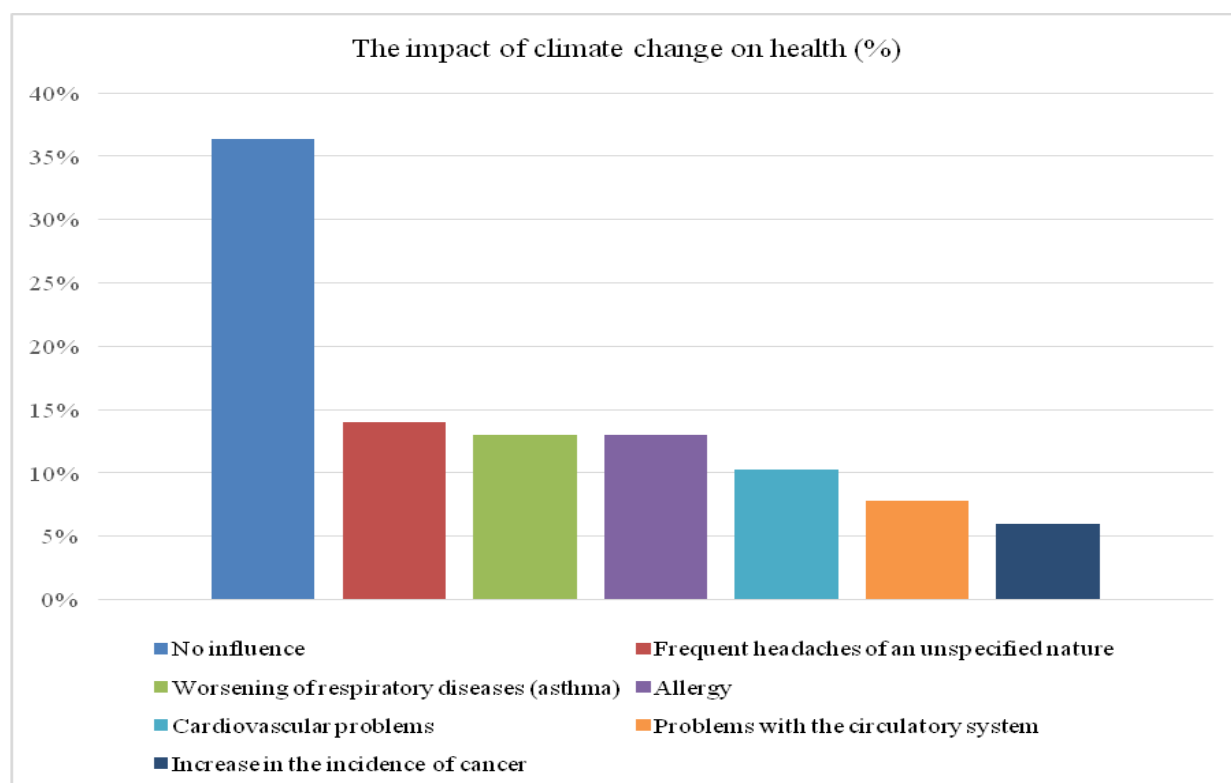


Figure 3. The impact of climate change on human health

Data analysis reveals that the effect of climate change on public health in Kazakhstan is becoming increasingly pronounced. While 36.34 % of respondents did not yet perceive any health-related changes, a substantial share reported various ailments potentially linked to environmental shifts:

- Headaches (13.96 %), possibly associated with temperature fluctuations and barometric pressure changes.
- Increased asthma incidents (13.01 %), which may reflect deteriorating air quality due to industrial emissions and altered humidity levels.
- Allergic reactions (13.01 %), likely driven by elevated ambient concentrations of airborne allergens.
- Cardiovascular disorders (10.23 %) and other circulatory problems (7.81 %), potentially stemming from abrupt temperature swings, heat stress, and pollution.
- Particularly alarming is the rise in oncological conditions (5.64 %), which may be linked to toxic emissions and radiation exposure (Figure 3).

These results suggest that climate change is already adversely affecting public health, signaling an urgent need for adaptive and protective measures. Key systems affected include the respiratory and cardiovascular systems, alongside impacts on immune response and increased disease vulnerability [7].

An additional research inquiry focused on the public's willingness to migrate in response to environmental degradation. A sociological survey conducted across Kazakhstan evaluated respondents' perspectives on relocating to other regions due to climate-related concerns [7]. The findings highlight a range of attitudes, reflecting diverse adaptation capacities and levels of concern, as well as the key factors influencing migration decisions.

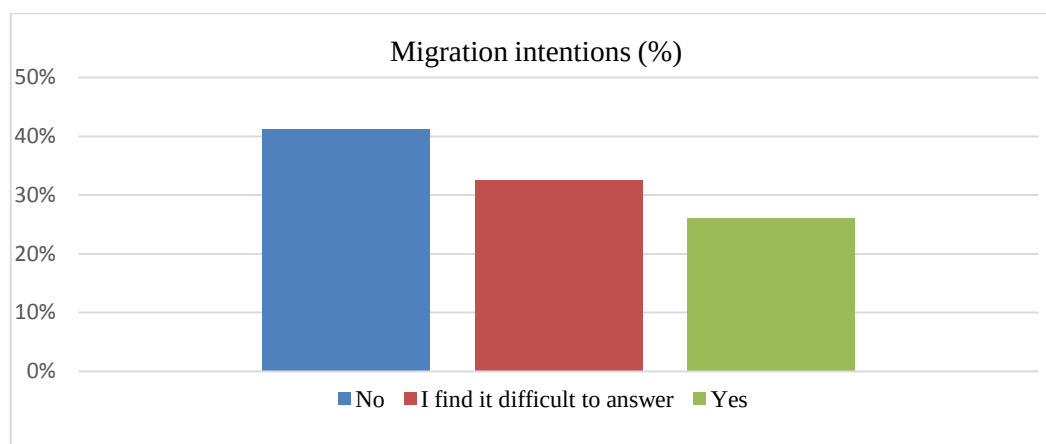


Figure 4. Public Opinion on the Possibility of Relocation Due to Climate Change

The survey findings indicate that 41.29 % of respondents do not intend to relocate, which may reflect either a high level of adaptation to existing environmental and socio-economic conditions or limited financial and logistical resources for migration. At the same time, 32.64 % of participants remain undecided, suggesting uncertainty regarding future plans and potential vulnerability to changing circumstances. Meanwhile, 26.07 % of respondents are considering relocation, likely driven by deteriorating climatic conditions, economic hardships, or social instability (Figure 4).

Overall, despite the noticeable effects of climate change, the majority of the population prefers to remain in their current locations, possibly expecting an improvement in local conditions or gradually adapting to environmental changes. However, the relatively high proportion of individuals considering migration highlights the urgent need for comprehensive strategies aimed at reducing climate-related risks and improving the quality of life in regions most affected by environmental degradation [8].

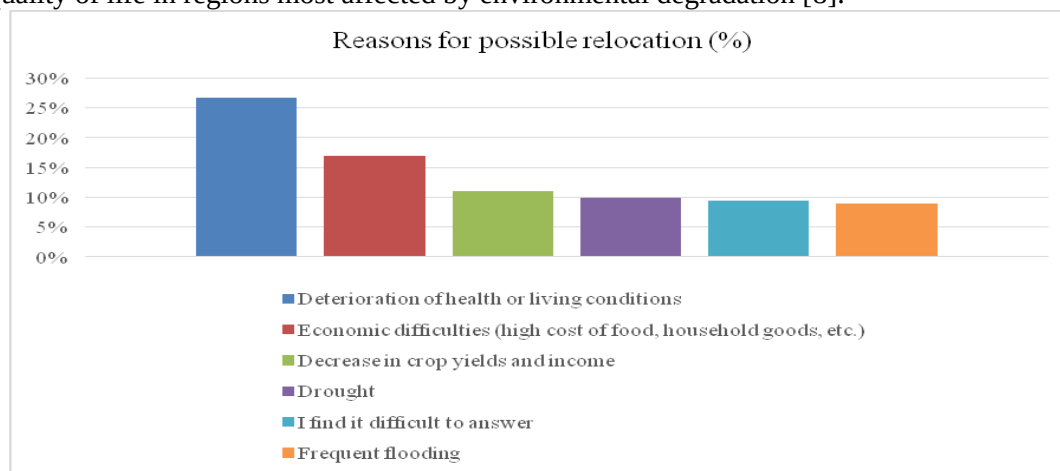


Figure 5. Main reasons people consider relocation

The survey results indicate that the most significant factor influencing migration intentions among respondents is the deterioration of health and living conditions (26.67 %). This finding highlights that climate change, including air pollution, rising temperatures, and the spread of diseases, has a direct impact on quality of life. Economic challenges represent another key driver (17.01 %), as increasing prices for food and essential goods force many individuals to consider relocation in search of better living conditions. Additionally, declining crop yields (11.07 %) and recurring droughts (9.91 %) undermine agricultural sustainability, especially in rural areas where livelihoods heavily depend on farming. Floods (8.92 %) further exacerbate migration pressures by damaging housing, infrastructure, and local economies (Figure 5).

Overall, the primary drivers pushing people to consider relocation include worsening environmental and health conditions, financial hardships, and extreme climatic events. Droughts and floods, in particular, intensify the vulnerabilities of affected communities, leading many to seek safer regions with more stable economic opportunities [8].

Based on the findings of the sociological survey, the following policy recommendations are proposed:

1. Development of National Adaptation Strategies — Implement comprehensive programs aimed at minimizing the consequences of climate change, with a particular focus on rural and environmentally vulnerable regions.
2. Enhancing Public Awareness — Conduct educational campaigns, community outreach, and provide accessible and reliable information to improve public understanding of climate-related risks.
3. Support for Climate Migrants — Establish legal, political, and social mechanisms to regulate internal migration driven by climate change, ensuring the protection of migrants' rights.
4. Economic Support for Affected Regions — Create new employment opportunities, promote sustainable agricultural technologies, and modernize infrastructure to reduce climate-related economic losses.
5. Strengthening International Cooperation — Enhance Kazakhstan's participation in global initiatives and partnerships focused on climate change mitigation and adaptation strategies.

This integrated approach would improve climate resilience, support vulnerable populations, and ensure sustainable socio-economic development while minimizing migration pressures caused by environmental change.

Discussion

Major natural disasters and their impact on population movements in Kazakhstan

Global climate change affects the environment by altering living conditions and the ways in which humans carry out economic activities. This, in turn, influences migration processes [9; 18].

Climate change has a negative impact on socio-economic and demographic processes worldwide, threatening food, water, and economic security [10; 36].

Rising sea levels, soil degradation, coastal erosion, extreme temperatures, and other climate changes can render certain areas uninhabitable, forcing populations to migrate to safer regions. The loss of income sources can provoke social instability, weaken government institutions, and, in some cases, lead to political crises and conflicts [11; 49].

The harsh natural and climatic conditions of Kazakhstan, much of which consists of steppes, deserts, and semi-deserts, combined with inefficient economic activities that contribute to environmental degradation, are factors that provoke ecological migration.

The increase in harmful emissions into the atmosphere is due to outdated and imperfect filtration and purification technologies. The main sources of pollution are enterprises in the petrochemical and chemical industries, as well as in non-ferrous and ferrous metallurgy. As a result of industrial activity, Kazakhstan has accumulated 230 tons of radioactive metals and 20 billion tons of waste, a significant portion of which is stored in inappropriate locations. Environmental issues increase the risks of cancer among the country's population [12; 97].

In Kazakhstan, over the past five years, from 2018 to 2022, a consistently high level of air pollution has been observed in cities, such as Astana, Karaganda, Zhezkazgan, and Temirtau [13].

Around 26 % of the population of Kazakhstan lives in areas prone to simultaneous flooding, landslides, and mudflows. During intense rainfall, which can trigger mudflows, the predicted changes in precipitation levels typically show a steady increase in the range of 5 %–20 % across all time horizons. The frequency of mudflows may increase by 10 times, posing a threat to 156 cities and settlements in Kazakhstan, including Almaty.

In 2024, Kazakhstan faced its largest flood in 80 years, affecting more than 120,000 people. The government responded quickly by organizing evacuation points and providing one-time compensation of 100 MCI to more than 34,000 families, totaling 12.6 billion tenge. Despite these measures, large-scale damage to infrastructure and the loss of homes forced many people to leave the flooded areas and relocate to safer regions [14].

This case underscores the increasing influence of climate change on internal migration in Kazakhstan. The rising frequency and severity of natural disasters, such as floods, may result in a growing number of ecological migrants, posing a significant challenge for the government to develop long-term adaptation strategies and provide adequate support to affected communities.

The drying up of the Aral Sea led to the destruction of the region's ecosystem, worsening living conditions and economic decline, which forced many residents to leave their homes in search of better conditions. Environmental changes have not only accelerated population outflow but also impacted the country's social

and economic stability, making ecological migration a critical area of study that demands strategic and well-coordinated solutions [15].

The drying up of the Aral Sea, desertification, and water scarcity have triggered active migration processes among the population, emphasizing the importance of studying «ecological migration» in Kazakhstan.

Mountain regions of Kazakhstan, particularly Almaty region, are also prone to mudflows. The increased frequency of heavy rainfall raises the likelihood of landslides, posing a threat to the population.

Southeastern Kazakhstan, including Almaty, lies in a seismic zone. Despite the strengthening of buildings and improvements in early warning systems, earthquakes remain a hazard.

Environmental changes, caused both by industrial activities and climatic factors, have become a significant driver of internal migration in Kazakhstan. The increase in environmental pollution, along with a rise in natural disasters such as floods and desertification, deteriorates living conditions, forcing people to move to safer areas. The drying up of the Aral Sea and technogenic pollution have already triggered massive migration processes, and the growing impact of climate change may exacerbate this trend. This underscores the need for the development of comprehensive measures for population adaptation, improved environmental policies, and ensuring sustainable development in regions exposed to ecological risks [11; 48].

Legal Regulation of Climate Migration in the Republic of Kazakhstan

Determining the boundary between migration caused by environmental or climate change and socio-economic factors is difficult. Their close interconnection requires detailed analysis and research to collect reliable, evidence-based data necessary for the development of future policies and initiatives.

The issue of the impact of climate factors on migration has many contextual nuances, which is why it is important to first define the terminology being used.

We share A.S. Lukyanets' view that the terms "climate migration" and "environmental migration" should not be treated as synonymous. The former emphasizes migration driven by natural and climatic conditions, while the latter refers to relocation caused by environmental disasters and pollution [16; 23].

V.Yu. Ledeneva believes that climate migration is a subgroup of environmental migration, in which people are forced to leave their permanent places of residence and relocate to other regions due to natural disasters [17].

Climate migration represents the relocation of the population from one country to another as a result of abrupt or gradual natural changes. Such factors include abnormal heat, extreme cold, sea level rise, drought, shortage of drinking water, and loss of land, which force people to move [18].

Based on the analysis of the above definitions, the following definition can be proposed: climate migration is the forced or voluntary movement of people caused by long-term climate changes or extreme natural events that make a territory unsuitable for habitation and economic activity.

Population migration is classified as internal and external, taking into account differences between urban and rural areas, which makes it possible to distinguish the following types of migration flows: external migration with urban/rural directionality; internal migration with a division into urban and rural movements [19].

Climate migration caused by climate change and natural disasters is becoming an increasingly pressing issue for Kazakhstan. The forced relocation of citizens due to floods, droughts, desertification, and other climate-related factors requires the development of effective legal mechanisms for regulation.

According to Article 21, Paragraph 1 of the Constitution of the Republic of Kazakhstan, everyone who is lawfully present in the country has the right to freely move and choose their place of residence, except in cases provided by law [20].

The Law of the Republic of Kazakhstan "On Population Migration" dated July 22, 2011, No. 477-IV, enshrines the principle of protecting national interests and ensuring national security [21]. Based on this principle, it can be argued that environmental security is part of national security. Mass migration of the population as a result of ecological threats can harm the country's economy and safety.

One of the key principles set out in Article 3 of the Environmental Code is the provision of a favorable environment for human life and health [22]. Therefore, the prevention of ecological migration is directly related to the state's obligation to create suitable living conditions for the population.

An analysis of current legislation shows that there is no specific legal regulation of climate migration in Kazakhstan. However, certain norms regarding environmental safety and the protection of the population during natural emergencies exist within Kazakhstani legislation. For example, the former Law "On Natural and Technogenic Emergency Situations" [23] regulated issues related to the movement of people during eco-

logical disasters. However, it did not consider long-term climate change as a potential driver of migration, and this law has since been repealed.

It has been replaced by the Law of the Republic of Kazakhstan “On Civil Protection” dated April 11, 2014, which incorporates the principle of minimizing risks and damage threatening citizens and society in the event of emergencies [24].

Kazakhstan’s updated Nationally Determined Contribution (NDC) to the global response to climate change, adopted by Government Resolution No. 313 on April 19, 2023, includes a goal of reducing greenhouse gas emissions by 25 % by the end of 2030 compared to 1990 levels. This implies the need for significant additional international investment, grant support, access to international technology transfer mechanisms, and participation in scientific projects aimed at developing low-carbon technologies [25].

Nevertheless, current legal acts in Kazakhstan make no mention of climate migration. There are no specific provisions or regulations addressing migration processes caused by climate change. As this is a relatively new type of migration, developing a legal framework for its effective regulation has become a pressing task. The absence of climate migration in the legal system complicates the management of its consequences and reduces the state’s preparedness for potential threats.

It is also important to highlight the role of Kazakhstan’s international commitments within the framework of climate policy. Kazakhstan is a party to the Paris Climate Agreement, which calls for reducing greenhouse gas emissions and adapting to climate change. However, at the level of national strategies and programs—such as the National Climate Change Strategy and the Climate Change Adaptation Action Plan—the issue of climate migration remains insufficiently addressed.

Migration management in Kazakhstan is carried out by several government bodies; however, there is a lack of clear coordination among them regarding climate migration. This limits the state’s ability to respond effectively to climate-related challenges.

Kazakhstan’s participation in global climate initiatives, such as the Paris Agreement, lays the groundwork for developing more sustainable policies that include consideration of climate migration. However, these commitments have not yet been fully integrated into national legislation and policy.

From an institutional point of view, different aspects of migration are regulated by various government agencies, including the Ministry of Labor and Social Protection, the Ministry of Internal Affairs, and the Ministry of Ecology and Natural Resources. However, interdepartmental coordination on climate migration issues is not clearly defined, which limits the ability to respond effectively to environmental challenges.

Conclusion

The analysis of the legislation revealed that existing regulations only partially address migration related to natural disasters, but fail to take into account the long-term consequences of climate change. Moreover, the issue of migration caused by environmental disasters has not been adequately regulated by law.

To develop the institutional and legal framework for climate migration in Kazakhstan, it is necessary to integrate this issue into existing laws and strategies, as well as strengthen interdepartmental cooperation and adopt measures for climate change adaptation. In particular, it is proposed to include the concept of climate migration in the Republic of Kazakhstan’s Law «On Population Migration», as well as to amend the Environmental Code by adding a specific article regulating climate migration. This article should provide legal regulation of both internal and international migration processes caused by climate-related disasters, as well as measures to support affected populations and adaptation mechanisms.

Furthermore, existing national strategies and programs, such as the National Strategy on Climate Change, do not pay enough attention to the potential migration consequences. Therefore, it is crucial to consider climate migration as a priority area in adaptation policy.

The survey revealed that climate change significantly impacts the living standards and migration sentiments of the population in Kazakhstan. The majority of respondents are aware of climate change, although not all feel its direct effects. The main reasons for potential relocation include deteriorating health, economic difficulties, and reduced crop yields.

Despite this, a significant portion of respondents does not plan to change their place of residence, which may indicate either adaptation to the changing conditions or a lack of resources for migration. At the same time, about a quarter of respondents are considering relocation, highlighting the relevance of the climate migration issue.

The data obtained confirms the need to strengthen the legal regulation of climate migration, develop comprehensive adaptation measures, and provide state support for affected regions.

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Д. Нұрмұханқызы, А.Т. Озенбаева

Қазақстандағы климаттық өзгерістердің ішкі миграцияға әсері: әлеуметтік-құқықтық мәселелер және оны шешу жолдары

Климаттың өзгеруі Қазақстандағы ішкі көші-қонға және халықтың өмір сүру жағдайларына айтарлықтай әсер ететін негізгі факторлардың біріне айналды. Мақалада климаттық көші-қонға байланысты әлеуметтік және құқықтық мәселелер қарастырылған, сонымен қатар оларды шешудің мүмкін жолдары талданған. Құрғақшылықтың жиі болуы, су тасқыны, жердің тозуы және ауылшаруашылық өнімділігінің төмендеуі сияқты табиғи факторлардың халықтың қоныс аудару процестеріндегі әсеріне ерекше назар аударылған. Зерттеу нәтижелері Қазақстанның бес өңірінде жүргізілген әлеуметтік сауалнама деректеріне негізделген. Алынған мәліметтерге сәйкес, көші-қонның негізгі себептері денсаулықтың нашарлауы, экономикалық тұрақсыздық, таза су мен азық-түлікке қол жетімділіктің шектеулі болуы. Сонымен қатар, талдау нәтижелері көрсеткендей, климаттық өзгерістердің айтарлықтай салдарына тап болған халықтың елеулі бөлігі көші-қонды әрдайым жалғыз немесе ең тиімді шешім ретінде қарастырмайды. Бүгінгі таңда Қазақстандағы климаттық көші-қонды құқықтық реттеу қалыптасудың бастапқы сатысында тұр. Мақалада климаттық көші-қонға ұшыраған азаматтардың құқықтарын қорғауды күшейтуге, жаңа климаттық жағдайларға аймақтардың бейімделуін жақсартуға, сондай-ақ зардап шеккен халықты қолдауға бағытталған мемлекеттік бағдарламаларды әзірлеуге арналған бірқатар шаралар ұсынылады. Зерттеу қорытындысы бойынша, климаттық өзгерістер салдарынан туындайтын ішкі көші-қонды тиімді басқару үшін құқықтық, экономикалық және әлеуметтік тетіктерді біріктіретін кешенді көзқарас қажет екендігі атап өтіледі.

Кілт сөздер: климаттық миграция, қоршаған орта, климаттық өзгерістер, ішкі миграция, құқықтық реттеу, экологиялық мәселелер, құрғақшылық, су тасқындары, халықтың бейімделуі, мемлекеттік саясат.

Д. Нурмуханқызы, А.Т. Озенбаева

Влияние изменения климата на внутреннюю миграцию в Казахстане: социально-правовые вызовы и пути решения

Изменение климата стало одним из ключевых факторов, влияющих на внутреннюю миграцию в Казахстане и оказывающих значительное воздействие на условия жизни населения. В статье рассматриваются социальные и правовые проблемы, связанные с климатической миграцией, а также анализируются возможные пути их решения. Особое внимание уделяется влиянию таких природных факторов, как продолжительные засухи, учащающиеся наводнения, деградация земель и снижение сельскохозяйственной продуктивности, на процессы переселения населения. Результаты исследования основаны на данных социологического опроса, проведенного в пяти регионах Казахстана. Согласно полученным данным, основными причинами миграции являются ухудшение состояния здоровья, экономическая нестабильность, ограниченный доступ к чистой воде и продовольствию. В то же время анализ показал, что значительная часть населения, испытывающая последствия изменения климата, не всегда рассматривает миграцию как единственный или наиболее эффективный способ решения возникающих проблем. На сегодняшний день правовое регулирование климатической миграции в Казахстане находится на начальной стадии формирования. В статье предлагается ряд мер по совершенствованию законодательства, направленных на защиту прав климатических мигрантов, повышение способности регионов адаптироваться к новым климатическим условиям, а также на разработку государственных

программ поддержки пострадавших категорий населения. В исследовании подчеркивается необходимость комплексного подхода, объединяющего правовые, экономические и социальные инструменты, для эффективного управления внутренней миграцией в условиях изменения климата.

Ключевые слова: климатическая миграция, окружающая среда, изменение климата, внутренняя миграция, правовое регулирование, экологические проблемы, засуха, наводнения, адаптация населения, государственная политика.

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Problems and prospects of legal regulation of land use in the North Kazakhstan region: legal and institutional analysis

The article is devoted to a comprehensive legal and institutional analysis of land use in the North Kazakhstan Region (NKR) of the Republic of Kazakhstan, one of the country's key agricultural regions. It examines both fundamental and applied aspects of the regulatory framework governing land relations, including the provisions of the Constitution, the Land Code, by-laws, as well as national and regional programs such as the Agro-Industrial Complex Development Concept, the "Digital Kazakhstan" program, and targeted projects for preserving soil fertility. Special attention is given to current challenges in the practical implementation of land policy: inefficient and unbalanced use of agricultural land, disparities in the distribution of land resources between large Agricultural Holdings and small farms, insufficient digitalization of the cadastral system, weak integration of information technologies, and limited control over compliance with environmental standards and soil protection regulations. Based on official statistics, legal acts, and expert assessments, the author concludes that comprehensive modernization of land use regulation, enhanced monitoring, innovative agricultural technologies, and legal education programs for rural communities are necessary to ensure productive, sustainable, and equitable land use in the NKR.

Keywords: land use, land use right, North Kazakhstan Region, legal regulation, land policy, agricultural land, cadastral system, digitalization, agricultural holding company, sustainable development, environmental requirements, agro-industrial complex, legal awareness.

Introduction

Land is one of the most important non-renewable natural resources, serving as the basis for agricultural production, economic stability, and environmental sustainability. In the Republic of Kazakhstan, rational land use is a priority of state policy and legal regulation. This issue is especially relevant for the North Kazakhstan Region (NKR), where the majority of the territory is agricultural land. The region faces acute challenges such as inefficient use of farmland, unequal access to fertile plots, weak enforcement of land legislation, and insufficient digitalization of cadastral processes. These problems undermine food security, hinder sustainable rural development, and require urgent legal and institutional solutions [1]; [2, 15]; [3, 1114]; [4, 10]; [5].

The purpose of this research is to analyze the current state of legal regulation of land use in the North Kazakhstan Region, identify key legal and organizational problems, and propose measures to improve the existing land management model. The main objectives include:

1. Reviewing the legal framework governing land use in Kazakhstan and NKR.
2. Examining the institutional mechanisms for land allocation, monitoring, and protection.
3. Identifying gaps between legal norms and their practical application.
4. Proposing recommendations for improving the efficiency, transparency, and sustainability of land use.

The theoretical foundation of Kazakhstani land law reflects a balance between public and private law principles, with constitutional recognition of land as national wealth under state protection. However, in practice there is a discrepancy between declared principles—such as rational use, sustainable development, and priority of agricultural designation—and their implementation. Methodological challenges arise in assessing land use efficiency, monitoring compliance, and integrating environmental requirements. Institutional conflicts often occur between state bodies and private land users, as well as between large agricultural holdings and small farmers [3, 1119]; [6].

While a number of Kazakhstani scholars, including A.E. Bekturganov, A.S. Stamkulov, and B.Zh. Abdraimov, have examined property rights and the legal regulation of agricultural land, there remains

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insufficient research into the regional application of these norms, especially in NKR. Literature rarely addresses the combined impact of cadastral digitalization, ecological monitoring, and legal enforcement mechanisms on sustainable land use. The gap between formal legal provisions and real-world enforcement has not been comprehensively analyzed in a regional context [1]; [4, 10]; [7, 27].

This study builds upon existing theoretical and empirical works but emphasizes the necessity of linking legal norms with practical tools such as GIS-based cadastral systems, satellite monitoring, and accessible legal education for rural land users. Unlike some studies that focus primarily on legislative analysis, this research integrates statistical data, institutional practices, and ecological indicators, offering a multidimensional view of the challenges facing land use in NKR. The author maintains that without systemic digital transformation, strengthened enforcement, and active participation of local communities, sustainable land management in the region will remain unattainable [6]; [8]; [9].

Methods and materials

The empirical basis of this study comprises a wide range of legislative, statistical, and scholarly sources relevant to land use regulation in the Republic of Kazakhstan. Key sources include the Land Code of the Republic of Kazakhstan and other special legislative acts, and subordinate regulations governing land use; regional programs of the North Kazakhstan Region aimed at promoting the rational use of land, advancing the digitalization of cadastral services, and preventing soil degradation; statistical datasets provided by the Committee for Land Resources Management, the Agency for Geology and Subsoil Use, and Local Executive Body (akimat) of the North Kazakhstan Region; as well as academic publications by Kazakhstani scholars addressing issues of land law and the sustainable development of land relations [10]; [11]; [5]; [12]; [13]; [14]; [15]; [16].

The methodological framework integrates both theoretical and empirical research approaches.

From a theoretical perspective, logical analysis and comparative legal analysis were applied to examine legal literature, academic studies, and legislative acts. These methods enabled the identification, classification, and systematization of the principal challenges associated with the implementation of land use rights in the North Kazakhstan Region.

From an empirical perspective, the research involved socio-legal monitoring to assess both the strengths and weaknesses of agricultural land use practices, and to evaluate the effectiveness of existing legal and institutional regulatory mechanisms.

Furthermore, the study employed the following analytical techniques:

- **Comparative analysis of statistical data** over temporally proximate periods, which facilitated the identification of short-term trends and changes in land use without overemphasizing long-term fluctuations;
- **Content analysis of legislative acts and regional policy documents** aimed at detecting overlaps, inconsistencies, and gaps in the current regulatory framework.

All data were systematized and cross-referenced to ensure consistency, and qualitative findings were supported by quantitative indicators where available.

Results

The analysis of legal regulation and land use practices in the North Kazakhstan Region (NKR) has led to several important findings.

1. Historical and legal evolution. Kazakhstan's land legislation has gradually evolved from the regime of complete state ownership during the Soviet period to the current dual model, which combines state ownership with private ownership and leasehold rights. The adoption of the Land Code in 2003 and subsequent amendments established a balance between market mechanisms and strategic state control over the national land fund [1]; [2, 30]; [7, 15]; [16].

2. National trends. Despite the existence of a relatively well-developed legal framework, systemic challenges persist in Kazakhstan. These include the inefficiency of lease mechanisms, weak enforcement of land use obligations, ongoing soil degradation, and insufficient digitalization of the land cadastre. Agricultural land, which accounts for approximately 75 % of the country's total land fund, remains the most vulnerable sector [3, 1118]; [6]; [16].

3. Regional specifics of the NKR. These nationwide issues are particularly evident at the regional level. In the North Kazakhstan Region, leasehold land use is predominant; however, a considerable share of land still remains in state ownership and is allocated for use by decisions of local executive bodies (akimats). The principal land users are farms and agro-industrial enterprises, yet access to the most productive plots is

highly unequal: large agricultural holdings retain control over fertile land, while smaller farmers are often left with degraded or less convenient parcels [6], [12].

4. Environmental dimension. Environmental challenges constitute one of the most pressing aspects of land use in the region. More than 75 % of agricultural land is affected by degradation, while 62.5 % of arable land is characterized by low humus content. Although environmental requirements are formally enshrined in legislation, they remain largely declarative, thereby reducing the effectiveness of soil protection policies. Therefore, there is an urgent need to move from formal provisions to the practical implementation of sustainable land use principles [10], [5], [6].

5. Digitalization and governance. Another critical issue relates to governance and transparency. The cadastral system remains fragmented and outdated, with limited application of geographic information systems (GIS) and electronic services. This not only hampers access to reliable land data but also creates risks of corruption and inefficiency in land allocation procedures [11]; [12]; [13].

6. International experience. Comparative analysis of foreign practices (European Union, United States, China, Russia, Uzbekistan) demonstrates that sustainable land use is best achieved through a combination of economic incentives and strict legal restrictions. For instance, subsidies and tax benefits for environmentally friendly practices are complemented by binding environmental standards and strong enforcement mechanisms. In this regard, the introduction of a hybrid model tailored to Kazakhstan's national conditions appears to be a promising direction for the North Kazakhstan Region [15]; [17]; [18]; [19]; [20]; [21]; [110]; [22].

7. Practical measures. To overcome the identified problems, a comprehensive set of measures is required. These include: strengthening monitoring mechanisms, redistributing unused or abandoned land, enforcing mandatory crop rotation, updating and digitalizing the cadastre, simplifying lease procedures, and introducing legal education programs for farmers and land users [10]; [23, 108]; [8]; [13]; [14]; [16].

Discussion

A comparison of the obtained results with similar studies shows that the identified land use problems in the North Kazakhstan Region largely mirror the situation in other agricultural regions of Kazakhstan. Studies by A.E. Bekturganov, A.S. Stamkulov, L.K. Erkinbayeva, and other authors indicate the same systemic challenges — the imbalance in land distribution, weak enforcement of norms on the compulsory withdrawal of unused plots, and insufficient digitalization of the cadastral system.

- In the works of Bekturganov and Stamkulov, as in the present study, it is emphasized that existing legal norms generally comply with international standards, but their implementation is hindered by institutional inertia [1]; [4, 10]; [7; 75].

- Research by Erkinbayeva and Ozenbayeva also records problems with the completeness and relevance of cadastral data, which coincides with the conclusions of this study [3, 1115].

At the same time, several distinctive contributions of the present research should be noted. Unlike many previous studies, this work places emphasis on the integration of the digital cadastre with an environmental monitoring system as a key concept for improving transparency and efficiency in land management. While most authors limit themselves to legal analysis, this study attempts to combine legal and environmental components within a unified approach, thereby expanding the scope of the discussion towards sustainable land management.

Another point of divergence lies in the interpretation of the causes of ineffective land use. The author agrees with the prevailing conclusion that the main obstacles are insufficient oversight and the weak legal culture of land users. However, unlike some researchers, the author does not attribute the primary issue exclusively to the imperfection of legislation. On the contrary, the legislative framework is considered sufficiently developed, while the critical difficulty lies in the persistent gap between legal norms and their practical application. This discrepancy is explained by a combination of institutional, economic, and social factors — ranging from administrative inertia and resource shortages to the influence of lobbying groups.

The findings also contribute to the broader academic debate on sustainable land use. In particular, they confirm that the formal existence of legal instruments (withdrawal of unused land, priority rights of current tenants, environmental requirements) does not guarantee their effective implementation. Sustainable land use is achievable only under the conditions of digital transformation of the cadastre, improvement of legal literacy among tenants, and strict enforcement of environmental regulations. These conclusions resonate with the international concept of sustainable land management, according to which economic, legal, and environmental factors must be balanced in order to achieve long-term productivity and resilience.

Finally, the study has certain limitations that should be acknowledged. The analysis is based primarily on official statistical data, legal and regulatory acts, and regional programs, which may not fully capture informal land use practices or local socio-economic dynamics. Future research could deepen the discussion by including field studies, surveys of land users, and cross-country comparative analysis to assess the adaptability of international practices to Kazakhstan's conditions.

The reliability of the conclusions is ensured through the triangulation of sources, including statistical data, legal acts, and expert assessments, as well as a comparative analysis with the results of previous studies in this field.

Conclusion

The study has demonstrated that land use regulation in the North Kazakhstan Region reflects the general dualism of Kazakhstan's land law: the coexistence of state ownership with private ownership and leasehold rights, combined with strong state control over strategic resources. While the regulatory framework — represented by the Constitution, the Land Code, and subordinate acts — is relatively well developed and aligned with international standards, its practical implementation remains limited by institutional inertia, weak oversight, and the insufficient legal culture of land users [6]; [12].

The key problems identified include the imbalance in land distribution between large agricultural holdings and small farmers, ineffective enforcement of provisions on the withdrawal of unused plots, the low level of cadastral digitalization, and widespread soil degradation. These challenges reduce both the economic productivity and ecological sustainability of land use in the region [6]; [12].

A distinctive contribution of the present study is the proposal to integrate the digital land cadastre with an environmental monitoring system, thereby ensuring both transparency in land allocation and effective control over compliance with ecological requirements. International experience confirms that sustainable land management can only be achieved through a combination of economic incentives, strict legal restrictions, and effective monitoring mechanisms. For Kazakhstan, and particularly for the North Kazakhstan Region, adopting a hybrid model adapted to national conditions appears to be the most promising approach [6]; [12]; [22].

The main conclusion is that further progress requires not so much changes in legislation as a comprehensive modernization of implementation mechanisms. This includes the digital transformation of cadastral and land management systems, the introduction of satellite monitoring and GIS technologies, strict enforcement of environmental regulations, and the strengthening of legal awareness among farmers and tenants.

The practical significance of the study lies in the possibility of applying these measures to enhance transparency in land allocation, reduce corruption risks, and prevent further soil degradation. The scientific value consists in the interdisciplinary approach that combines legal, institutional, and environmental perspectives within the framework of a regional case study, thereby enriching the broader debate on sustainable land use.

Recommendations:

- Development of regional programs for modernizing the cadastral system and expanding digital services;
- Introduction of satellite monitoring, GIS technologies, and environmental audit tools into land use control;
- Legal and environmental training for farmers and tenants to improve compliance and awareness;
- Transparent and competitive procedures for land redistribution, ensuring equal access for small and medium-sized farms;
- Integration of ecological standards into the economic incentives system to support sustainable agricultural practices.

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А. Каскеева

Солтүстік Қазақстан облысындағы жер пайдалану құқығын құқықтық және институционалдық тұрғыдан реттеудің мәселелері мен перспективалары

Мақала еліміздің негізгі аграрлық аймақтарының бірі Солтүстік Қазақстан облысындағы (СҚО) жерді пайдалану мәселелерінің құқықтық және институционалдық талдауына арналған. Онда Конституция,

Жер кодексі, заңға тәуелді актілер, сондай-ақ агроөнеркәсіптік кешенді дамыту тұжырымдамасы, «Цифрлық Қазақстан» бағдарламасы және топырақ құнарлылығын сақтау жөніндегі нысаналы жобалар сияқты мемлекеттік және аймақтық бағдарламалардың ережелерін қоса алғанда, жер қатынастарын реттейтін нормативтік-құқықтық базаның іргелі және қолданбалы аспектілері қаралады. Жер саясатын іс жүзінде жүзеге асырудағы өзекті мәселелерге ерекше назар аударған, атап айтсақ: ауыл шаруашылығы жерлерін тиімсіз және теңгерімсіз пайдалану, ірі агрохолдингтер мен шағын шаруашылықтар арасында жер ресурстарын бөлудегі теңсіздік, кадастрлық жүйенің жеткіліксіз цифрландырылуы, ақпараттық технологияларды енгізудің төмен деңгейі, сондай-ақ топырақты қорғаудың экологиялық нормалары мен стандарттарының сақталуына бақылаудың әлсіздігі. Ресми статистиканы, құқықтық актілерді және сараптамалық бағалауларды талдау негізінде авторлар құқықтық реттеуді кешенді жаңғырту, мониторинг пен есептілік жүйесін күшейту, инновациялық агротехнологияларды енгізу және ауыл тұрғындарына арналған құқықтық білім беру бағдарламасын кеңейту қажет деген қорытынды жасайды.

Кілт сөздер: жерді пайдалану, Солтүстік Қазақстан облысы, құқықтық реттеу, жер саясаты, ауыл шаруашылығы жерлері, кадастрлық жүйе, цифрландыру, агрохолдинг, тұрақты даму, экологиялық талаптар, агроөнеркәсіптік кешен, құқықтық білім.

А. Каскеева

Проблемы и перспективы правового регулирования землепользования в Северо-Казахстанской области: правовой и институциональный анализ

Статья посвящена всестороннему правовому и институциональному анализу землепользования в Северо-Казахстанской области (СКО) Республики Казахстан, которая является одним из ключевых аграрных регионов страны. Рассматриваются фундаментальные и прикладные аспекты нормативно-правовой базы, регулирующей земельные отношения, включая положения Конституции, Земельного кодекса, подзаконных актов, а также государственных и региональных программ, таких как Концепция развития агропромышленного комплекса, программа «Цифровой Казахстан» и целевые проекты по сохранению плодородия почв. Особое внимание уделено актуальным проблемам практической реализации земельной политики: неэффективному и несбалансированному использованию сельскохозяйственных угодий, диспропорциям в распределении земельных ресурсов между крупными агрохолдингами и мелкими фермерскими хозяйствами, недостаточному уровню цифровизации кадастровой системы, слабой интеграции информационных технологий, а также ограниченному контролю за соблюдением экологических норм и стандартов охраны почв. На основе анализа официальной статистики, правовых актов и экспертных оценок автор делает вывод о необходимости комплексной модернизации правового регулирования, усиления системы мониторинга и отчетности, внедрения инновационных агротехнологий и расширения программ правового просвещения сельского населения. Предлагаемые меры направлены на обеспечение высокой продуктивности, экологической устойчивости и социальной справедливости землепользования в СКО.

Ключевые слова: Землепользование, Северо-Казахстанская область, правовое регулирование, земельная политика, сельскохозяйственные угодья, кадастровая система, цифровизация, агрохолдинг, устойчивое развитие, экологические требования, агропромышленный комплекс, правовое просвещение.

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АЗАМАТТЫҚ ЖӘНЕ АЗАМАТТЫҚ ІС ЖҮРГІЗУ ҚҰҚЫҒЫ ГРАЖДАНСКОЕ И ГРАЖДАНСКОЕ ПРОЦЕССУАЛЬНОЕ ПРАВО CIVIL AND CIVIL PROCEDURE LAW

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The family as a subject of law and economics: a balance of personal and entrepreneurial interests

The article considers the family as a multifaceted social institution that simultaneously performs the functions of a subject of law and economics. The author focuses on the dual nature of the family: on the one hand, it is a space of personal connections based on trust, love and mutual support, on the other — a carrier of property interests and a participant in economic activity. The article analyzes the legal subjectivity of the family, its limitations, as well as its economic role in the transformation of modern society. Special attention is paid to the problem of the balance between the personal and entrepreneurial dimensions of the family, the identification of contradictions between them and the search for possible mechanisms for their reconciliation. The importance of the family entrepreneurship as a form of realization of the economic function of the family and an important factor in the sustainability of society is emphasized.

Keywords: family, social institution, subject of law, subject of economy, property interests, family entrepreneurship, balance of personal and economic values, sustainable development of society.

Introduction

The family is traditionally recognized as one of the fundamental values and basic social institutions of society and the state. The family ensures biological reproduction, upbringing, and socialization of children, the transmission of cultural and moral norms, and creates a special environment for personal development. The family is actively involved in economic processes and is a participant in entrepreneurial activities, manages property, enters into obligations, and acts as a subject of economic life, forming households and creating family businesses.

This understanding of the functions of the family raises the question of its status: should the family be considered solely as a social phenomenon, or should it be recognized as an independent subject of law and the economy? The expansion of the family's functions sharpens the contradictions between its personal and economic dimensions.

On the one hand, the family represents a space for intimate connections based on trust, love, and mutual support. On the other hand, the family becomes a carrier of property interests, a subject of ownership, and often a participant in business. This dual position defines the particular relevance and need for a comprehensive understanding, the problem of balancing personal and property interests, as well as the significance of entrepreneurial functions within the family: how can one reconcile the family's universal human values of assistance and support with economic interests, property obligations, and business risks.

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The relevance of the topic is due to the necessity of considering the family not only as a social institution but also as a subject of law and the economy, where individual rights, collective values, and entrepreneurial interests intersect. The stability of both the family itself and society as a whole depends on how successfully a balance between these elements can be found.

The purpose of this research is to analyze the current state of the family as a subject of law and the economy, identify the contradictions between personal and entrepreneurial interests, and outline the mechanisms for their potential balance.

The objectives of the study are to examine the family as a social institution and identify the features of its transformation in the modern period; to characterize the legal subjectivity of the family and its limitations; to analyze the economic role of the family, including the phenomenon of family entrepreneurship.

Methods and materials

In the course of the study on the chosen topic, the method of comparative legal analysis was used, along with a logical approach to solving the problem, as well as a statistical method that allowed identifying the causes of the development of family entrepreneurship abroad and in Kazakhstan. An extensive literature review was conducted, examining the family as an element of law and economics in the context of family entrepreneurship. Based on this review, the dynamics and trends in the development of family entrepreneurship in Kazakhstan were identified as significant economic and legal factors in the country's overall development. A comprehensive analysis of the current state of the family involvement in entrepreneurship was carried out, and specific strategies for the development of family entrepreneurship were determined. The subject of the study included regulatory legal acts, in particular the Marriage and Family Code of the Republic of Kazakhstan, scientific literature by domestic and foreign authors, and other informational and analytical materials. The research involved a thorough analysis of academic books, scientific articles, and online resources. An in-depth theoretical analysis of academic sources, as well as national legislation regarding the regulation of family law relations, was conducted.

Discussion

The Family as a Social Institution. Modern society comprises numerous social institutions, among which marriage and the family the most widespread — social formations that determine the life of every individual. It is commonly understood that a social institution is a historically developed system of formal and informal rules, principles, and norms regulating human behavior in a particular area of life and reflecting a system of roles and social statuses [1; 149].

Thus, a social institution can be defined as an established form of organization for joint living activity of people. Family and marriage are primary social institutions that define rules and models of life and thought, reinforcing traditions, customs, and kinship relations between people. The family, as a small social group, has a stable structure, a number of essential functions, and is an independent management system in which all members develop a culture of communication and shared values.

The modern approach to the family's functions assumes that, in general, the average family is characterized by a certain set of life functions, the absence of which would deprive the family of its meaning. No classification can be considered definitive throughout the entire period of the family's existence, as some functions are lost over time, others change, some become additional, and others become more relevant with time and development of the family [2; 92].

A detailed analysis of the family's main functions is provided in the work of A.N. Elizarov:

- 1) Birth and upbringing of children;
- 2) Preservation, development, and transmission of societal values and traditions to subsequent generations;
- 3) Accumulation and realization of socio-educational potential;
- 4) Satisfaction of people's needs for mental comfort, emotional support, a sense of safety, self-worth, emotional warmth, and love;
- 5) Creation of conditions for the development of the personality of all family members;
- 6) Satisfaction of sexual and erotic needs;
- 7) Organization of joint household management, division of labor within the family, mutual assistance;

- 8) Satisfaction of the individual's need for communication with loved ones, establishing strong communicative ties with them;
- 9) Satisfaction of individual needs for parenthood, contact with children, their upbringing, self-realization in children;
- 10) Organization of financial support for the family;
- 11) Social control over the behavior of individual family members;
- 12) Recreational function — protection of the family members' health, organization of their rest, stress relief, etc. [3; 42–49].

The family, remaining the foundation of stability and the cornerstone of social relations, has become more mobile and dynamic. Changes in the family reflect demographic processes, socialization of individuals and relationships, and the continuity of generations. These changes are characterized by the categories of “crisis” or “modernization”. The “modernization” model of family transformation involves changing the forms of family-marital relationships (their diversity), the distribution of social roles within the family, which is an irreversible evolutionary process, also having positive outcomes. Speaking of the “crisis” of the modern family, the emphasis is placed on the loss and insufficient fulfillment of traditional family functions, particularly the reproductive function, the instability of the family and marriage, and the dilution of family values that lead to family distress. The changes, in general, are characterized as deformation of the family lifestyle [4; 359–370].

Within traditional society, the family functioned as a unified whole, where the personal interests of its members were subordinated to the collective goals of the clan or household. However, the modern situation is fundamentally different. Transformation processes, such as urbanization, growth of individualization, and economic mobility, have altered the structure and meaning of the family. Nuclear families, the increase in single-parent households, the rise in marriages without registration, and alternative forms of cohabitation indicate that the family is no longer exclusively “traditional”. Despite the fact that individualization strengthens the focus on personal rights, sometimes contradicting the collective interests of the family as a whole, scholars such as R. Baumeister and M. Liri argue that “being part of a group (relatives, friends, colleagues, community), forming and experiencing attachment is our fundamental need” [5; 497–529].

Thus, in the modern world, the family retains its status as a key social institution, but its content becomes multilayered and contradictory. These changes are reflected not only at the value and cultural level but also in the family's legal and economic roles.

The Family as a Subject of Law. According to the legislation of the Republic of Kazakhstan, under paragraph 29 item 1 of Article 1 of the Marriage and Family Code of the Republic of Kazakhstan, “The family is a circle of people bound by property and personal non-property rights and obligations arising from marriage, kinship, adoption, or another form of accepting children for upbringing, and is intended to promote the strengthening and development of family relations” [6].

Historically, the family was a specific legal institution, subject to detailed regulation, and the main features of the family structure were expressed with exceptional completeness and consistency. The family was considered a public institution. Any changes in family regulation determined changes in the economic life of society and the ideology of the ruling class. Moreover, the concept of family differed from the modern understanding. For example, in Roman law, the term “familia” was used, which in all modern languages approximates the idea of blood relations; however, in its original sense, it encompassed not only blood relations but everything under the authority of the paterfamilias — wife, children, offspring, sons, slaves, cattle, and inanimate objects [7; 119].

It is important to note that the study of the genesis of the family, from its primitive forms to the paired marriage, is still disputed by contemporary scholars, particularly N. Rulan, who challenges the conclusions of F. Engels on the issue of the origin and forms of the family [8; 74].

According to A.I. Zagorovsky's definition, “The family is a group of people connected by marriage or kinship, living together... the family union includes three types of relationships: between spouses, between parents and children, and between guardians and wards” [9; 123].

In the view of V.I. Sinaiskii, “In our law, the concept of family is unclear and indefinite. On the one hand, in our laws, the family is almost mixed with the concept of kin, while on the other hand, the family can mean a very narrow circle of people — parents, spouses, and children, or a broader one, including some collateral relatives and even non-relatives accepted into the family”. He also points out that the Senate operates with the concept of the family as a labor unit — the peasant household [10; 368].

G.F. Shershenevich noted that “a family is the permanent cohabitation of a husband, wife, and children, i.e., it represents a union of persons connected by marriage and those descending from them”. The foundation of the family lies in a physiological aspect — the desire to satisfy sexual needs. Children are a physiological consequence of cohabitation. The physical and moral structure of the family arises independently of law... the legal aspect is necessary and appropriate in the realm of property relations between family members [11; 214].

Notably, O.S. Ioffe’s opinion reflects the general view of scholars from the Soviet period. He stated that the family is “a union of persons recognized and supported by the state and society, based on marriage by love and natural closeness by origin, and existing for the purposes of procreation, communist upbringing, and material mutual assistance”. He identified three functions of the family: natural, ideological, and economic [12; 153].

V.A. Ryasentsev, in discussing the family as a legal institution, positively assessed the absence of a universal definition of the family, because, firstly, “it would lead to more negative consequences than advantages. If such a definition were constructed in an overly general manner, aiming to cover the widest possible range of relationships regulated by family law, it would diverge from the sociological understanding of the family and would turn the legal concept of family into an artificial and contrived construction. The features of a family in the modern period are mostly optional in nature”. Secondly, in his view, “there is no need for a legal definition of the family because the law does not treat the family as an independent legal entity. Granting the family a special legal status, which was typical of earlier stages in the development of human society, is no longer dictated by economic or social needs, and would, in fact, contradict them” [13; 82].

A detailed analysis of the institution of the family was conducted by E.M. Vorozheikin, who studied the role of the family in the social structure, the socio-legal concept of the family, the interaction between family and law, its consolidation in legal norms, and the autonomous nature of the family. In his view, the family represents a triune entity: a social cell of the state, a structure of a special, limited human collective, and a sphere of personal life activity. Each of these aspects requires special regulation [14; 223].

In the legal system, the family occupies a special place. It is recognized and protected by the state as a social value, but it also functions as an element of legal relations. Family law establishes it as a special legal institution that regulates personal and property relations between its members [15; 196].

In classical legal theory, the family is not a legal entity, yet it possesses legal capacity within the scope of family relations. The subjects can be both the family as a whole (e.g., in cases of adoption, child-rearing) and its individual members. The peculiarity of the family’s legal capacity lies in the combination of personal non-property rights (such as the right to marriage, parenthood, upbringing) and property rights (such as joint ownership and maintenance obligations) [16; 110].

The law primarily focuses on personal relationships (marriage, children, spousal duties), while the economic activity of the family, according to researchers, remains insufficiently addressed. For instance, family businesses, joint entrepreneurship by spouses, or the transfer of property complexes by inheritance are areas where the boundaries between family and corporate law are blurred. The lack of comprehensive regulation leads to conflicts — such as property division during divorce, family liability for business debts, and the protection of rights of family members not involved in entrepreneurship [17; 147].

Thus, the legal subjectivity of the family is limited: it is clearly defined in the realm of personal and familial relationships but does not fully reflect economic realities.

The Family as an Economic Subject. Traditionally, the family was considered primarily as a consumer household subject in economics — a unit that forms demand, makes decisions on budget allocation, and invests in the education and health of children. Human capital theory emphasizes that it is the family that creates, preserves, and transmits the main resources: labor, education, culture.

In modern conditions, the family increasingly acts not only as a consumer but also as a producer. This can manifest in forms of family farming, handicrafts, small businesses, and family companies. These forms combine labor, capital, and social connections within the family, creating a special model of economic activity [18; 273].

Family entrepreneurship occupies a special place as an activity where business and family relationships are inextricably intertwined. It has advantages (trust, continuity, long-term orientation) and risks (conflicts of interest, blending personal and business matters). International practice shows that family companies are major players in the economy (in some countries, up to 60–70 % of small and medium-sized businesses are family-owned) [19; 431–436].

A family accumulates not only material resources but also intangible forms of capital: human, social, cultural, and entrepreneurial. All of this makes it a unique economic entity that cannot be reduced merely to the role of a consumer. However, contradictions arise here: where do the boundaries between personal and entrepreneurial life lie. How fair and effective is the regulation of family members' participation in the business? These questions point to the need for a balance.

Results

Family entrepreneurship represents a unique form of economic activity based on the interaction of family members as both owners and participants in the business. Unlike conventional entrepreneurship, business and personal relationships are intertwined in family entrepreneurship, giving it distinct characteristics. Family entrepreneurship should not be reduced solely to family businesses: it is a broader and more dynamic phenomenon, encompassing entrepreneurial activity initiated and supported by the family [20; 539–575].

The characteristics of family entrepreneurship include the involvement of family members in management; concentration of capital within the family, generational continuity and inheritance of the business, and the blending of personal and entrepreneurial roles (e.g., spouses as business partners, parents and children as managers and heirs).

At the same time, family enterprises remain the “backbone of entrepreneurial economies”, and researchers emphasize the growing interest in how families create, pass on, and transform entrepreneurial opportunities across generations [21].

Key functions of family entrepreneurship manifest in the combination of its economic and socio-cultural nature. These include job creation and contributions to the development of small and medium-sized enterprises, which allows family entrepreneurship to be viewed as a factor of regional and national sustainability (Anwar et al., 2023); the transmission of entrepreneurial skills and values from one generation to the next, forming “succession capital”. Successful entrepreneurial families, as noted in the monograph *Family Entrepreneurship: Insights from Leading Experts* (Springer, 2021), are focused not only on preserving the business but also on developing family identity, values, and management mechanisms. Family entrepreneurship is oriented towards the transfer of entrepreneurial skills and values from generation to generation, creating a distinct “succession capital”. According to Springer, successful entrepreneurial families focus not only on continuing the business but also on reinforcing family values and management mechanisms. Maintaining stability during economic crises is based on a high degree of intra-family solidarity. Studies show that family businesses often demonstrate greater resilience in turbulent conditions compared to corporate structures. Moreover, in rural areas, family entrepreneurship plays a stabilizing role by providing employment, preserving traditions, and maintaining social cohesion, thereby strengthening family bonds through joint activity, which confirms the special social role of family entrepreneurship beyond its purely economic function [22; 101–106].

Despite its obvious advantages, family entrepreneurship is fraught with several issues: conflicts of interest between family members, arising from differences in strategies and goals; difficulties in distinguishing personal and professional spheres, leading to heightened tension; intergenerational disputes over business development, especially in inheritance matters. Thiele notes that family constitutions, as a tool of «soft law», help mitigate such conflicts; however, normative regulation remains weak, expressed by the absence of specific legal forms or status for family enterprises. In this context, Randerson emphasizes the need for legal differentiation between family business and family entrepreneurship for more precise regulation. Special attention in contemporary research is also given to the gender aspect: “gender expectations often limit the recognition of women as full-fledged entrepreneurs, relegating them to supportive and “invisible” roles in the family business. Thus, family entrepreneurship performs simultaneously economic, social, and cultural functions, but its potential largely depends on adequate legal recognition and institutional support from the state. In global practice, family businesses account for a significant portion of the economy: in Europe and the US, up to 60–70 % of SMEs are family-based. In Kazakhstan and the CIS countries, family entrepreneurship is developing but lacks a stable legal status. It mainly exists in the form of individual entrepreneurship, farms, and limited liability partnerships (LLCs), where relatives serve as owners and managers” [19; 431–436].

Thus, family entrepreneurship becomes a vivid example of how a family simultaneously fulfills personal and economic functions. On the one hand, this strengthens its role in the economy; on the other, it creates specific conflicts that require legal and social balancing mechanisms.

Conclusion

The modern family emerges as a multilayered phenomenon: simultaneously a social institution, a legal entity, and an economic subject. Its functions are undergoing profound transformations. The traditional focus on collective values and the continuation of lineage is increasingly combined with trends toward individualization and the strengthening of personal rights of family members. These changes are directly reflected in the family's legal and economic status. The modern family is not only a union of close individuals but also an economic unit, where personal relationships intersect with entrepreneurial activity, giving rise to specific conflicts related to property, roles, intergenerational dynamics, and psychology.

Legal mechanisms for maintaining balance include prenuptial agreements, property division agreements, shareholder agreements within family businesses, inheritance law, and the use of mediation. Social and psychological mechanisms include intra-family agreements, a culture of open discussion, and the formation of values based on trust and continuity. Harmony between the personal and the entrepreneurial enhances the resilience of both the family and its business, while imbalance can lead to the breakdown of both.

A unique situation is unfolding in domestic law: the term “family” is actively used in legislation, yet its definition is not explicitly provided. In practice, the legislator allows each branch of law to interpret this concept based on its specific regulatory objectives. However, a rigid legal definition of “family” introduces new challenges: an overly broad interpretation deprives the term of legal clarity, while an unreasonably narrow one restricts the real diversity of family forms. Previous attempts to define the family in normative terms have often gone beyond a purely legal approach, incorporating sociological and ideological elements. The multifaceted nature of the institution complicates the formulation of a unified definition that can simultaneously meet legal requirements and reflect the social essence of the family.

Viewing the family as an independent legal subject could help resolve this issue, and in our view, such an approach is becoming increasingly relevant in today's context.

It is now reasonable to consider the family as a holistic socio-legal institution, moving away from the opposition between sociological and legal approaches. This perspective leads to the idea of recognizing the family as an independent legal subject, which could help resolve a range of legal issues. However, this raises a broader question — what are the boundaries and forms of interaction between the family and the state, and to what extent is it beneficial for society and the state to recognize the family as an independent subject. The importance of the family as a social phenomenon is unquestionable: it provides for the socialization of individuals, the satisfaction of basic human needs, and population reproduction. At the same time, the level and objectives of its interaction with the state require further reflection, especially in light of the current transformation of both family relations and state family policy.

Considering the family as a subject of law and economics reveals its dual nature. On the one hand, it is a space for personal relationships based on trust, love, and mutual support. On the other hand, it becomes a bearer of property interests and a participant in business and economic processes. The phenomenon of family entrepreneurship clearly demonstrates this interweaving of dimensions: the personal and the economic are closely connected, creating both new opportunities and new contradictions. The absence of clear legal regulation, intergenerational conflicts, and blurred roles underscore the need to find effective balancing mechanisms.

Balancing personal and entrepreneurial interests becomes a key condition for the family's stability. This balance is achieved not only through legal mechanisms but also through social and cultural practices based on trust, consensus, and mutual responsibility. Such a balance is attained through both legal tools (prenuptial agreements, corporate contracts, inheritance law) and through social and cultural practices—trust, continuity, and conscious distribution of roles within the family. It is precisely the ability to combine the personal and the entrepreneurial that makes the family a unique legal and economic subject. Harmonizing these spheres is a key condition for the resilience of the family and its contribution to societal development.

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Отбасы құқық пен экономиканың субъектісі ретінде: жеке және кәсіпкерлік мүдделердің тепе-теңдігі

Мақалада отбасы құқық субъектісі мен экономикалық қатынастарға қатысушы ретінде бір уақытта қызмет ететін күрделі және көп қырлы әлеуметтік институт ретінде қарастырылады. Авторлар отбасының екіжақты табиғатын атап көрсетеді: бір жағынан, ол сенімге, сүйіспеншілікке және өзара қолдауға негізделген жеке қатынастар кеңістігі; екінші жағынан, мүлктік мүдделердің иесі және шаруашылық қызметтің қатысушысы ретінде көрінеді. Зерттеуде отбасының құқықтық субъективтілігі, оның шекаралары мен іске асыру ерекшеліктері, сондай-ақ қазіргі қоғамның трансформациясы жағдайындағы экономикалық рөлі талданған. Отбасының жеке және кәсіпкерлік өлшемдері арасындағы тепе-теңдік мәселесіне, олардың арасындағы қайшылықтарды анықтауға және оларды үйлестірудің мүмкін тетіктерін іздеуге ерекше назар аударылады. Отбасылық кәсіпкерліктің отбасының экономикалық қызметін жүзеге асыру нысаны және қоғамның тұрақтылығының маңызды факторы ретіндегі маңыздылығы атап өтіледі.

Кілт сөздер: отбасы, әлеуметтік институт, құқық субъектісі, экономика субъектісі, мүлктік мүдделер, отбасылық кәсіпкерлік, жеке және шаруашылық құндылықтардың тепе-теңдігі, қоғамның тұрақты дамуы.

Ф. Аbugалиева, М. Жаскайрат

Семья как субъект права и экономики: баланс личных и предпринимательских интересов

В статье рассматривается семья как сложный и многогранный социальный институт, выполняющий одновременно функции субъекта права и участника экономических отношений. Автор акцентирует внимание на двойственной природе семьи: она представляет собой пространство личных связей, основанных на доверии, любви и взаимной поддержке, и в то же время — носителя имущественных интересов, включенного в хозяйственную деятельность. Анализируется правовая субъектность семьи, её границы и особенности реализации, а также экономическая роль в условиях трансформации современного общества. Особое внимание уделяется проблеме баланса между личностным и предпринимательским измерением семьи, выявлению противоречий между ними и поиску возможных механизмов их согласования. Подчёркивается значение семейного предпринимательства как формы реализации хозяйственной функции семьи и важного фактора устойчивости общества.

Ключевые слова: семья, социальный институт, субъект права, субъект экономики, имущественные интересы, семейное предпринимательство, баланс личных и хозяйственных ценностей, устойчивое развитие общества.

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Институт конфискации в гражданском праве: казахстанский и международный опыт

Целью исследования является анализ правовой природы, структуры и функциональных особенностей института возврата незаконно приобретенных активов в Республике Казахстан в контексте международных подходов к конфискации без вынесения обвинительного приговора. Задачей работы является определение места казахстанского механизма среди существующих моделей конфискации и оценка степени его соответствия международным стандартам в сфере противодействия незаконному обогащению. Методологическую основу исследования составляют сравнительно-правовой, формально-юридический, историко-правовой и системный методы, а также анализ международных и национальных нормативных актов и научных источников. Такой комплексный подход обеспечивает целостность и объективность правового анализа. В результате установлено, что механизм, закрепленный Законом «О возврате государству незаконно приобретенных активов», по своим признакам относится к модели конфискации состояния необъяснимого происхождения. Он характеризуется ограничением круга субъектов, возможностью добровольного возврата имущества, применением обеспечительных мер и перераспределением бремени доказывания. Сделан вывод, что современная казахстанская модель представляет собой национально адаптированный механизм гражданско-правовой конфискации, отражающий переход от карательного подхода к превентивному регулированию имущественных отношений. Ее развитие способствует укреплению доверия общества к правосудию и совершенствованию системы возврата активов.

Ключевые слова: право собственности, возврат активов, конфискация, активы необъяснимого происхождения, гражданско-правовой механизм, коррупция, конфискация без обвинительного приговора, расширенная конфискация, публичный интерес, имущественная ответственность.

Введение

Современное общество предъявляет государству возрастающий запрос на эффективные правовые механизмы противодействия незаконному обогащению и возврата активов, выведенных из легального оборота. Одним из таких инструментов является институт гражданской конфискации (далее — гражданско-правовой механизм), который предусматривает возможность изъятия имущества независимо от наличия обвинительного приговора суда. В Казахстане данный институт развивается на фоне усиленного внимания Президента к вопросам восстановления справедливости и обеспечения прозрачности. Как отметил К. -Ж. Токаев в Послании народу Казахстана 2025 года: «Генеральная прокуратура хорошо поработала с владельцами незаконных активов, в казну возвращено около 850 миллиардов тенге. Эти средства направлены на возведение десяти школ и четырех спортивных сооружений, строительство и модернизацию 235 объектов здравоохранения и 177 объектов водной инфраструктуры» [1].

Официальная статистика подтверждает масштаб предпринимаемых усилий, указывая на то, что «с субъектов олигополий взыскано свыше 1,3 триллиона тенге» [2].

Мировой опыт демонстрирует, что рассматриваемый механизм выступает эффективной альтернативой уголовно-правовым мерам борьбы с незаконными доходами. Ирландия, Великобритания, Италия и США накопили значительный опыт его применения, выработав различные модели и правовые подходы. Казахстан, опираясь на эти примеры, формирует собственную модель, адаптированную к национальным правовым и социальным реалиям. Исследование правовой природы данного механизма, особенностей его нормативного закрепления и практического применения является необходимым условием для понимания перспектив развития института гражданско-правовой конфискации и определения его оптимальных параметров в национальной правовой системе.

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Целью данного исследования заключается в проведении сравнительного анализа механизма гражданско-правовой конфискации в Казахстане и зарубежных странах, а также в определении его правовой природы и направлений дальнейшего развития.

Методы и материалы

Исследование основано на применении комплексного методологического подхода, сочетающего анализ нормативных актов, сравнительно-правовой метод, историко-правовой и системно-структурный анализ. Основу эмпирической базы составили положения Закона Республики Казахстан «О возврате государству незаконно приобретенных активов», Гражданского кодекса Республики Казахстан, а также международные документы и законодательные акты зарубежных государств, регулирующие аналогичные институты. При подготовке статьи изучены научные публикации и доктринальные источники, отражающие теоретические подходы к институту и механизмам гражданско-правовой конфискации и возврата незаконно приобретенных активов.

Сравнительно-правовой метод применен для сопоставления казахстанской модели механизмов гражданско-правовой конфискации с механизмами, действующими в других государствах. Историко-правовой подход позволил проследить эволюцию конфискации от уголовно-правовой меры к самостоятельному гражданско-правовому институту. Системный анализ обеспечил выявление взаимосвязей между видами применяемых механизмов.

Такой подход позволил рассмотреть институт гражданско-правовой конфискации как многоуровневое явление, включающее нормативный, доктринальный и практико-ориентированный аспекты.

Результаты

На основе анализа международных источников модели конфискации без вынесения обвинительного приговора могут быть классифицированы по ряду критериев. Так, в докладе Европейской комиссии 2019 года предложена типология, включающая четыре основные модели:

- а) классическая конфискация без приговора, применяемая в случаях, когда вынесение обвинительного решения невозможно;
- б) расширенная конфискация;
- с) производство по вещному иску;
- д) конфискация имущества необъяснимого происхождения [3].

При этом следует четко разграничивать понятия «расширенная конфискация» и «конфискация без вынесения обвинительного приговора», поскольку они основаны на различных правовых предпосылках и процессуальных условиях.

В подпункте (с) пункта 1 статьи 54 Конвенции ООН против коррупции [4] закрепляется возможность применения конфискации «в отсутствие приговора в рамках уголовного производства». Данная формулировка охватывает ситуации, при которых лицу предъявлено обвинение, однако в результате судебного разбирательства обвинительный приговор не выносится. Речь идет, прежде всего, о случаях, когда уголовное преследование не может быть завершено в силу объективных причин — например, вследствие смерти обвиняемого либо его уклонения от правосудия после предъявления обвинения.

Таким образом, конфискация без вынесения обвинительного приговора представляет собой меру имущественного характера, применяемую при отсутствии судебного решения о виновности лица. В отличие от конфискации без приговора, расширенная конфискация направлена на изъятие не только имущества, непосредственно связанного с преступлением, но и активов, происхождение которых обвиняемый не может подтвердить законными источниками.

В связи с этим в научной и правоприменительной литературе отмечается, что расширенную конфискацию целесообразно рассматривать как самостоятельный правовой механизм, отличающийся от института конфискации без вынесения обвинительного приговора [5; 5].

Конфискация, осуществляемая без вынесения обвинительного приговора, нередко характеризуется как производство по вещному иску, при котором предметом доказывания выступает не степень вины конкретного лица, а законность происхождения имущества. Такой подход отражает суть моделей, применяемых в ряде государств, прежде всего в странах англосаксонской правовой системы, где получила развитие концепция механизма гражданско-правовой конфискации незаконно приобретенных активов.

Вместе с тем, положения статьи 54 Конвенции Организации Объединенных Наций против коррупции не исключают возможности применения конфискации на основании связи имущества с конкретным лицом, если такая зависимость прямо предусмотрена национальным законодательством. Это свидетельствует о гибкости международно-правового регулирования, допускающего сочетание вещно-правового и персонально-правового подходов к обращению незаконных активов в доход государства.

На первом этапе классификации принято различать два базовых подхода — в зависимости от того, осуществляется ли конфискация без вынесения обвинительного приговора в рамках уголовного судопроизводства или вне его пределов, в порядке гражданского либо административного производства. Хотя данное различие не является принципиальным в доктринальном смысле, оно имеет значение для определения процессуальных гарантий и стандарта защиты прав собственности, применимых в каждом конкретном случае.

В ряде государств на законодательном уровне прямо закрепляется, что конфискация, осуществляемая без вынесения обвинительного приговора, носит гражданско-правовой характер. Подобная модель характерна прежде всего для стран англосаксонской правовой системы [6], где она органично вписывается в традиционные принципы правовой культуры и судебной практики.

В то же время в последние годы наблюдается устойчивая тенденция к распространению гражданско-правового механизма конфискации и в государствах, принадлежащих к иным правовым системам. Это свидетельствует о его универсальности и способности адаптироваться к различным правовым и институциональным условиям при решении задач по возврату незаконно приобретенных активов и укреплению принципов добросовестного владения имуществом.

Сущность подобных механизмов заключается в установлении государственного контроля над имуществом и активами, имеющими предполагаемую связь с преступной деятельностью, независимо от привлечения конкретного лица к уголовной ответственности. В этом случае предметом конфискации выступает имущество незаконного происхождения, что предопределяет вещно-правовой характер соответствующего производства.

Если происхождение активов вызывает обоснованные сомнения, в отношении них применяются меры обеспечения — арест или иные ограничения. После этого собственнику предоставляется возможность доказать законность приобретения имущества и отстоять свои имущественные права в судебном порядке. Государственные органы, как правило, обеспечивают публичное уведомление об аресте имущества сомнительного происхождения, чтобы потенциальные владельцы могли заявить свои права на него. В случае, если такое обращение не поступает или требования заявителя отклоняются судом, имущество подлежит обращению в доход государства.

Данный механизм имеет гражданско-правовую природу, поскольку разбирательство по вопросу происхождения имущества и оценка доказательств его законности осуществляются в рамках гражданского судопроизводства с применением стандартов доказывания, характерных для гражданских дел (например, «баланс вероятностей»).

На законодательном уровне в некоторых государствах реализуется иная модель, при которой конфискация без вынесения обвинительного приговора сохраняет тесную связь с уголовным процессом, выступая не как самостоятельное гражданское производство, а как альтернативная мера в рамках уголовного дела. В таких правовых системах данный механизм рассматривается как замещающая форма конфискации, применяемая в исключительных случаях, когда вынесение обвинительного приговора оказывается невозможным по объективным или процессуальным причинам.

Речь идет, в частности, о ситуациях, когда уголовное преследование не может быть инициировано или продолжено в связи со смертью подозреваемого, его скрытием от правосудия, истечением срока давности или иными обстоятельствами, препятствующими постановлению приговора. В этих случаях конфискация применяется в отношении имущества, в отношении которого установлена связь с противоправной деятельностью, несмотря на отсутствие окончательного судебного решения о виновности лица. Такой подход позволяет сохранять баланс между принципом презумпции невиновности и публичным интересом государства в изъятии активов, происхождение которых подтверждено доказательствами, собранными в рамках уголовного производства.

В рамках Конвенции ООН против коррупции конфискация без вынесения обвинительного приговора рассматривается преимущественно как альтернативный инструмент по отношению к классической уголовно-правовой конфискации, призванный обеспечить возврат незаконных активов в случаях, когда уголовное осуждение лица невозможно. Такой подход не исключает более широкой трак-

товки, при которой конфискация выступает в качестве самостоятельной правовой меры, не зависящей от исхода уголовного дела и направленной исключительно на восстановление законности имущественного оборота.

В отдельных юрисдикциях (например, Франции [7], Чехии [8], Канаде [9]) конфискация без приговора встроена в уголовно-процессуальную систему и применяется в рамках уже начатого уголовного производства, если оно не может быть завершено вынесением приговора по объективным причинам — смерти обвиняемого, его бегства, истечения срока давности и т.п.

Таким образом, в указанных юрисдикциях конфискация без приговора выполняет компенсаторно-превентивную функцию, сохраняя связь с уголовным процессом, но не требуя признания лица виновным. Этот механизм позволяет государству реализовать принцип неотвратимости последствий незаконного обогащения даже при невозможности уголовного наказания, обеспечивая баланс между защитой прав собственника и интересами правосудия.

Обсуждение

В ряде государств конфискация без вынесения обвинительного приговора рассматривается как альтернативный инструмент уголовного правосудия, предназначенный для ситуаций, когда проведение полного уголовного процесса или вынесение приговора оказывается невозможным. Несмотря на то, что подобные процедуры формально закреплены в рамках уголовно-правовой системы, они обладают относительной самостоятельностью и нередко сочетают в себе элементы гражданского судопроизводства.

Так, в Германии и Швейцарии [10] конфискационные производства инициируются органами, уполномоченными на ведение уголовных дел, и рассматриваются судами уголовной юрисдикции. Однако при этом применяются гражданско-процессуальные принципы — например, в части доказывания происхождения имущества и защиты прав добросовестных владельцев.

Кроме того, такие меры могут применяться не только в ситуациях, когда уголовное преследование невозможно (например, в связи со смертью подозреваемого), но и до возбуждения уголовного дела — при наличии оснований полагать, что имущество имеет незаконное происхождение. Подобная практика позволяет государству действовать превентивно, предотвращая утрату или сокрытие активов, потенциально подлежащих возврату.

В отдельных странах разработаны гибридные модели конфискации без вынесения обвинительного приговора, которые не укладываются в традиционные рамки ни гражданского, ни уголовного производства. Такие модели занимают промежуточное положение между этими системами, сочетая в себе элементы обеих.

Так, например, в Италии и на Кубе [10] реализуется так называемый административно-правовой подход к изъятию незаконно приобретенных активов, предполагающий возможность конфискации независимо от уголовного преследования, но при этом сохраняющий определенную связь с уголовно-правовой сферой — в частности, при оценке происхождения имущества и установлении доказанности его незаконного характера.

Сущность таких административных моделей заключается в том, что они направлены прежде всего на обеспечение публичных интересов государства и восстановление законности имущественных отношений, а не на наказание виновного лица. В этом смысле они представляют собой функциональный компромисс между гражданской и уголовной конфискацией, позволяя эффективно реагировать на случаи незаконного обогащения даже при отсутствии судебного приговора.

Наряду с этим, в отдельных юрисдикциях предусмотрены правовые механизмы, допускающие применение конфискации без вынесения обвинительного приговора не только в ситуациях, когда уголовное преследование правонарушителя невозможно, но и в случаях, когда незаконное происхождение активов подтверждается независимо от установления вины конкретного лица. Подобный подход реализован, например, в законодательстве Латвии [10], где решающее значение имеет не факт совершения преступления, а доказанность криминального источника имущества.

Таким образом, в подобных системах акцент делается на оценке правового статуса активов, а не на ответственности их владельца, что отражает тенденцию к укреплению вещно-правовой природы конфискационного производства и расширению его применения как самостоятельного инструмента противодействия незаконному обогащению.

Одной из разновидностей конфискации без вынесения обвинительного приговора выступает механизм изъятия имущества необъясненного или неустановленного происхождения (либо активов,

приобретенных в результате незаконного обогащения). Его ключевая особенность заключается в том, что конфискация осуществляется не по причине доказанной связи имущества с преступной деятельностью, а из-за неспособности владельца подтвердить законность его происхождения, особенно в случаях, когда объем активов явно превышает официальные доходы.

Подобная модель применяется в ряде государств, включая Италию, Кубу и Латвию (в последнем случае — преимущественно в отношении публичных должностных лиц) [10]. Она может выступать как самостоятельный инструмент, так и дополнять иные меры, не требующие обвинительного приговора.

Вопрос о возможности внедрения подобных механизмов прямо затронут в пункте 8 статьи 31 Конвенции ООН против коррупции, где рекомендуется рассмотреть их целесообразность. Кроме того, статья 20 Конвенции, посвященная незаконному обогащению, также создает правовую основу для применения конфискации активов, происхождение которых не может быть объяснено.

Следует отметить, что аналогичный результат может быть достигнут и на уровне доказывания: в ряде стран, вне зависимости от модели (гражданско-правовой или уголовно-правовой), допускается применение презумпций необъяснимого богатства, позволяющих изымать активы, если владелец не представил убедительных доказательств их законного происхождения. Подобная практика применяется, например, в Австралии, на Багамских Островах и в Мексике [10].

Механизмы конфискации, основанные на презумпции необоснованного обогащения, могут реализовываться в разных правовых формах. В одних государствах они встраиваются в уголовное производство, что сближает их с уголовно-правовой моделью конфискации без вынесения обвинительного приговора. В других — действуют вне рамок уголовного процесса, в виде самостоятельного конфискационного производства, как это реализовано, например, в Италии, Колумбии и на Кубе [10].

При этом отдельные юрисдикции, включая Республику Молдова [10], придают такому производству гражданско-правовой характер, что отражает тенденцию к универсализации инструментов возврата активов и их адаптации к различным правовым системам. Таким образом, конфискация на основе презумпции необоснованного обогащения может рассматриваться как гибридная мера, сочетающая элементы уголовного и гражданского права, в зависимости от особенностей национального законодательства.

Казахстанский опыт внедрения института гражданской конфискации представляет собой закономерный этап эволюции национального законодательства в сфере противодействия незаконному обогащению.

На протяжении длительного времени конфискация имущества в Республике Казахстан рассматривалась исключительно как уголовно-правовая мера наказания, применяемая к лицам, признанным виновными в совершении преступления.

Существенный сдвиг произошел с принятием в 2014 году нового Уголовно-процессуального кодекса [11], в котором была введена глава 71, регламентирующая порядок производства по делам о конфискации имущества, полученного незаконным путем, до вынесения обвинительного приговора. Эта норма, вступившая в силу с 1 января 2018 года, стала первым шагом к формированию правовых предпосылок для перехода от исключительно уголовно-правового к гражданско-правовому механизму изъятия активов.

Дальнейшее развитие данной концепции нашло отражение в принятии в 2023 году Закона Республики Казахстан «О возврате государству незаконно приобретенных активов» [12]. Этот нормативный акт закрепил гражданско-правовую модель возврата имущества, основанную на выявлении несоответствия между доходами и расходами лица.

По своей структуре и преобладающему алгоритму правоприменения данный механизм соответствует модели конфискации имущества необъяснимого происхождения, что приближает казахстанскую систему к современным международным стандартам в сфере противодействия незаконному обогащению.

Во-первых, предметом судебного разбирательства в рамках данного механизма выступает не уголовная ответственность конкретного лица, а само имущество (активы), происхождение которого признается сомнительным. Производство инициируется иском о признании активов необъяснимого происхождения и их обращении в доход государства. При этом казахстанская модель представляет собой персонализированный гражданско-правовой механизм, ориентированный на установление несоответствия доходов и расходов определенного круга лиц и обеспечивающий возврат незаконно приобретенных активов в доход государства при сохранении процессуальных гарантий.

Во-вторых, процессуальная природа данного механизма является гражданско-правовой. Возврат активов осуществляется в порядке гражданского судопроизводства, которое не связано с уголовным наказанием и не требует вынесения обвинительного приговора. При этом Комитет по возврату активов Генеральной прокуратуры выступает инициатором исков, осуществляет сбор, обработку, обобщение, оценку поступающей информации об активах, анализ сведений о происхождении активов, обеспечивает межведомственное взаимодействие и координацию деятельности государственных, правоохранительных и специальных государственных органов по вопросам возврата активов и другие функции.

В-третьих, логика процесса предполагает перераспределение бремени доказывания, в соответствии с которым государство обязано представить доказательства, достаточные для признания активов необъяснимыми, после чего ответчик получает возможность опровергнуть эти доводы. Такая структура характерна для гражданско-процессуальных систем конфискации и обеспечивает баланс между интересами государства и правами собственника.

Заключение

Проведенный анализ показывает, что механизм возврата активов, установленный в Республике Казахстан Законом «О возврате государству незаконно приобретенных активов», по своей сущности и правовой конструкции воплощает четвертую модель конфискации — модель состояния необъяснимого происхождения. Ее концептуальное содержание ориентировано на оценку правомерности происхождения имущества, а не на установление виновности лица, что отражает смещение акцента с уголовно-правового наказания на восстановление экономической справедливости и защиту публичных интересов.

Казахстанская правоприменительная практика демонстрирует формирование собственной модификации указанной модели, в которой сочетаются гражданско-правовая процедура, ограниченный круг субъектов, возможность добровольного возврата активов и система предварительных обеспечительных мер. Такое сочетание обеспечивает оптимальное соотношение между эффективностью государственного вмешательства и соблюдением процессуальных гарантий участников, формируя сбалансированный и институционально устойчивый механизм противодействия незаконному обогащению.

Тем самым механизм гражданско-правовой конфискации в Казахстане выступает не просто инструментом изъятия имущества сомнительного происхождения, но и элементом более широкой системы укрепления правового государства, основанной на международных стандартах прозрачности и подотчетности. Ее дальнейшее развитие связано с совершенствованием процедурных основ, уточнением критериев добросовестности и усилением механизмов судебного контроля, что позволит повысить доверие общества к институтам правосудия и эффективности государственной политики в сфере возврата активов.

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Н.М. Суиндигов

Азаматтық құқықтағы тәркілеу институты: қазақстандық және халықаралық тәжірибе

Зерттеудің мақсаты — айыптау үкімі шығарылмай тәркілеудің халықаралық тәсілдері контекстінде Қазақстан Республикасындағы заңсыз иемденілген активтерді қайтару институтының құқықтық табиғатын, құрылымы мен функционалдық ерекшеліктерін талдау. Жұмыстың мақсаты қолданыстағы тәркілеу модельдері арасындағы қазақстандық механизмнің орнын анықтау және оның заңсыз байытуға қарсы күрес саласындағы халықаралық стандарттарға сәйкестік дәрежесін бағалау. Зерттеудің әдіснамалық негізі салыстырмалы құқықтық, формалды-құқықтық, тарихи-құқықтық және жүйелік әдістер, сондай-ақ халықаралық және ұлттық нормативтік актілер мен ғылыми дереккөздерді саралау. Бұл кешенді тәсіл құқықтық талдаудың тұтастығы мен объективтілігін қамтамасыз етуге мүмкіндік берді. Нәтижесінде «Заңсыз иемденілген активтерді мемлекетке қайтару туралы» заңда бекітілген механизм өзінің белгілері бойынша түсініксіз шығу тегі бар байлықты тәркілеу моделіне қатысты екені анықталды. Ол субъектілер шеңберін шектеумен, мүлкті өз еркімен қайтару мүмкіндігімен, уақытша шараларды қолданумен және дәлелдеу ауыртпалығын қайта бөлумен сипатталады. Қазіргі қазақстандық модель азаматтық-құқықтық тәркілеудің ұлттық бейімделген механизм, ол жазалау тәсілінен мүлктік қатынастарды алдын ала реттеуге көшуді көрсетеді деген қорытындыға келеді. Оның дамуы қоғамның сот төрелігіне деген сенімін нығайтуға және активтерді қайтару жүйесін жетілдіруге ықпал етеді.

Кілт сөздер: меншік құқығы, активтерді қайтару, тәркілеу, түсініксіз активтер, азаматтық-құқықтық механизм, сыбайлас жемқорлық, айыптаусыз тәркілеу, кеңейтілген тәркілеу, қоғамдық мүдде, мүлктік жауапкершілік.

N.M. Suindikov

The institution of confiscation in civil law: Kazakhstani and international experience

The study aims to analyse the legal nature, structure and functional characteristics of the institution of the return of illegally acquired assets in the Republic of Kazakhstan in the context of international approaches to confiscation without conviction. The paper sets out to determine the place of the Kazakhstani mechanism among existing confiscation models and to identify the extent to which it complies with international standards in the field of combating illicit enrichment. The methodological basis of the study consists of comparative legal, formal legal, historical legal and systematic methods, as well as analysis of international and national regulatory acts and scientific sources. This comprehensive approach has ensured the integrity and objectivity of the legal analysis. As a result, it has been established that the mechanism enshrined in the Law 'On the Return of Illegally Acquired Assets to the State' is, by its characteristics, a model of confiscation of wealth of unexplained origin. It is characterised by a limited range of subjects, the possibility of voluntary return of property, the application of protective measures and the redistribution of the burden of proof. The study concludes that the modern Kazakhstani model represents a nationally adapted mechanism of civil law confiscation, reflecting the transition from a punitive approach to preventive regulation of property relations. Its development contributes to strengthening public confidence in justice and improving the asset recovery system.

Keywords: property rights, asset recovery, confiscation, assets of unexplained origin, civil law mechanism, corruption, confiscation without conviction, extended confiscation, public interest, property liability.

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Тауар жеткізілімі элементтері бар мердігерлік шартын құқықтық реттеудің ерекшеліктері: теориялық тәсілдер мен соттық тәжірибе

Мақала Қазақстан Республикасының азаматтық құқық жүйесіндегі тауар жеткізілімі элементтері бар мердігерлік шартын құқықтық реттеудің ерекшеліктерін кешенді зерттеуге арналған. Тақырыптың өзектілігі осындай аралас шарттарды құқықтық тұрғыдан саралаудың күрделілігімен және Қазақстан заңнамасы, ең алдымен ҚР Азаматтық кодексі контекстіндегі негізгі міндеттемелерді: жұмыстарды орындауды (мердігерлік) және мүлікті беруді (жеткізу) ажырату өлшемдерін анықтау қажеттігімен негізделген. Осы шарттардың өзара байланысы мен тоғысу нүктелерін зерттеуге, сондай-ақ олардың құқық қолдану практикасындағы арақатынасы мен өзара іс-қимылының тетіктерін анықтауға ерекше назар аударылады. Тиісті нормаларды қосымша қолдану мақсатында шарттың басым элементін анықтауға арналған теориялық тәсілдер талданды. Көрсетілген шарттық конструкциялардан туындайтын дауларды шешу бойынша ҚР Жоғарғы Сотының және жергілікті соттардың сот практикасына талдау жасалған. Тәуекелдерді бөлуге, жұмыстарды тиісінше орындамағаны немесе сапасыз тауарды жеткізгені үшін тараптардың жауапкершілігіне, сондай-ақ меншік құқығының ауысу сәттеріне және оларға залалдарды өтеу туралы ережелерді қолдануға қатысты мәселелер зерттеледі. Жұмыстың нәтижесі құқықтық анықтықты арттыруға, құқық қолдану практикасындағы тәсілдерді біріздендіруге және Қазақстан Республикасының коммерциялық айналымындағы шарттық базаны жетілдіруге бағытталған дәлелді қорытындылар мен ұсыныстар болып табылады.

Кілт сөздер: сот практикасы, мердігерлік шарт, тауар жеткізілімі шарты, міндеттемелік құқық, мердігер, тапсырыс беруші.

Kipicne

Келісімшарттық конструкциялар, азаматтық заңнамада аталған дәстүрлі міндеттемелер түрлерінің шеңберінен тыс шығып, қазіргі шаруашылық айналымында елеулі орын алады. Олардың ішінде аралас шарттарға ерекше мән беріледі, себебі олар әртүрлі келісімшарттық үлгілердің элементтерін біріктіреді. Құқық қолдану тәжірибесінде ең кең таралған әрі айтарлықтай күрделі қиындықтар туындататын санат — бұл мердігерлік шарт пен тауар жеткізілімі шартының элементтерін біріктіретін шарттар.

Мұндай міндеттемелерді құқықтық саралау және олардың орындалуы мен жауапкершілігіне сәйкес құқықтық режимді айқындау күрделі міндет. Ерекше қиындықтар мердігерлік пен тауар жеткізілімі қатынастарының түйісу нүктесінде туындайды, өйткені аталған институттардың нормалары бір мәселелерді қатар реттеген жағдайда коллизияға түседі. Мысалы, бұл жағдай материалдарды беру мерзімдеріне, сапаға қойылатын талаптарға немесе міндеттемені бұзудың елеулі критерийлеріне қатысты туындауы мүмкін.

Саралаудың бірімәнді еместігінің нәтижесінде, бір тараптың белгілі бір келісімшарттық үлгінің нормаларына сәйкес әрекеті аралас конструкцияға енгізілген басқа үлгінің ережелері бойынша қате түрде міндеттемені бұзу ретінде бағалануы мүмкін. Мұндай коллизиялар құқықтық анық еместік тәуекелін арттырып, шаруашылық айналымында аралас шарттарды қолдануға бірыңғай тәсілді қалыптастыруды қиындатады. Бұдан бөлек, осындай шарттық қатынастар аясында туындайтын жекелеген міндеттемелер мүлде құқықтық саралаусыз қалуы ықтимал, өйткені олардың табиғаты бастапқыда не мердігерлік шартта, не тауар жеткізілімі шартында көзделмеген. Мұндай жағдайларда

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құқық қолданушы құқықтық олқылықты толықтыру қажеттілігіне тап болады, бұл қолданылатын құқықтық режимді айқындауды одан әрі күрделендіреді.

Тауар жеткізілімі элементтері бар мердігерлік шарттарын саралаудың күрделілігі, сондай-ақ құқықтық реттеудегі олқылықтар әртүрлі зерттеу әдістеріне жүгінудің қажеттілігін туындатты.

Әдістер мен материалдар

Зерттеу барысында мердігерлік шарт пен тауар жеткізілімі шарттарын реттейтін азаматтық заңнама нормаларын талдауға мүмкіндік берген формалды-құқықтық әдіс қолданылды. Қосымша түрде сот практикасына талдау жүргізіліп, азаматтық-құқықтық қатынастардың осы санатындағы дауларды шешу бойынша соттардың негізгі құқықтық ұстанымдарын айқындауға мүмкіндік берілді.

Салыстырмалы-құқықтық әдіс аталған келісімшарттық конструкцияларды салыстыру және олардың ұқсастықтары мен айырмашылықтарын анықтау үшін қолданылды. Құқықтық-талдамалық тәсіл қарастырылып отырған шарт түрлерін реттейтін доктриналық қағидаттар мен нормативтік үлгілерді жүйелеу және қорытындылау үшін пайдаланылды.

Зерттеудің эмпирикалық базасына Қазақстан Республикасының нормативтік құқықтық актілері, сот практикасының материалдары, сондай-ақ аралас шарттар мәселесінің әртүрлі қырларын ашатын ғылыми жарияланымдар мен түсіндірмелер енгізілді. Жұмыс барысында азаматтық құқық саласындағы отандық және шетелдік зерттеушілердің, атап айтқанда: Ю. Г. Басин, М. К. Сүлейменов, Г. А. Жайлин, С. П. Мороз, Д. В. Огородов, Е. Б. Казакова, Д. К. Туменбаева, А. А. Чеботаева, Е. С. Верховец, В. П. Камышанский, Н. М. Коршунова, В. И. Иванова, К. Н. Шмырева, С. А. Олейник, К. В. Янчуревич, А. Р. Гарипов еңбектері талданып, қорыту жүргізілді. Бұл зерттеудің кешенділігі мен жан-жақтылығын қамтамасыз етуге мүмкіндік берді. Аталған дереккөздерді пайдалану тақырыпты тереңірек ашуға және негізделген қорытындылар жасауға ықпал етті.

Нәтижелер

Қазіргі азаматтық айналым Қазақстан Республикасының Азаматтық кодексінде бекітілген қатаң түрде аталған міндеттемелер түрлерінен тыс шығатын келісімшарттық конструкцияларды белсенді қолданумен сипатталады. Осындай конструкциялардың бірі — тауар жеткізілімі элементтері бар мердігерлік шарт, ол аралас шарттардың бір түрі және екі дербес келісімшарттық үлгінің белгілерін үйлестіреді.

Аралас шарттың конструкциясы заң шығарушыны өзара ұқсас немесе бір-бірінен туындайтын шарттардың орасан зор номенклатурасын арнайы реттеуден босатады, сонымен бірге шарттық қатынастарды реттеудің сол деңгейі мен сапасын сақтайды. Мұндай заңнамалық үнемдеудің екінші қыры — жекеше құқықтық реттеудегі белгілі олқылықтарды барынша азайту: шарт тараптары өздерінің экономикалық қажеттіліктеріне сай шартты синтездейді, бірақ сонымен қатар бұл шарт азаматтық құқықпен бұрыннан реттелген шарттардың элементтерінен тұрады [1].

Құқықтық табиғаты бойынша мердігерлік шарт белгілі бір жұмысты орындауға және оның нәтижесін тапсырыс берушіге беруге бағытталған, бұл ретте нәтижесінің сапасы, орындалу мерзімдері және тараптар арасындағы тәуекелдерді бөлу мәселелері негізгі мәнге ие болады.

Ю. Г. Басин мен М. К. Сүлейменов атап көрсеткендей: «кез келген мердігерлік шарттың жалпы белгісі оның негізгі мазмұны болып табылады, яғни қатысушылардың негізгі құқықтары мен міндеттері. Мердігер үшін — жұмысты тапсырысқа қатаң сәйкестікте орындау, ал тапсырыс беруші үшін — осындай жұмыстардың нәтижесін қабылдау және төлеу» [2].

Қазақстан Республикасының Азаматтық кодексінің 616-бабының 1-тармағына сәйкес (бұдан әрі — ҚР АҚ), «мердігерлік шарты бойынша бір тарап (мердігер) екінші тараптың (тапсырысшының) тапсырмасы бойынша белгілі бір жұмысты атқаруға және белгіленген мерзімде оның нәтижесін тапсырысшыға өткізуге міндеттенеді, ал тапсырысшы жұмыс нәтижесін қабылдап алуға және оған ақы төлеуге (жұмыстың бағасын төлеуге) міндеттенеді. Егер заң актілерінде немесе шартта өзгеше көзделмесе, жұмыс мердігердің тәуекелімен орындалады» [3].

Г. А. Жайлин мердігерлік шарттың негізгі ерекшелігі ретінде мердігердің қызметінің өз процесіне емес, тапсырыс беруші үшін дербес құндылыққа ие болатын материалдық нәтижені жасауға бағытталуын атап көрсетеді [4].

Мердігерлік шарттың базалық сипаттамасы деңгейінде жұмыстың орындалу процесі мен оның түпкі нәтижесіне баса назар аударылады. Ал бұл шарт түрінен айырмашылығы ретінде тауар

жеткізілімі шарты мүлде өзге табиғатқа ие және азаматтық құқықтың дербес нысаны ретінде тауарды беруге назар аударады.

ҚР АҚ-ның 458-бабының 1-тармағына сәйкес, тауар жеткізілімі шарты бойынша кәсіпкер болып табылатын сатушы (тауар беруші) сатып алушыға өзі өндіретін немесе сатып алатын тауарларды кәсіпкерлік қызметке немесе жеке өзіне, отбасына, үй ішіне және сол сияқты өзге де пайдалануға байланысты емес өзге мақсаттарға пайдалану үшін келісілген мерзімде немесе мерзімдерде беруге міндеттенеді [3].

Тауар жеткізілімі шарты сатып алушының меншігіне тауарларды беруді реттейді, мұнда негізгі назар өнімді тиісті сапада және келісілген мерзімдерде жеткізу міндеттемелеріне аударылады. Е. Б. Казакова мен А. А. Чеботаеваның пікірінше, «бұл шарт бойынша кәсіпкерлік қызметті жүзеге асыратын жеткізуші — сатушы өзі өндіретін немесе сатып алатын тауарларды келісілген мерзімде немесе мерзімдерде сатып алушыға кәсіпкерлік қызметте пайдалану үшін не жеке, отбасылық, тұрмыстық және өзге де осыған ұқсас пайдалануға байланысты емес басқа мақсаттарда беруге міндеттенеді» [5].

Аталған шарттардың элементтері бір конструкцияда біріктірілген кезде күрделі құқықтық феномен туындайды, мұнда мердігер жұмысты орындай отырып, оны орындау үшін қажетті материалдар мен жабдықтарды жеткізуге де міндеттенеді. Міндеттемелерді орындау нәтижесінде процессуалдық құрамдас бөлік (дайындау, қайта өңдеу, жұмысты орындау) пен мүлктік құрамдас бөлік (заттарды тауар ретінде беру) қатар қамтылады.

К. В. Янтуревичтің пікірінше, «аралас шарт — бұл заңда немесе өзге де құқықтық актілерде көзделген әртүрлі шарттардың элементтері қамтылған шарт. Тараптардың аралас шарт бойынша қатынастарына, егер тараптардың келісімінен немесе аралас шарттың табиғатынан өзгеше туындамаса, аралас шартта қамтылған элементтерге сәйкес шарттар туралы ережелер тиісті бөліктерде қолданылады» [6; 179].

Мұндай шарттың ерекшелігі — белгілі бір қырларында мердігерлікке қатысты нормалар мен тауар жеткізіліміне қатысты нормалардың тоғысуында. Бұл мысалы, берілетін материалдардың сапасын реттеу, оларды ұсыну тәртібі, міндеттемелерді орындау мерзімдері және тиісінше орындалмаған жағдайда туындайтын салдарларды анықтау мәселелерінде көрініс табады.

Осылайша, шарттың аралас сипаты оны саралауға, қолданылатын құқықтық режимді таңдауға және тараптардың жауапкершілік шараларын айқындауға байланысты тұтас бірқатар құқықтық мәселелерді туындатады.

А. Р. Гарипов өз еңбегінде атап өткендей, «тараптар әртүрлі шарттардың, соның ішінде мердігерлік пен тауар жеткізілімі шарттарының элементтері біріктірілетін аралас шарт жасасуға құқылы. Сонымен бірге, бұл конструкцияның өзегінде мердігерлік шарт қалуы тиіс» [7].

Е. С. Верховецтің атап көрсетуінше, жеткізуші бір мезгілде әрі сатушы, әрі тауар өндіруші бола алады, демек, тауар жеткізілімі шартының өзінде мердігерлік шарттың элементтері қамтылуы мүмкін. Мердігерлік шарт белгілі бір затты дайындауға және оның нәтижесі мен затқа құқықтарды тапсырыс берушіге беруге жасалады. Жеткізу барысында да түпкілікті түрде тауарға меншік құқығы жеткізушіден сатып алушыға өтеді [8].

Мұндай келісімшарттық конструкциялар ең үлкен практикалық мәнге мемлекеттік сатып алулар саласында ие болады. Дәл осы жерде тауар жеткізілімі элементтері бар мердігерлік шарттар ең кеңінен қолданылады, өйткені тапсырыс беруші, әдетте, орындалған жұмыстың нәтижесіне ғана емес, сонымен қатар оның тиісті материалдық-техникалық қамтамасыз етілуіне де мүдделі болады.

Осындай ерекшелік осы міндеттемелерді кешенді түрде реттеудің қажеттілігін айқындайды және мемлекеттік қажеттіліктерге қатысты мердігерлік пен тауар жеткізілімі шарттарының қолданылу аясын шектеу мәселесін өзекті етеді.

В. П. Камышанский, Н. М. Коршунов және В. И. Иванова атап өткендей, «мемлекеттік қажеттіліктерге арналған мердігерлік жұмыстардың ерекше құқықтық режимі бар: мемлекеттік келісімшарт өз бойында мердігерлік шарт пен тауар жеткізілімі шартының элементтерін біріктіреді, бұл мемлекеттік тапсырыс берушіні тек жұмыстардың орындалуымен ғана емес, сонымен қатар тиісті материалдық-техникалық қамтамасыз етумен де жабдықтау қажеттілігіне, сондай-ақ жекеше-құқықтық және жария-құқықтық бастауларды теңестіру талабына байланысты» [9; 534].

С. П. Мороздың пікірінше, «шарт инвестициялық қызмет субъектілері арасындағы қатынастарды реттейтін негізгі құқықтық құрал болып табылады, бұл мемлекеттік сатып алулар саласында

жасалатын аралас шарттарды реттеуде келісімшарттық конструкциялардың маңыздылығын бірдей дәрежеде дәлелдейді» [10].

Атап айтқанда, бұл мемлекеттік қажеттіліктерді қамтамасыз ету мақсатында құрылыс-монтаж және өзге де жұмыстарды орындау үшін жасалатын толық бітіріп берілетін құрылыс туралы шарттарында өз көрінісін табады.

К. Н. Шмырева мен С. А. Олейник атап өткендей, қазіргі кезде практикалық тұрғыдан алғанда, қатынастарды дұрыс саралау және тауар жеткізілімі мен мердігерліктің арасындағы шекараны айқындау аса маңызды мәнге ие. Өйткені тараптардың құқықтары бұзылған жағдайда талап қоюдың нысанасы мен негізін дұрыс тұжырымдаудың өзегі тараптар арасындағы құқықтық қатынастарды дұрыс саралау, әсіресе мердігерлік шарт пен тауар жеткізілімі шартының араласуы орын алған жағдайда. Атап айтқанда, сот формалды түрде тауар жеткізілімі, мердігерлік және қызмет көрсету шарттары деп белгіленген келісімшарттан туындаған дауды карау кезінде, талап қоюшының тараптар жасасқан шартты тауар жеткізілімі шарты деп бағалауына қарамастан (осыған сүйеніп талап қойылғанына қарамастан), сот шартты тауар жеткізілімі шарты емес, мердігерлік шарт деп танығандықтан, жеткізілмеген тауарлардың құны және айыппұл түрінде анықталған нақты залалды өндіру туралы талаптар қанағаттандырылмаған болып қалады [11; 344].

Қазақстан Республикасының 2024 жылғы 1 шілдедегі «Мемлекеттік сатып алу туралы» Заңының 31-тармағына сәйкес (бұдан әрі — Заң), толық бітіріп берілетін құрылыс туралы шарт — жобалау, іздестіру, құрылыс-монтаждау (кеңейту, жаңғырту, техникалық қайта жарактандыру, реконструкциялау, реставрациялау, күрделі жөндеу) жұмыстарын және басқа да жұмыстарды орындауды, сондай-ақ жобалар мен көрсетілетін техникалық қадағалау қызметтеріне ведомстводан тыс кешенді сараптама жүргізуді қоспағанда, көрсетілген жұмыстарға ілеспе тауарларды беруді және қызметтер көрсетуді қамтитын, объектіні салу және оны пайдалануға беру жөніндегі кешенді жұмыстар нысанасы болып табылатын шарт [12].

Қазақстан Республикасының «Мемлекеттік сатып алу туралы» Заңы «толық бітіріп берілетін құрылыс туралы» шарттарының аралас сипатын айқын көрсетеді және оны кешенді құқықтық нысан ретінде таниды. Ол жобалау, құрылыс-монтаж және өзге де жұмыстарды орындау жөніндегі міндеттемелерді тауарларды жеткізу және негізгі нысанмен — құрылыс объектісін тұрғызу және пайдалануға беруімен тығыз байланысты ілеспе қызметтерді көрсету жөніндегі міндеттемелермен біріктіреді. Мұндай саралау тапсырыс берушіге бір орындаушыдан дайын, пайдалануға жарамды нысанды алуға мүмкіндік береді, процесті оңтайландырады және бірнеше бөлек шарттарды үйлестірумен байланысты тәуекелдерді барынша азайтады.

Осылай, құқықтық реттеудің негізгі аспектісі аталған кешенді мәміленің тиісті элементтеріне мердігерлікке де, тауар жеткізіліміне де қатысты ережелерді қолдану қажеттілігіне саяды, бұл ретте мемлекеттік қажеттіліктердің мақсаттарының басымдығын ескеру керек. «Толық бітіріп берілетін құрылыс туралы» шартының шеңберінде бұл құрылысқа материалдық қамтамасыз етуге қатысты міндеттемелер бөлігінде (мысалы, жабдықтардың, материалдар мен техниканың сапасы, толықтығы және жеткізу мерзімдері тұрғысынан) тауар жеткізілімі ережелерін қолдануды білдіреді, ал мердігерлікке қатысты нормалар құрылыс жұмыстарының орындалу процесін және нәтижесін реттейді. Дәл осындай кешенді тәсіл мемлекеттік құрылыстың бірыңғай басқару мен жауапкершілікті талап ететін жобаларын тиісінше іске асыруды қамтамасыз етеді.

Тауар жеткізілімі элементтері бар мердігерлік шарттың нормативтік мазмұны

Мердігерлік пен тауар жеткізілімін біріктіретін аралас шарттарда тараптар, әдетте, міндеттеменің қосарлы табиғатын бейнелейтін бірқатар арнайы ережелерді бекітеді.

Біріншіден, мұндай шарттарда нысан кешенді түрде тұжырымдалады: мердігер құрылыс-монтаж жұмыстарын орындау міндетін өзіне ала отырып, сонымен қатар қажетті жабдықтарды, материалдар мен қосалқы бөлшектерді жеткізуді қамтамасыз етеді. Жеткізу құрамдасының енгізілуі бұл шарттарды классикалық мердігерліктен ерекшелейді, өйткені соңғысында материалдармен қамтамасыз ету мердігердің міндеті болып саналса да, шарттың нысаны болып табылмайды.

Екіншіден, тараптар тәуекелдер мен жауапкершіліктің ауысу режимін нақтылайды. Әдетте, жеткізу бөлігі бойынша тауардың кездейсоқ жойылу немесе бүліну тәуекелі тапсырыс беруші қабылдау сәтінде ауысады, ал құрылыс жұмыстары бөлігі бойынша мердігер объектіні тапсыру сәтіне дейін оның кездейсоқ жойылу тәуекелін көтереді.

Үшінші маңызды элемент — қабылдау механизмі. Орындалған жұмыстар актілерінен бөлек, жеткізілген жабдықтар мен материалдарды міндетті түрде қабылдау рәсімі белгіленеді, ол көбіне

зауыттық сынақтармен (ФАТ) және тапсырыс берушінің өкілдерінің қатысуымен жүзеге асырылады. Осылайша, қабылдау «тауарлық» және «құрылыс» шеңберлеріне бөлінеді.

Төртінші ерекшелік — кепілдік міндеттемелер. Аралас шарттарда құрылыс жұмыстарының нәтижесіне және жабдыққа қатысты бөлек мерзімдер көзделеді. Мердігер жұмыста да, жеткізілген тауарларда да кемшіліктер анықталған жағдайда оларды уақтылы жоюға міндетті.

Ерекше орын есеп айырысу мен міндеттемелерді орындауды қамтамасыз ету шарттарына тиесілі. Шарттарда аванстық төлемдер олардың қайтарылуын міндетті түрде қамтамасыз етумен, орындалған кезеңдер үшін аралық төлемдермен, сондай-ақ міндеттемелерді орындауды қамтамасыз ету ретінде банктік кепілдіктер немесе депозиттермен көзделеді.

Бұдан бөлек, мұндай шарттарда субмердігерлікке қатысты ережелер (берілетін жұмыстар үлесінің шектері, бас мердігердің жауапкершілігі), еңбек қауіпсіздігі, техника қауіпсіздігі мен экологиялық талаптар, сондай-ақ шартты бұзудың арнайы салдарлары бекітіледі. Мысалы, алаңда тұрған материалдар мен жабдықтар бойынша түпкілікті есеп айырысулар аяқталғанға дейін олардың тапсырыс берушінің меншігі деп танылуы.

Осылайша, тауар жеткізілімі элементтері бар мердігерлік шарт мердігерлікке де, тауар жеткізіліміне де қатысты нормалар қолданылатын кешенді реттеумен сипатталады, ал онда бекітілетін ережелер міндеттемелердің екі бөлігінің де орындалуын қамтамасыз етуге және тапсырыс берушінің мүдделерін қорғауға бағытталған.

Д.К. Туменбаева атап өткендей, «мемлекеттік сатып алулар бойынша сот практикасының елеулі бөлігін бір мезгілде жұмыстарды орындауды да көздейтін мемлекеттік келісімшарттардың құрамында тауарларды жеткізу жөніндегі міндеттемелердің тиісінше орындалмауынан туындайтын даулар құрайды. Жабдықты кешіктіру немесе мүлде жеткізбеу сияқты бұзушылықтар айыппұл өндіруге және жеткізушіні сатып алудың адал емес қатысушысы деп тануға әкеп соғады» [13].

Сот практикасын талдау

Теориялық тұжырымдарды растау үшін сот практикасын талдауға жүгіну қажет. Сот органдарының шешімдерінен алынған мысалдар аралас шарттарды саралаудың негізгі қиындықтарын және олардың құқықтық реттелу ерекшеліктерін айқындауға мүмкіндік береді.

Мемлекеттік сатып алу саласындағы тауар жеткізілімі элементтері бар мердігерлік шарттың ерекшелігін көрсететін сот практикасының келесі мысалы айқын болып табылады. Мәселен, Ақмола облысының мамандандырылған ауданаралық экономикалық соты «Ақмола облысының құрылыс басқармасы» мемлекеттік мекемесінің «Строй групп» ЖШС-ға медициналық жабдықтардың құнын өндіру туралы талабын қарады [14].

Тараптар арасында аудандық емхананы салуға арналған мемлекеттік сатып алу шарты жасалды, ол құрылыс жұмыстарын орындаумен қатар мердігердің медициналық жабдықтарды жеткізу жөніндегі міндетін де қамтыды. Қаржыландыру алғанына қарамастан, мердігер жабдықтарды толық көлемде жеткізуді қамтамасыз етпеген, бұл талап қоюға негіз болды.

Сот істің мән-жайларын зерттей отырып, жалпы сомасы 274 649 920 теңгеге жабдықтың жеткізілмегенін анықтады. Жауапкердің жабдықты ішінара жеткізгені туралы уәждері орындалған жұмыстардың растайтын актілерінің болмауына байланысты негізсіз деп танылды. Дауды шешу барысында сот объектіні орындау және тапсыру міндеттемесіне қатысты мердігерлік қатынастарды реттейтін нормаларға да, төленген тауарды тапсыру немесе алдын ала төлемді қайтару міндетіне қатысты жеткізу туралы ережелерге де сілтеме жасады. Нәтижесінде талап қоюшының талабы қанағаттандырылып, жауапкерден жеткізілмеген жабдықтың құны мен сот шығындары өндірілді.

Осылайша, сот іс жүзінде объектіні тапсыру бөлігінде мердігерлікке қатысты нормаларды, ал орынсыз берілмеген тауардың құнын қайтару бөлігінде тауар жеткізіліміне қатысты нормаларды қатар қолданып, біріктірілген тәсілді көрсетті. Бұл аралас шарттардың жүйелі және кешенді түсіндірмесін талап ететінін дәлелдейді.

Бұл сот ісі тауар жеткізілімі элементтері бар аралас мердігерлік шарттарды саралау барысында туындайтын сипаттамалық қиындықтарды көрсетеді. «Толық бітіріп берілетін құрылыс туралы» нысанындағы құрылыс шартына қол қойған мердігер құрылыс жұмыстарын орындау міндетін ғана емес, сонымен бірге медициналық жабдықтарды жеткізу міндетін де өзіне алды, бұл сатып алу-сату және тауар жеткізілімі туралы ережелердің реттеу аясына жатады.

Практикада бұл бірнеше құқық қолданушылық мәселелерге алып келеді. Біріншіден, міндеттеменің нысанын ажырату қиынға соғады. Мердігерлік бойынша жұмыстың нәтижесі дәстүрлі түрде аяқталған объект ретінде айқындалады, ал тауар жеткізілімі шартында нысан — жеке-дара

айқындалған тауар. Аралас шартта белгісіздік туындайды: жабдықты жеткізбеу мердігерлік міндеттеменің тиісінше орындалмауы ретінде де, не жеткізу шарттарының бұзылуы ретінде де саралануы мүмкін.

Екіншіден, міндеттемелерді орындау сәтін айқындауда қиындықтар туындайды. Мердігерлік қатынастарда орындау сәті акт бойынша нәтижені тапсыру болып есептеледі, ал тауар жеткізілімінде — тауарды беру немесе оны сатып алушының қарауына ұсыну. Осыдан практикалық даулы мәселе туындайды: толықтырушы жабдықтарсыз объект тапсырылды деп санауға болады ма?

Үшіншіден, тәуекелдерді бөлу мәселесі анықталмай қалады. Мердігерлікте тәуекел тапсырыс беруші нәтижені қабылдағанға дейін мердігердің жауапкершілігінде болады, ал тауар жеткізілімі шартында тауардың кездейсоқ жойылу немесе бүліну тәуекелі оны беру сәтінен бастап сатып алушыға өтеді. Аралас шартта бұл ереже сараланған сипатта болып, коллизия туындатады: тәуекелдердің бір бөлігі жұмысты орындау процесімен байланысты болса, екінші бөлігі — тауардың жеткізу нысаны ретіндегі табиғатымен байланысты.

Төртіншіден, шарт бойынша міндеттемелердің орындалмауы немесе тиісінше орындалмауы үшін жауапкершілік шарасын таңдаудың мәселелі болуы. Мердігерлік шарт бойынша тапсырыс беруші кемшіліктерді жоюды, бағаны төмендетуді немесе шарттан бас тартуды талап етуге құқылы, ал тауар жеткізілімі шартында — тауарды ауыстыруды, толық жиынтықтауды немесе төленген соманы қайтаруды талап ете алады. Нәтижесінде жауапкершілік шаралары тоғысуы немесе өзара қайшылыққа түсуі мүмкін.

Қаралған істе сот мердігердің жеткізілмеген жабдықтың құнын қайтару міндетін көрсете отырып, ол орындалған жұмыстар актілеріне қатысты мердігерлік нормаларын да, сондай-ақ алдын ала төленген тауардың берілмеу салдарларына қатысты тауар жеткізілімі нормаларын да пайдаланып, іс жүзінде біріктірілген тәсілді қолданды.

Осылайша, сот практикасы тауар жеткізілімі элементтері бар мердігерлік шарттардың құқықтық тұрғыдан күрделі конструкциялар екенін, оларды жүйелі түсіндіруді және ҚР АҚ-ның әртүрлі тарауларының нормаларын келісімді түрде қолдануды талап ететінін растайды. Мұндай шарттарға қатысты бірыңғай тәсілдің болмауы байқалады.

Мемлекеттік қажеттіліктер үшін жасалатын тауар жеткізілімі элементтері бар мердігерлік шарттарды құқықтық реттеудің күрделілігі әсіресе мерзімдер мен жауапкершілік бөлігінде бір бұзушылыққа мердігерлікке де, тауар жеткізіліміне де қатысты нормаларды бір мезгілде қолдану қажеттілігінде көрініс табады. Осы тұжырымды нақтылау үшін Алматы қалалық сотының азаматтық істер жөніндегі сот алқасының 2025 жылғы 5 наурыздағы № 7599-25-00-2а/1704 ісі бойынша қаулысы негізінде бейімделген сот практикасын қарастырайық [15].

Даудың мәні аралас сипаттағы су құбыры және кәріз желілерін салу жөніндегі келісімшартқа байланысты туындады, ол құрылыс-монтаж жұмыстарын ғана емес, мердігердің негізгі жабдықтарды, атап айтқанда сорғы станциялары мен құбырларды жеткізу және орнату жөніндегі міндетін де қамтыды. Қиындық мердігер нысанды тапсыру мерзімдерін бұзып, мұны импорттық жабдықтарды жеткізудегі кідірістермен және жобалау-сметалық құжаттамаға (ЖСҚ) түзетулер енгізу қажеттілігімен түсіндірген кезде пайда болды. Мердігер сот арқылы мерзімді ұзарту мен айыппұлды өндіріп алудан құтылуға тырысқанымен, оның әрекеттері сәтсіз аяқталды.

Дауды шешу барысында сот жабдықты жеткізудегі кідірістерге байланысты нысанды жалпы тапсыру мерзімінің бұзылуы мердігерлікке көзделген жауапкершілікті туындататынын көрсетті. Сот «толық бітіріп берілетін құрылыс туралы» шартының басым элементі аяқталған объектіні жасау болып табылатындықтан, ҚР АҚ-нің 293-бабын ескере отырып, айыппұлды даусыз өндірді. Осылайша, сорғы жабдықтарын жеткізудегі кідіріс форс-мажор жағдайы ретінде танылған жоқ, керісінше, нысанды әрі тауармен, әрі жұмыс нәтижесімен қамтамасыз ету міндеттемесін өз мойнына алған мердігердің кәсіпкерлік тәуекелі ретінде қаралды.

Бұл сот ісі бұзушылық жеткізу міндеттемелерінің орындалмауынан туындаған жағдайда да, соттардың мердігерлік элементтің басым рөлінен шығатынын көрсетеді. Бұл мемлекеттік тапсырыс шеңберінде аяқталған объектіні жасау мақсатының басымдығын растайды.

Бұдан бөлек, соттар мерзімді ұзартудан қатаң түрде бас тартады, себебі олар Заңның 45-бабындағы императивтік нормаларға сүйенеді. Бұл негізгі қиындықты туындатады: мысалы, ұзақ импорттық жеткізілімге байланысты объективті түрде қажет болатын мерзімнің ұзартылуы да, егер ол Заңда көзделген тар негіздердің қатарына кірмесе, жүзеге асырылмайды.

Сонымен бірге, сот ҚР АҚ-нің 386-бабы 3-тармағына сәйкес шарттың қолданылу мерзімі өткеннен кейін барлық міндеттемелер тоқтатылатынын атап көрсетті. Бұл аралас шартта тауар жеткізілімі аяқталмайынша жұмысты бөлек аяқтауға болмайтынын, керісінше де солай екенін дәлелдейді. Тауар жеткізілімі мерзімінің бұзылуы бүкіл құрылыс міндеттемесінің тоқтатылуына әкеп соқты, бұл «толық бітіріп берілетін құрылыс туралы» шартында жария-құқықтық шектеулер жеке-құқықтық нормалардың коллизиясын ушықтыратынын және соттарды жиі тауар жеткізілімі элементінен туындайтын бұзушылықтар үшін мердігерлік шарт бойынша қатаң санкциялар қолдануға мәжбүрлейтінін көрсетеді.

Осылайша, сот практикасы сараланған тәсілдің қажеттілігін көрсетеді: мерзімдердің бұзылуы үшін жауапкершілік бұзушылықты шарттың қай элементі: мердігерлік пе, әлде тауар жеткізілімінен туындай ма? Мемлекеттік қажеттіліктер үшін «толық бітіріп берілетін құрылыс туралы» шарттарымен жасалатын тауар жеткізілімі элементтері бар мердігерлік шарттарды құқықтық реттеудің негізгі күрделіліктерінің бірі — аралық кезеңдердің тиісінше орындалмауы үшін жауапкершіліктің сәтін және көлемін айқындау.

Осылайша, Астана қаласының мамандандырылған ауданаралық экономикалық сотының шешіміне сәйкес, шарттың нысаны «толық бітіріп берілетін құрылыс туралы» жағдайында тұрғын үй кешендерін салу болды. Мұндай келісімшарт өзінің табиғаты бойынша аралас сипатқа ие болып, құрылыс-монтаж жұмыстарын ғана емес, мердігердің барлық қажетті жүйелерді қамтамасыз ету, жеткізу және орнату жөніндегі міндетін де қамтиды.

Қиындық мердігер аралық кесте мерзімдерін, атап айтқанда тікелей тауар жеткізіліміне тәуелді жұмыстарды: электр жарығын жүргізу, сантехникалық жұмыстар мен ішкі әрлеуді бұзған кезде туындады. Мердігер сәтсіз дәлелдегеніндей, «толық бітіріп берілетін құрылыс туралы» шартының құрылысында жеке кезеңдердің кешіктірілуі үшін жауапкершілік жүктелмеуі тиіс, өйткені міндеттеме тек бүкіл объектіні тапсырудың соңғы мерзімінің бұзылуы бойынша ғана бағалануы керек. Бұл уәж классикалық коллизияны бейнелейді: жабдықтарды монтаждаумен байланысты бұзушылыққа мердігерлік нормаларын қолдану қажет пе, әлде оны жеткізу мерзімдерінің бұзылуы ретінде қарастыру керек пе.

Сот бұл уәжді қабылдамады және шарттың жұмыс кестесі бойынша кезеңдерге бөлінетінін көрсетті. Сот кесте келісімшарттың міндетті шарты болып табылатындықтан, аралық мерзімдердің бұзылуы үшін айыппұл өндірді. Жеткізілген жүйелерді монтаждау мерзімдерінің сақталмауы міндеттеменің тиісінше орындалмауы ретінде танылып, ол қаржылық жауапкершілікке әкеп соқтырды [16]. Соттар «толық бітіріп берілетін құрылыс туралы» шарты өзінің кешенді сипатына қарамастан, мердігерді қаржылық жауапкершіліктен босатпайтынын, тіпті кешігу себебі жеткізу элементімен байланысты тәуекел болған жағдайда да, мойындайды.

Сонымен қатар, осы іс бойынша сот санкцияларды қолдануда теңгерімділік танытып, мердігерді мемлекеттік сатып алулардың адал емес қатысушысы деп танудан бас тартты. Сот бұзушылықтың мәнділік критерийін ескерді, өйткені жұмыстардың 94 %-ы орындалған және түпкілікті мерзім әлі басталмаған еді. Осылайша, соттар жауапкершілікті саралайды: кестенің бұзылуы, соның ішінде тауар жеткізілімі элементі айыппұлмен жазаланады, бірақ қатаң жария-құқықтық санкцияларды қолдану үшін тапсырыс берушіге келтірілген зиянның мәнділігі дәлелденуі қажет.

Нәтижесінде, бұл тәжірибе мемлекеттік сатып алулар үшін жасалатын тауар жеткізілімі элементтері бар мердігерлік шарттарда соттардың жауапкершілікке қатысты сараланған тәсілді қолдануға мәжбүр болатынын растайды: мерзімдердің бұзылуы функционалды түрде жеткізу элементімен байланысты болған жағдайдың өзінде де, мердігерлікке тән қатаң санкциялар қолданылады, бірақ жария-құқықтық санкциялар үшін міндетті түрде тапсырыс берушіге келтірілген зиянның мәнділігі дәлелденуі талап етіледі.

Қорытынды

Тауар жеткізілімі элементтері бар мердігерлік шарт өзінің табиғаты әртүрлі міндеттемелерді біріктіретін аралас шарттық конструкцияның айқын мысалы. Жүргізілген зерттеу шарттың нысанын ажырату, міндеттемелерді орындау сәтін айқындау, тәуекелдерді бөлу және жауапкершілік шараларын тандау мәселелерінде негізгі қиындықтардың туындайтынын көрсетті. Бұл мәселелердің өзектілігі бір шарттың шеңберінде жұмыстарды орындау процесі мен материалдық құндылықтарды тапсырудың қатар қамтылу жағдайында арта түседі.

Мемлекеттік сатып алу саласында аталған проблематика ерекше өзектілікке ие. Мемлекеттік келісімшарт, әдетте, тек дайын нысан түріндегі түпкілікті нәтижеге қол жеткізуге ғана емес, сонымен қатар тапсырыс берушіні толыққанды материалдық-техникалық жабдықтауға да бағытталады.

Бұл осындай шарттарға мердігерлікке де, тауар жеткізіліміне де қатысты нормаларды, сонымен бірге жария-құқықтық талаптардың ерекшеліктерін ескере отырып қолдану қажеттілігін айқындайды. Сот практикасы мұндай жағдайларда басымдық, әдетте, мердігерлік элементке берілетінін растайды, өйткені түпкілікті мақсат — аяқталған нысанды құру. Алайда тауар жеткізілімі элементтері де жауапкершілікті дұрыс бөлу және тараптардың құқықтарын қорғау үшін дербес мәнін сақтап қалады.

Осылайша, тауар жеткізілімі элементтері бар мердігерлік шарттарды тиімді құқықтық реттеу тек кешенді тәсілдің негізінде мүмкін болады, ол азаматтық заңнама нормаларын бөлектеп қолдануды және оларды мемлекеттік тапсырыстың қажеттіліктеріне бейімдеуді көздейді. Бұл құқықтық айқын еместікті барынша азайтуға, мердігер мен тапсырыс берушінің мүдделерінің тепе-теңдігін қамтамасыз етуге және сот тәжірибесінде бірыңғай тәсілді қалыптастыруға мүмкіндік береді.

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О.Т. Алимов, Т.В. Степанова

Особенности правового регулирования договора подряда с элементами поставки: теоретические подходы и судебная практика

Настоящая статья посвящена комплексному исследованию особенностей правового регулирования договора подряда с элементами поставки в системе гражданского права Республики Казахстан. Актуальность темы обусловлена сложностью правовой квалификации смешанных договоров и необходимостью определения критериев разграничения ключевых обязательств — выполнения работ (подряд) и передачи имущества (поставка) — в контексте положений Гражданского кодекса РК. Особое внимание уделено анализу взаимосвязи и точек соприкосновения указанных договоров, а также механизмам их соотношения и взаимодействия в правоприменительной практике. Рассматриваются теоретические подходы к определению доминирующего элемента договора для целей субсидиарного применения норм, регулирующих соответствующий вид обязательства. Проанализирована судебная практика Верховного Суда РК и местных судов по спорам, возникающим из данных договорных конструкций. Отдельный раздел посвящен вопросам распределения рисков, ответственности сторон за ненадлежащее исполнение работ или поставку некачественного товара, а также моментов перехода права собственности и применения к ним положений о возмещении убытков. Результаты исследования выражены в обоснованных выводах и практических рекомендациях, направленных на повышение правовой определенности, унификацию подходов в правоприменительной практике и совершенствование договорного регулирования в коммерческом обороте Республики Казахстан.

Ключевые слова: судебная практика, договор подряда, договор поставки, обязательственное право, подрядчик, заказчик.

O.T. Alimov, T.V. Stepanova

Peculiarities of the Legal Regulation of a Contract for Work and Labor with Elements of Supply: Theoretical Approaches and Judicial Practice

This article is devoted to a comprehensive study of the peculiarities of legal regulation of a contract for work and labor with elements of supply within the civil law system of the Republic of Kazakhstan. The relevance of the topic is determined by the complexity of the legal qualification of such mixed contracts and the need to establish criteria for distinguishing between key obligations: the performance of work (contract for work) and the transfer of property (supply) in the context of Kazakhstani legislation, primarily the Civil Code of the Republic of Kazakhstan. Particular emphasis is placed on examining the interrelation and points of intersection of these contracts, as well as on identifying the mechanisms of their correlation and interaction in legal practice. The article analyzes theoretical approaches to identifying the dominant element of the contract for the purpose of subsidiarily applying the relevant legal norms. Particular attention is given to the analysis of judicial practice of the Supreme Court of the Republic of Kazakhstan and local courts in resolving disputes arising from such contractual structures. The study also examines issues related to the allocation of risks, the liability of the parties for improper performance of work or delivery of defective goods, as well as the issues of transferring ownership and the application of provisions on compensation for damages. The findings of the research include reasoned conclusions and recommendations aimed at enhancing legal certainty, unifying approaches in law enforcement practice, and improving the contractual framework in commercial turnover in the Republic of Kazakhstan.

Keywords: judicial practice, contract for work and labor, contract of supply, law of obligations, contractor, customer.

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Legal Regulation of Smart Contracts in China and the United States: A Comparative Legal Analysis

This paper presents a comprehensive comparative study of the legal regulation of smart contracts in the United States and the People's Republic of China, taking into account both theoretical frameworks and practical applications. Smart contracts are examined as both technological and legal instruments that facilitate the automation of contractual obligations, enhance transactional transparency, and streamline the management of digital assets within the digital economy. The relevance of this research arises from the rapid integration of blockchain technology into the financial sector, public services, international trade, logistics, and insurance. Nevertheless, despite the widespread use of the technology, the legal status of smart contracts and their recognition by national and international courts remain subjects of academic and professional debate. The methodological basis of this study combines comparative legal analysis, a systematic review of regulatory acts and judicial practice, an examination of academic literature, and the synthesis of information from diverse sources. This research highlights the key features of the Chinese and American regulatory models. The Chinese model is characterized by centralized control, where smart contracts are integrated into state-backed digital platforms, including the Blockchain-based Service Network (BSN) and the digital yuan. This approach ensures standardization and security, however constrains the pace of innovative adoption. By contrast, the American model demonstrates flexibility and fosters innovation by recognizing program code as a legally significant instrument under digital transactions and contract law (e.g., the E-SIGN Act of 2000 and various state laws). However, it lacks clear standards and uniform security protocols.

Keywords: smart contract, blockchain, legislation, legal regulation, USA, China, digital economy, decentralization, judicial practice, Anglo-Saxon legal system, legal force.

Introduction

The development of the digital economy generates new opportunities while simultaneously presenting novel challenges for legal systems. A smart contract is program code that enables the automated execution of contractual terms without the involvement of third parties, thereby ensuring transactional transparency and facilitating the management of digital assets [1]. Smart contracts operate on blockchain technology, which provides decentralized verification of transactions and immutability of records [2]. Their application extends to public services, international trade, financial technologies, insurance, and logistics.

The relevance of this study lies in the widespread adoption of smart contracts within the digital economy and the presenting need to define their legal status. Different jurisdictions adopt divergent approaches to regulation: China emphasizes standardization and centralized control through state-backed digital platforms and the digital yuan, whereas the United States prioritizes flexibility and the promotion of innovation.

The central research problem is the absence of a unified international approach to recognizing the legal force of smart contracts. Regulatory frameworks in the United States and China diverge due to differences in their legal systems, traditions, and economic priorities, highlighting the necessity of developing recommendations for harmonizing national legislation and minimizing legal risks.

The object of this study is the smart contract as both a technological and legal phenomenon [3].

The aim of this research is to conduct a comparative analysis of the legal regulation of smart contracts in the United States and China, and to identify prospects for the development of their legal status.

The research objectives are as follows:

1. To examine the technological characteristics and theoretical foundations of smart contracts;
2. To analyze legislation and judicial practice in the United States regarding smart contracts;
3. To study the approaches of the People's Republic of China in regulating smart contracts;
4. To conduct a comparative legal analysis of the Chinese and American models, identifying their strengths and weaknesses;

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5. To propose recommendations for adapting national legislation and harmonizing international regulation in the context of the digital economy.

As global leaders in the development of advanced technologies, the United States and China play a pivotal role in the legal frameworks for smart contracts. Analyzing the regulation of smart contracts in these countries is therefore essential for understanding their legal nature.

Methods and materials

The study conducted a comprehensive analysis of the legal regulation of smart contracts in the People's Republic of China and the United States, employing comparative legal analysis, systems analysis, and the examination of legislative acts and judicial practice. Both general scientific and specialized legal methods were applied, including doctrinal, analytical, and comparative approaches.

The materials for this research comprised a wide range of official documents, including the E-SIGN Act of 2000, state legislation, digital finance laws, electronic transactions, standards of the BSN, official judicial decisions, as well as academic papers and doctrinal sources.

Comparative analysis was conducted with due regard to the specific features of Chinese and American legal systems.

A systems approach was employed to examine the interrelation between technological infrastructure and the legal dimensions of smart contracts, including the role of decentralized finance platforms (DeFi) in the United States and public digital platforms such as the BSN in China.

The method of synthesis enabled the integration of data on legal approaches, practical examples of smart contract implementation, and judicial practice, and further facilitated the formulation of recommendations for harmonizing regulatory frameworks.

Results

Smart contracts were first conceptualized by Nick Szabo in 1994 as program codes designed to enable the automatic execution of contractual terms without involvement of third parties [4]. With the advent of blockchain technology, smart contracts have rapidly developed and gained widespread application. Accordingly, their legal regulation and enforceability have become issues of central importance. The legal force of a smart contract depends on the recognition of the code as a legally binding agreement. In China, smart contracts are integrated into centralized, state-backed platforms, and the evidentiary weight of blockchain records has been recognized by courts, including the Beijing Internet Court [5]. By contrast, in the United States, the legal framework for digital transactions is established through legislation as the E-SIGN Act of 2000 and the Uniform Electronic Transaction Act (UETA) [6].

The People's Republic of China

Although the People's Republic of China lacks direct legislation specifically addressing smart contracts, their use is regulated by a range of legal instruments. The Blockchain-based Service Network (BSN) standards provide the infrastructure for deploying smart contracts on state-backed digital platforms. Laws governing digital finance regulate electronic transactions, payments, tokenization, and digital assets, while electronic transactions laws ensure the admissibility of blockchain-based evidence in electronic documents.

Several distinctive features of the Chinese model can be highlighted. First, there is a unified (centralized) control: the state regulates the infrastructure, verification, and security standards for smart contracts. Second, the Supreme People's Court of China has issued a ruling requiring internet courts to recognize electronic data verified by blockchain methods, including hash values, timestamps, electronic inscriptions, and others, if their authenticity and resistance to counterfeiting can be established. Third, smart contracts are integrated with the digital yuan, allowing interaction with the national digital currency [7].

Judicial practice further illustrated the recognition of blockchain-based evidence in China. The first such case occurred in June 2018 in Hangzhou, where blockchain records were accepted as admissible and reliable evidence. The court emphasized that smart contracts should not be dismissed merely due to their technological complexity. In 2019, the Beijing Internet Court automatically submitted a case using smart contract technology. If the terms of mediation were not fulfilled, the case was automatically sent to court, which became the first such precedent in China. A dedicated platform, "Balance Blockchain", is integrated with the judicial system and applies smart contracts to speed up the consideration process and increase transparency. This platform stores tens of millions of pieces of evidence. For example, in Sichuan, the court accepted blockchain evidence in a copyright infringement case. An audio work protected by hashes was recognized as admissible evidence, and compensation in the amount of 20,000 yuan was awarded. Blockchain ev-

idence is even being applied in criminal cases. This was in a fraud case in the Shaoxing City Court (Shanyu County). The defendant was sentenced to imprisonment [8].

The United States of America

In the United States, smart contracts are regulated on the basis of contract law and electronic commerce. There are three main aspects in the U.S. approach. First, the E-SIGN Act of 2000 recognizes electronic contracts as legally binding. Second, state laws, for example, the Wyoming Digital Asset and Smart Contract Law, provide a legal basis for digital assets and smart contracts. Third, in judicial practice, legislation is applied to smart contracts on decentralized platforms, such as CFTC v. Ooki DAO (a judicial precedent).

The features of the American model lie in its flexibility and support of innovation. The laws may allow experimentation with new technologies [9]. Recognition of code as a contract depends mainly on the fulfillment of the conditions of offer, acceptance, and the intention to create an obligation. However, while decentralized platforms increase the speed of innovation, they may also create legal uncertainty. The U.S. overcomes this uncertainty through major precedent-setting cases [10].

Judicial practice in the United States is based on precedents, as the country follows the Anglo-Saxon legal system. The CFTC (Commodity Futures Trading Commission) and the SEC (Securities and Exchange Commission) are the main regulatory bodies, although sometimes individuals also act as plaintiffs in U.S. courts, with decentralized platforms often appearing as defendants. After analyzing five major cases concerning blockchain technology, such as CFTC v. Ooki DAO (2022-2023), SEC v. Telegram (2020), SEC v. Ripple Labs (2020-2023), Archer v. Coinbase (2019), CFTC v. McDonnell (2018), the following conclusions can be drawn:

1. Smart contracts are a technical instrument of execution rather than an independent agreement;
2. Liability rests with the developer, the DAO administrator, or the companies that use smart contracts;
3. Automation through code does not exempt parties from the application of traditional contractual and financial law.

In conclusion, the Chinese model ensures security and standardization, but slows down the adoption of new technologies, while the American model is flexible and encourages innovation, but lacks legal standardization and clear regulations.

Discussion

The comparative analysis of the legal regulation of smart contracts in the two countries has shown that there are significant differences in their approaches. Both the United States and China recognize the legal force of smart contracts, but their integration into the existing legal systems differs significantly.

Menell P. believes that the American system encourages the introduction of innovative technologies and ensures maximum flexibility, allowing smart contracts to operate within the framework of contract law [11]. N. Szabo notes that the recognition of program code as a legally binding agreement opens broad opportunities for the digital market, but at the same time creates legal uncertainty, especially in cross-border transactions.

Judicial practice, such as CFTC v. Ooki DAO, shows that U.S. courts tend to apply existing laws to new digital instruments, but such decisions often require interpretation and may be ambiguous or even contradictory. Thus, the American experience demonstrates high potential for innovation, while maintaining significant legal risks.

Chinese author Y. Liu emphasizes that China focuses on centralized legal regulation and standardization of smart contracts, which ensures legal certainty and security. The People's Bank of China (PBC), between 2020 and 2022, issued recommendations and regulatory guidelines. According to their position (2022), the implementation of smart contracts in state-backed digital platforms has allowed blockchain transactions to be used as evidence in court, thereby reducing the risks of dishonest practices. However, the Chinese model limits innovative potential and slows the integration of new technologies. Researchers from BSN Development (2023) have noted that centralized infrastructure facilitates the control and verification of smart contracts, but also created dependence on government decisions.

As we can see, each model has its advantages and disadvantages, and they differ significantly from one another. Therefore, some authors, including UNICITRAL, propose developing international standards for smart contracts in order to minimize risks and increase legal certainty in cross-border transactions. This confirms the need to harmonize national approaches with international practices [12]. Effective use of smart contracts requires a combination of flexibility and standardization, which will establish legal certainty,

strengthen trust among participants in the digital economy, and ensure the sustainable development of innovative technologies.

As for domestic scientists, Ilyassova G.A. and Aitimov B.Zh. believe that, based on blockchain technology, the national regulation for the protection of personal data should be adopted [13]. Authors Bazarov M.M. and Tokatov R.A. argue in their article that the legal correctness of smart contracts in blockchain technology, including the mechanisms regulating its legal definition, should be thoroughly studied by legal professionals. We assume that the experience of the two leading countries can help in resolving these issues [14].

We also believe that the following recommendations could be added to this list:

1. The practical implementation of smart contracts requires improving the legal literacy of developers and market participants;
2. The adaption of national laws to the digital economy must take into account the balance between security and innovation;
3. The integration of elements of decentralized and centralized control would allow combining the advantages of the U.S. and Chinese models.

Overall, the comparative analysis of the legal regulation of smart contracts in China and the United States has showed that both countries strive to create favorable conditions for the use of blockchain technologies. It should also be emphasized that further development of the regulatory framework and the harmonization of international norms will contribute to strengthening trust in smart contracts and their widespread use.

Conclusion

This study has shown that the legal regulation of smart contracts in China and the United States differs significantly in its approaches. These differences stem from national legal traditions, economic priorities, and strategies for implementation of digital technologies.

In the United States, smart contracts are regarded as a flexible tool that supports innovation and allows program code to be used as a legally binding agreement. However, the decentralized nature of these platforms creates legal uncertainty in the absence of standardization.

In China, the model is oriented toward centralized regulation and standardization. The digital yuan and state-backed digital platforms provide a high level of legal certainty, and blockchain-based transactions are recognized as admissible evidence in court. Control and restriction of flexibility and innovation result in enhanced security and traceability of actions, although this significantly slows the pace of technological adoption.

Undoubtedly, the regulatory approaches of these two global powers have their own advantages and disadvantages. In China, the People's Bank of China and other government agencies fully control the blockchain sector; smart contracts may only be implemented on approved state-backed digital platforms. This limits the innovative initiative of private startups and companies. Cryptocurrency trading is prohibited in China, and therefore international projects on Ethereum or other public blockchains cannot operate legally within the country. China does not have a separate law on smart contracts; they are interpreted solely as a type of electronic contract. Similarly, in the United States there is no unified federal law on smart contracts. In some states, smart contracts are recognized in civil law circulation, but the rules vary, leading to legal fragmentation. The U.S. Securities and Exchange Commission (SEC) defines many tokens as securities, while the Commodity Futures Trading Commission (CFTC) treats them as commodity derivatives. This creates inconsistencies in determining the legal nature of smart contract involving tokens.

In both jurisdictions, smart contracts have demonstrated tangible results and continue to develop rapidly.

The findings of this analysis allow for following conclusions and recommendations:

1. National approaches should be systematized, and international standards should be developed to increase legal certainty and foster trust among participants in the digital economy.
2. The Civil Code of the Republic of Kazakhstan currently lacks a definition of smart contracts. It is therefore proposed to enshrine such the definition in order to determine their legal nature and to regulate the legal mechanism for their application in legislation.
3. To practical implementation of smart contracts requires improving the legal literacy of developers and market participants. It is also essential to prepare IT specialists capable of implementing smart contracts.

4. The integration of elements of centralized and decentralized control would make it possible to combine the advantages of both models.

In conclusion, it should be noted that smart contracts represent a promising instrument of the digital economy. However, their effective application requires legal regulation, primarily at the international level, followed by the harmonization of national legislation with international instruments.

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С.С. Боранбай

АҚШ пен ҚХР-да смарт-келісімшартын құқықтық реттеу: салыстырмалы-құқықтық талдау

Жұмыста смарт-келісімшарт ұғымының құқықтық табиғаты мен оны қолдану тәжірибесі АҚШ пен ҚХР мысалында салыстырмалы-құқықтық талдау негізінде қарастырылған. Смарт- келісімшарт — шарттық міндеттемелерді автоматтандыруға ықпал ететін, мәмілелердің ашықтығын арттыратын, цифрлық экономика жағдайында цифрлық активтерді басқаруды жеңілдететін технологиялық және құқықтық құрал ретінде зерделенген. Мақаланың өзектілігі қаржы секторына, мемлекеттік қызметтерге, халықаралық саудаға, логистика мен сақтандыруға блокчейн технологиясын жедел енгізуге байланысты. Алайда, технологияның кең таралуына карамастан, смарт-келісімшарттың құқықтық мәртебесі және оларды ұлттық және халықаралық соттарда мойындау мамандар мен ғалымдар арасында даулы мәселе болып саналады. Зерттеудің әдіснамалық базасы салыстырмалы құқықтық талдаудан, нормативтік құқықтық актілер мен сот практикасын жүйелі зерттеуден, ғылыми әдебиеттерді талдаудан, әртүрлі дереккөздерден алынған ақпарат синтезінен тұрады. Сонымен қатар мақалада қытайлық және американдық реттеу модельдерінің негізгі ерекшеліктері көрсетілген. Қытай моделі орталықтандырылған бақылауға ие және смарт-келісімшарттар мемлекеттік цифрлық платформаларға (Blockchain-based Service Network (BSN) пен сандық юаньды қоса алғанда) енгізілген. Бұл стандарттау мен қауіпсіздікті қамтамасыз етеді, алайда инновациялық енгізу жылдамдығын шектейді. Американдық модель, керісінше, орталықсыздандырумен, икемділікпен және технологиялық инновацияларды қолдаумен ерекшеленеді. Федералдық және штаттық заңдар деңгейінде смарт-келісімшарт заңды маңызды құрал ретінде танылады, атап айтқанда, E-SIGN Act (2000), жеке штат заңдарына және бірқатар штаттардың цифрлық мәмілелер туралы заңдарына сәйкес. Алайда, бірыңғай қауіпсіздік стандарттары мен хаттамаларының болмауы құқық қолдану

практикасын фрагментациялау қаупін тудырады. Осылайша, салыстырмалы талдау көрсеткендей, АҚШ-та инновациялардың дамуын ынталандыратын либералды тәсіл басым, ал ҚХР-да мемлекеттік қауіпсіздік пен цифрлық платформаларға сенімділікті қамтамасыз етуге бағытталған құқықтық бақылау мен стандарттау моделі жүзеге асырылуда.

Кілт сөздер: смарт-келісімшарт, блокчейн, заңнама, құқықтық реттеу, АҚШ, Қытай, цифрлық экономика, орталықсыздандыру, сот практикасы, англо-саксондық құқықтық жүйе, заң күші.

С.С. Боранбай

Правовое регулирование смарт-контракта в КНР и США: сравнительно-правовой анализ

В данной работе проведено комплексное сравнительное исследование правового регулирования смарт-контракта в США и в КНР, охватывающее как теоретические основы, так и практические аспекты их применения. Смарт-контракт рассматривается как технологический и юридический инструмент, обеспечивающий автоматизацию исполнения договорных обязательств, повышение прозрачности сделок и эффективное управление цифровыми активами в условиях развития цифровой экономики. Актуальность исследования обусловлена стремительным внедрением блокчейн-технологии в финансовый сектор, государственное управление, международную торговлю, логистику и страхование. Несмотря на широкое распространение технологии, правовой статус смарт-контракта и их признание в национальных и международных судах остается предметом споров как среди специалистов, так и среди ученых. Методологическую основу работы составляют сравнительно-правовой анализ, системное изучение нормативно-правовых актов и судебной практики, а также анализ научной литературы и синтез данных из различных источников. Исследование выявляет особенности китайской и американской моделей регулирования. Китайская модель характеризуется высокой степенью централизации: смарт-контракты интегрируются в государственные цифровые платформы, включая Blockchain-based Service Network (BSN) и систему цифрового юаня. Такой подход обеспечивает стандартизацию и высокий уровень безопасности, однако ограничивает скорость инновационного развития. Американская модель, напротив, отличается децентрализацией, гибкостью и поддержкой технологических инноваций. На уровне федерального законодательства и законодательства штатов смарт-контракт признается юридически значимым инструментом — в частности, в соответствии с E-SIGN Act (2000) и законами о цифровых сделках ряда штатов. Однако отсутствие единых стандартов и протоколов безопасности создает риски фрагментации правоприменительной практики. Таким образом, сравнительный анализ показывает, что в США преобладает либеральный подход, стимулирующий развитие инноваций, тогда как в КНР реализуется модель правового контроля и стандартизации, направленная на обеспечение государственной безопасности и доверия к цифровым платформам.

Ключевые слова: смарт-контракт, блокчейн, законодательство, правовое регулирование, США, Китай, цифровая экономика, децентрализация, судебная практика, англо-саксонская правовая система, юридическая сила.

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Гражданско-правовая ответственность государства за вред, причинённый бездействием органов дознания и следствия

В статье исследуется институт гражданско-правовой ответственности государства за вред, причинённый бездействием органов дознания и предварительного следствия в Республике Казахстан. Цель исследования заключается в выявлении пробелов национального законодательства и правоприменительной практики, а также в их сопоставлении с международными правовыми стандартами. Методологическую основу исследования составляют сравнительно-правовой анализ, историко-правовой подход и анализ судебной практики. В ходе исследования выявлены ключевые проблемы: ограниченность компенсационных выплат, отсутствие единой методики оценки морального вреда, формализм при рассмотрении жалоб, а также отсутствие устойчивой практики предъявления регрессных исков к должностным лицам. Сделан вывод о том, что эффективная реализация института гражданско-правовой ответственности государства является необходимым условием укрепления верховенства права, повышения доверия граждан к государственным институтам и предотвращения социальных кризисов.

Ключевые слова: гражданско-правовая ответственность, компенсация, моральный вред, судебная защита, конституция, верховенство права, ЕСПЧ, регрессные иски, правовой нигилизм, социальная стабильность.

Введение

Верховенство права предполагает не только наличие нормативных гарантий, но и их реальную, эффективную реализацию на практике. Одним из ключевых индикаторов зрелости правового государства является готовность государства нести ответственность за неправомерные действия или бездействие своих органов. Бездействие органов дознания и предварительного следствия представляет собой системную проблему, ведущую к тяжёлым последствиям: нарушению прав потерпевших, росту рецидивной преступности, игнорированию жалоб граждан и непринятию мер при очевидных угрозах. Формальное «списывание» заявлений не только препятствует восстановлению нарушенных прав, но и подрывает доверие к судебной и правоохранительной системе, создавая угрозу правопорядку и безопасности общества.

Актуальность исследования усиливается в условиях глобальной цифровизации правосудия и возрастания международного контроля за соблюдением прав человека. Недостаточная эффективность механизмов возмещения ущерба, причинённого государством, формирует правовой вакуум, при котором нормы закона остаются декларативными и не подкреплёнными действенными средствами приращения.

Цель настоящего исследования заключается в комплексном анализе института гражданско-правовой ответственности государства за вред, причинённый бездействием органов дознания и предварительного следствия, с учётом современных вызовов и международных стандартов.

Для достижения поставленной цели определены следующие задачи:

- изучить теоретико-правовые основы ответственности государства за вред;
- проанализировать правоприменительную практику в Республике Казахстан;
- провести сравнительно-правовой анализ с международными стандартами, включая прецедентную практику Европейского суда по правам человека (ЕСПЧ);
- выявить причинно-следственные связи между правовым бездействием и социальной напряжённостью;

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– сформулировать конкретные предложения по совершенствованию законодательства и практики его применения.

По мнению авторов исследования, недооценка гражданско-правовых последствий бездействия со стороны органов дознания, следствия и суда оказывает системное влияние на состояние правопорядка. Во-первых, это приводит к ущемлению прав потерпевших, которые не получают адекватного возмещения. Во-вторых, формируется правовой вакуум, при котором нормы закона не подкреплены практической реализацией и фактически становятся «мертвыми». В-третьих, страдает превентивная функция права: отсутствие эффективных механизмов возмещения стимулирует повторяемость нарушений и подрывает доверие общества к государству.

Методы и материалы

В исследовании использованы: формально-юридический метод (анализ норм Конституции РК, ГК РК, УПК РК, постановлений ВС РК); сравнительно-правовой метод (сопоставление казахстанской практики с нормами МПГПП, ЕКПЧ и решениями ЕСПЧ); эмпирический метод (анализ конкретных кейсов: Талгарский случай, дело Шерзата, практика «списанных жалоб»); доктринальный подход (идеи А.Т. Ащеулова, Г.А. Жайлина об универсальности гражданско-правовой ответственности) и другие источники.

Результаты

Анализ правоприменительной практики и авторские наблюдения показали, что институт гражданско-правовой ответственности государства за вред, причинённый бездействием органов дознания и предварительного следствия, хотя и закреплён в Конституции и Гражданском кодексе Республики Казахстан, на практике реализуется ограниченно. Жалобы граждан нередко рассматриваются формально, перенаправляются без решения по существу либо остаются без ответа, компенсации за моральный вред носят символический характер, а механизм регрессных исков фактически не применяется из-за отсутствия четкой методической базы. Эти наблюдения подтверждаются конкретными случаями, когда отсутствие своевременной реакции правоохранительных органов приводило к тяжким последствиям, что свидетельствует о системном характере проблемы.

Научная новизна исследования заключается в систематизации полученных данных и сопоставлении национальной практики с международными стандартами — Международным пактом о гражданских и политических правах и прецедентами Европейского суда по правам человека, в которых компенсация рассматривается как реальный, а не формальный механизм защиты. В результате выявлен не только разрыв между нормативными гарантиями и их реализацией, но и обозначен новый подход к оценке гражданско-правовой ответственности как элемента укрепления верховенства права и доверия к государственным институтам.

Достигнутые результаты напрямую коррелируют с целями и задачами исследования, поскольку демонстрируют причинно-следственную связь между бездействием органов дознания и предварительного следствия и ростом социальной напряжённости. Практическая значимость работы заключается в обосновании необходимости унификации методики оценки морального вреда и внедрения действенного механизма регрессных исков к должностным лицам, что позволит обеспечить баланс между обязанностью государства компенсировать ущерб и персональной ответственностью конкретных представителей правоохранительных органов. Концепция обязательности компенсации не только как формы возмещения ущерба, но и как инструмента правовой превенции подтверждается результатами исследования и может быть реализована в национальном законодательстве для его гармонизации с международными стандартами.

Обсуждение

Актуальность темы подтверждается и на уровне государственной политики. Так, в Послании Президента Республики Казахстан (2024) подчёркивалось, что «жить по законам, быть справедливыми, соблюдая закон и порядок» — основа доверия между государством и обществом [1]. В 2025 году Президент отметил, что «в цивилизованном государстве законы должны быть справедливыми, власть — компетентной, а граждане — сознательными и активными» [2]. Эти положения прямо указывают на необходимость эффективной реализации правовых механизмов ответственности государства, включая сферу дознания и предварительного следствия.

Работа по противодействию организованной преступности и коррупции в Республике Казахстан осуществляется не только на национальном, но и на наднациональном уровне. Казахстан активно взаимодействует с международными организациями, участвует в процедурах экстрадиции и обеспечивает привлечение к ответственности лиц, скрывающихся за пределами страны [3]. Деятельность центральных органов прокуратуры демонстрирует политическую волю государства в выполнении международных обязательств и укреплении правопорядка.

Однако на уровне местного правоприменения сохраняются системные проблемы, препятствующие реализации прав граждан. Формальное «списывание» жалоб, отказ в регистрации уголовных правонарушений и затягивание сроков расследования фактически нивелируют закреплённые в законодательстве гарантии. В таких условиях институт гражданско-правовой ответственности государства за вред, причинённый бездействием органов дознания и предварительного следствия, приобретает декларативный характер. Это противоречие между активной позицией государства на международной арене и деформацией практики на местах подрывает доверие общества к судебной и правоохранительной системе и требует комплексных мер по совершенствованию механизма возмещения вреда.

Вместе с тем, непотизм и коррупционная составляющая представляют собой самостоятельный вызов, который подрывает доверие к государственным институтам. Исторически государство предпринимало меры противодействия этим явлениям, закрепляя их в правовых нормах, включая специальные формы юридической ответственности, направленные на минимизацию ущерба обществу и укрепление верховенства права. Уже в советский период коррупция рассматривалась как системная угроза: Декрет о взяточничестве от 8 мая 1918 г. предусматривал конфискацию имущества и суровые меры наказания [4], а В.И. Ленин настаивал на привлечении к ответственности не только взяточников, но и судей, проявивших снисходительность [5]. Эти исторические примеры свидетельствуют о восприятии коррупции как фактора, подрывающего государственные основы и требующего жёсткого реагирования. Ключевым этапом дальнейшего развития правового механизма ответственности государства стало принятие Закона СССР от 18 мая 1981 г. «О возмещении ущерба, причинённого гражданину незаконными действиями государственных и общественных организаций, а также должностных лиц при исполнении ими служебных обязанностей» [6]. Этот акт предвосхитил становление института гражданско-правовой ответственности государства в постсоветских странах, включая Республику Казахстан.

Этот исторический опыт показывает, что основы государственной ответственности были заложены ещё в советский период, тогда как в условиях независимости данная обязанность приобрела особое значение в связи с необходимостью реагировать на новые социальные вызовы. Доктринальные толкования казахстанских учёных-цивилистов уже в первые десятилетия независимости позволили выявить и систематизировать комплекс существующих проблем, а также предложить пути их решения. Однако данные вопросы сохраняют актуальность и в настоящее время, дополняясь новыми вызовами, связанными с цифровизацией и трансформацией общественных отношений. Нерешённость этих проблем оказывает прямое влияние на общественные настроения и уровень доверия к институтам власти, что находит своё отражение в нарастающих социальных напряжениях.

Рост социальной несправедливости и недостаточная прозрачность деятельности государственных органов во многом становятся катализаторами массовых протестов и политических кризисов. Государственный переворот в Непале, массовые беспорядки во Франции в сентябре 2025 года, январские события 2022 года в Казахстане, а также череда переворотов и волнений в Киргизии за последние годы демонстрируют, что непонимание действий властей и игнорирование специфики отдельных сфер государственного управления, в том числе со стороны профессионального сообщества, ведут к подрыву доверия к государственным институтам. Это, в свою очередь, формирует неоднозначную, а зачастую и негативную общественную реакцию по отношению к системе власти в целом.

При этом протестующие не учитывают, что протестные выступления, сопровождающиеся разрушением инфраструктуры, создают дополнительное бремя для государственного бюджета, поскольку восстановление объектов жизнеобеспечения и социальной инфраструктуры осуществляется за счёт средств налогоплательщиков. Вместе с тем многие участники подобных акций зачастую не обладают достаточным мировоззренческим горизонтом и уровнем правосознания для понимания социально-экономических и международно-правовых аспектов функционирования государства. В силу ограниченности восприятия они ошибочно трактуют деятельность специалистов — юристов, экономистов, дипломатов, действующих в соответствии с международными стандартами и национальными интересами, — как произвольную и лишённую рационального основания. Такая деформация воспри-

ятия усиливает недоверие к профессиональной экспертизе, подрывает авторитет государственных институтов и приводит к тому, что деструктивное меньшинство возлагает ответственность за системные проблемы исключительно на власть, в то время как добросовестное большинство вынуждено нести бремя восстановления и развития страны.

Следует отметить, что подобные противоречия усиливают проявления правового нигилизма и социальной поляризации. При этом не все граждане в полной мере осознают значение собственного вклада в развитие общества и государства, тогда как именно государство представляет собой форму общественного договора, основанного на взаимных обязательствах.

В этом контексте обращение к классической теории общественного договора приобретает особое значение. В трактате «Общественный договор» французский просветитель Жан-Жак Руссо обосновывает идею, что законная политическая власть основывается на общем согласии народа (народном суверенитете), где каждый человек отказывается от части своих личных прав в пользу коллективного целого, чтобы создать справедливое общество, руководствующееся общей волей и направленное на общее благо [7]. В свою очередь Дж. Локк подчеркивал, что договор общества предполагает не только права, но и обязанности гражданина по поддержанию правопорядка и защите собственности (Два трактата о правлении, 1689) [8]. Игнорирование данной взаимосвязи искажает восприятие функций государства и подрывает доверие к механизму общественного договора, что повышает риск дестабилизации правовой системы.

Также проблема состоит в том, что правоохранительная деятельность и государственное управление в целом не предполагают абсолютной прозрачности в силу самой природы государства, в том числе с целью защиты сведений, составляющих государственную тайну, или информации об особенностях деятельности правоохранительных органов — в частности, для ограничения доступа к ней со стороны лиц, в отношении которых ведется данная деятельность. Однако ограниченный доступ к информации не освобождает государство от обязанности обеспечивать гражданам гарантии возмещения ущерба, закреплённые в национальном законодательстве и международных договорах. Конституция Республики Казахстан закрепляет фундаментальные права и свободы человека и гражданина как абсолютные и неотчуждаемые. В статье 12 прямо указывается, что они принадлежат каждому от рождения и определяют содержание и применение всех законов и иных нормативных актов. Статья 13 усиливает данные гарантии, закрепляя право каждого на признание его правосубъектности, на защиту своих прав всеми не запрещёнными законом способами, включая необходимую оборону (пункт 1), а также право на судебную защиту (пункт 2).

При этом в пункте 5 статьи 12 особо подчёркивается, что осуществление прав и свобод не должно нарушать прав и свобод других лиц, посягать на конституционный строй и общественную нравственность [9]. Это положение формирует баланс между индивидуальной автономией и общественным порядком, что является основой правового государства. Таким образом, Конституция устанавливает прямую обязанность государства не только признавать права личности, но и обеспечивать эффективные механизмы их защиты.

В совокупности данные положения отражают фундаментальный принцип: права личности абсолютны по своей природе, однако их реализация невозможна без учёта прав других граждан и интересов общества. Государство обязано обеспечивать данный баланс посредством развитых правовых институтов, в том числе института гражданско-правовой ответственности государства за вред, причинённый незаконными действиями или бездействием органов дознания и предварительного следствия.

Данный принцип получил развитие в статьях 922–923 Гражданского кодекса Республики Казахстан, которые конкретизируют обязанность государства возмещать ущерб, причинённый незаконными актами, решениями либо бездействием должностных лиц [10]. Эти нормы образуют основу института деликтной ответственности государства, обеспечивая защиту имущественных и неимущественных интересов граждан.

Различие между классическим и современным пониманием принципа *restitutio in integrum* состоит в том, что в римском праве он применялся лишь как исключительная мера защиты в случаях обмана, насилия или ошибки [11], тогда как современное право превратило его в универсальный механизм, закрепляющий обязанность государства возмещать ущерб при нарушении прав личности со стороны публичной власти. В Казахстане этот подход отражён в Конституции и Гражданском кодексе, где закреплёно возмещение вреда независимо от вины должностных лиц, что делает данный принцип ключевым элементом доктрины гражданско-правовой ответственности государства.

Как отмечают А.Т. Ащеулов и Г.А. Жайлин в монографии «Гражданско-правовая ответственность за вред, причиненный преступлением против личности» — «Субъекты правоприменения не всегда в полной мере дают гражданско-правовую оценку последствиям правонарушений (в том числе преступлений)» [12; 4-5]. Авторы подчёркивают, что правовые нормы без должного применения юридической ответственности, включая гражданско-правовую, остаются декларативными и не реализуются на практике. Кроме того, ими отмечается универсальный характер гражданско-правовой ответственности: она выступает инструментом защиты имущественных притязаний, возникающих не только в сфере гражданского права в узком смысле, но вследствие нарушений, происходящих в иных отраслях — уголовной, административной, трудовой. Такая универсальность позволяет рассматривать гражданско-правовую ответственность как связующее звено правовой системы, обеспечивающее единый механизм возмещения вреда вне зависимости от источника его возникновения.

По сути, речь идёт о том, что гражданско-правовая ответственность выполняет компенсаторную функцию в наиболее широком смысле: она призвана восполнить убытки и моральный ущерб независимо от того, в какой отрасли права произошло нарушение. Именно это делает её ключевым элементом механизма защиты прав личности. «Вред, причиненный действиями указанными органами в результате совершения действий, перечисленных в пункте 1 статьи 923 ГК РК, возмещается государством независимо от вины должностных лиц органов дознания, предварительного следствия, прокуратуры и суда в причинении вреда» [13; 446].

Методы распределения гражданско-правовой ответственности предусматривают как исключительную (персональную) обязанность причинителя вреда, так и субсидиарные и солидарные модели. В соответствии со статьей 287 ГК РК, при причинении вреда несколькими лицами их обязанность может быть возложена солидарно, что позволяет потерпевшему предъявить требования одновременно к разным субъектам. Показательным примером является ситуация с угоном транспортного средства: прямым причинителем вреда выступает угонщик, однако при превышении полномочий или применении несоразмерных мер со стороны полиции ответственность может быть возложена и на государство. В таких случаях потерпевший вправе требовать возмещения как от угонщика, так и от государства, что усиливает компенсаторную функцию гражданско-правовой ответственности и гарантирует реальную защиту прав граждан. Страхование в данном контексте выполняет вспомогательную функцию: добровольное страхование автотранспортных средств (КАСКО) покрывает ущерб от угона только для застрахованных лиц, тогда как обязательное страхование гражданско-правовой ответственности владельцев транспортных средств (ОСАГО) такие случаи не охватывает. Таким образом, обязанность возмещения сохраняется за угонщиком и государством, а страховая выплата не исключает последующего регрессного требования к виновным.

Следует также отметить, что уголовное законодательство содержит нормы о персональной ответственности должностных лиц. Так, статьи 370, 370-1, 370-2 Уголовного кодекса Республики Казахстан предусматривают уголовно-правовые санкции за невыполнение государственных функций [14]. Однако если уголовная ответственность выполняет превентивную и карательную функции, то именно гражданско-правовой механизм возмещения вреда обеспечивает реализацию конституционной обязанности государства компенсировать ущерб пострадавшим.

Закон Республики Казахстан «О фонде компенсации потерпевшим» от 10 января 2018 года № 131-VI ввёл специальный механизм обеспечения прав лиц, пострадавших от преступлений [15]. Данный институт был создан как инструмент дополнительной государственной защиты, направленный на преодоление ситуации, когда причинитель вреда либо не установлен, либо не имеет возможности возместить ущерб. В отличие от традиционного возмещения вреда в рамках гражданского процесса, фонд выполняет функцию гарантийного механизма, позволяющего потерпевшему получить компенсацию непосредственно от государства.

Фонд охватывает ограниченный перечень категорий преступлений: умышленное причинение тяжкого вреда здоровью, изнасилование, сексуальное насилие, торговля людьми, а также преступления, повлекшие смерть потерпевшего. Размер выплат является фиксированным и не всегда соответствует фактическому объёму ущерба, однако его значение заключается прежде всего в том, что государство признаёт свою обязанность обеспечить минимальный уровень компенсации даже в условиях недоступности традиционных способов возмещения.

Таким образом, Фонд компенсации потерпевшим можно рассматривать как элемент реализации принципа социальной справедливости и верховенства права, а также как показатель эволюции гражданско-правовой ответственности государства в условиях постсоветской трансформации. Вместе с

тем ограниченный перечень преступлений, низкий размер выплат и отсутствие чёткой процедуры регрессного взыскания с виновных лиц указывают на необходимость дальнейшего совершенствования данного института. По данным Министерства финансов Республики Казахстан, на сегодняшний день из Фонда компенсации потерпевшим выплачено более 312 млн тенге [16]. Эта сумма иллюстрирует практическую реализацию закона, однако в контексте масштабов причиняемого преступлениями вреда она остаётся крайне незначительной. Данный факт подтверждает необходимость как расширения перечня преступлений, подпадающих под действие Фонда, так и пересмотра размеров выплат, чтобы они соотносились с реальными потерями потерпевших.

Уголовно-процессуальный кодекс Республики Казахстан играет ключевую роль в обеспечении прав граждан именно в тех случаях, когда речь идёт о признании незаконными действий или бездействия органов дознания и следствия, а также о предоставлении пострадавшим права на обжалование. Особое значение имеет глава 49 УПК РК, посвящённая институту реабилитации лиц, незаконно подвергшихся уголовному преследованию. Эти положения демонстрируют тесную взаимосвязь процессуальных гарантий и гражданско-правовых механизмов защиты, поскольку именно судебное установление факта незаконного преследования служит основанием для последующего возмещения вреда в гражданско-правовом порядке [17]. Не менее значимым является Закон Республики Казахстан «О профилактике правонарушений», закрепивший превентивный подход как системный элемент государственной политики. В нём профилактика трактуется в широком смысле — охватывает как первичные, так и повторные правонарушения, включая преступления. Это позволяет рассматривать её не только как механизм снижения риска причинения ущерба, но и как элемент, непосредственно сопряжённый с институтом гражданско-правовой ответственности государства [18].

Верховный Суд РК в постановлении Пленума № 7 от 9 июля 1999 года разъяснил, что незаконные действия или бездействие органов дознания и предварительного следствия подлежат гражданско-правовому возмещению даже при отсутствии вины, что подчёркивает обязательность компенсационных механизмов [19].

Следует отметить, что указанные положения национального права согласуются с международными обязательствами Казахстана. Так, Международный пакт о гражданских и политических правах 1966 г. (статьях 2, 9, 14) возлагает на государства обязанность предоставлять каждому эффективные средства правовой защиты при нарушении прав [20].

Аналогичные положения закреплены в Европейской конвенции о защите прав человека и основных свобод 1950 года (статьях 5, 6, 13), которая требует от государств предоставления пострадавшим эффективных средств правовой защиты и адекватной компенсации [21]. В качестве сравнительного опыта заслуживает внимания практика Европейского суда по правам человека, который в решениях *Kudła v. Poland* (2000) и *Mikheyev v. Russia* (2006) подчеркнул необходимость обеспечения не только формального признания нарушений, но и предоставления потерпевшим реального возмещения [22, 23].

Сравнительный анализ показывает, что в Казахстане, несмотря на наличие нормативной базы, компенсации зачастую носят символический характер, что снижает эффективность института гражданско-правовой ответственности государства. В то время как в европейской практике размер присуждённых выплат, как правило, адекватно отражает тяжесть последствий нарушений. Характерным примером является дело *Branko Tomašić v. Croatia* (2009), в котором Европейский суд по правам человека признал ответственность государства за непринятие мер в отношении опасного лица, впоследствии совершившего убийство [24].

Таким образом, сопоставление с международными стандартами выявляет ключевое различие: при формальном совпадении правовых норм их практическая реализация в Казахстане остаётся ограниченной, что препятствует обеспечению полноценной защиты прав граждан.

Резонансные уголовные дела — убийство Шерзата Полата (октябрь 2024) и убийство брата потерпевшей в Талгарском районе (сентябрь 2025) — выявили общую системную проблему: хроническое бездействие правоохранительных органов [25, 26]. В первом случае, несмотря на возбуждение уголовного дела в отношении девяти лиц, поджог дома семьи и последующее убийство дяди потерпевшего продемонстрировали неспособность полиции обеспечить превентивную защиту и локализацию конфликта, связанного с деятельностью организованных группировок в Рыскулово [27]. Во втором случае игнорирование заявлений женщины о насилии со стороны бывшего сожителя привело к убийству её брата и похищению ребёнка, после чего прокуратура возбудила дело о халатности сотрудников полиции.

Оба кейса свидетельствуют о том, что кадровые перестановки в системе МВД не обеспечивают радикального улучшения правоприменительной практики. Регулярные «рокировки» руководящего состава не формируют устойчивого механизма раскрытия преступлений и их предупреждения. Напротив, сохраняется институциональный дефект — формальное реагирование на обращения граждан и отсутствие действенных процедур защиты при наличии очевидной угрозы жизни и здоровью.

Эти случаи подтверждают: без глубокой трансформации системы правоохранительных органов, включающей персональную ответственность должностных лиц и усиление института гражданско-правовой ответственности государства за вред, причинённый его бездействием, сама смена руководства не способна предотвратить повторение подобных трагедий. Государство, признавая за собой обязанность охранять права и свободы личности, должно выстроить эффективный механизм, при котором бездействие органов дознания и следствия рассматривается как юридический факт, влекущий не только обязанность компенсации потерпевшим, но и регрессное взыскание с виновных должностных лиц.

Сопоставление с международным опытом показывает, что аналогичные проблемы наблюдаются и за пределами Казахстана. Так, в августе 2025 года в США произошло убийство 23-летней украинской беженки Ирины Заруцкой [28]. Подозреваемый, ранее судимый и страдавший психическими расстройствами, смог беспрепятственно совершить преступление в общественном транспорте. Этот случай вызвал широкую критику в адрес американских правоохранительных органов за отсутствие надлежащего контроля и превентивных мер. Таким образом, проблема неэффективности правоохранительных институтов носит транснациональный характер: наличие формальных гарантий и даже развитой судебной системы не исключает риска халатности или бездействия.

В обоих контекстах — как казахстанском, так и американском — ключевой вывод заключается в том, что институты государства несут не только уголовно-правовую, но и гражданско-правовую ответственность за вред, причинённый бездействием их органов. Компенсация пострадавшим и последующее предъявление регрессных исков к должностным лицам должны стать не факультативными, а обязательными элементами системы. Без этого любые реформы рискуют оставаться поверхностными, а доверие общества к государству продолжит снижаться.

Одним из факторов, усугубляющих проблему незаконных действий и бездействия органов дознания и следствия, является переполненность мест лишения свободы. Казахстан, как и многие постсоветские государства, сталкивается с тем, что значительная часть заключённых содержится в условиях, не соответствующих международным стандартам (МППП, ЕКПЧ, «Правила Нельсона Манделлы»). Это ведёт, во-первых, к чрезмерному применению альтернативных мер, нередко ошибочных и чреватых рецидивом, а во-вторых, к утрате ресоциализационной функции наказания. В подобных случаях государство несёт ответственность за вред, вызванный системными недостатками, создающими почву для повторных преступлений.

Несмотря на то, что в законодательстве Республики Казахстан закреплён принцип возмещения ущерба, причинённого незаконными действиями органов дознания и следствия, на практике фактические выплаты компенсаций остаются ограниченными. Сравнение с международными стандартами демонстрирует существенный разрыв. Европейский суд по правам человека неоднократно указывал, что эффективное средство правовой защиты по смыслу статьи 13 ЕКПЧ предполагает не только признание нарушения, но и предоставление потерпевшему адекватной компенсации. В Казахстане же нередко фиксируются ситуации, когда факт нарушения признаётся, однако реальное возмещение затягивается или оказывается символическим. Такая ситуация формирует двойной негативный эффект: с одной стороны, потерпевшие ощущают ущемление своих прав и отсутствие доступа к правосудию, с другой — должностные лица, допустившие преступления или халатность, укрепляются в ощущении собственной безнаказанности. В результате гражданско-правовой механизм, изначально призванный восстанавливать нарушенные права и выполнять превентивную функцию, превращается в формальную процедуру, не обеспечивающую ни справедливого возмещения, ни воспитательного воздействия.

Таким образом, компенсация должна рассматриваться как ключевой элемент института гражданско-правовой ответственности государства. Без эффективного механизма возмещения вреда правовые нормы остаются декларативными, а потерпевшие оказываются в ситуации «вторичной виктимизации», когда к уже понесённому ущербу добавляется невозможность его возмещения. При этом, хотя обязанность компенсировать ущерб возлагается на государство, полноценный механизм ответственности должен включать не только выплату компенсации гражданам, но и предъявление рег-

регрессных исков к должностным лицам, действия или бездействие которых стали причиной вреда. Отсутствие устойчивой практики регрессных взысканий формирует ощущение безнаказанности, нивелирует превентивную функцию гражданско-правовой ответственности и фактически способствует воспроизводству системной неэффективности.

Кроме того, важно разграничивать два вида вреда:

1. ущерб, причинённый непосредственно преступлением и его последствиями, за который несут ответственность виновные лица;
2. ущерб, возникший вследствие бездействия должностных лиц правоохранительных органов, препятствующего своевременному расследованию или предотвращению преступления.

Показательным примером последствий подобного бездействия может служить гипотетическая ситуация, когда лицо, уличённое в краже металлических деталей, было бы отпущено без принятия должных мер. В этом случае оно могло бы продолжить разбирать элементы подстанции, обеспечивающей электроэнергией целый район. Потенциальный ущерб в подобной ситуации выходит далеко за пределы стоимости похищенного металла и включает простой объектов, убытки предприятий и граждан, а также угрозу жизни и здоровью людей (например, пациентов медицинских учреждений).

В этих условиях особое значение приобретает прокурорский надзор, который должен обеспечивать проверку законности оснований проведения следственных и негласных действий, достоверность отчётности, соблюдение прав граждан, а также предотвращать фальсификации и применение незаконных методов [29]. Такой контроль выступает не формальной функцией, а ключевым инструментом укрепления законности на стадии досудебного расследования.

Соккрытие нарушений или непринятие мер по их устранению подрывают доверие общества к институтам власти. Распространённая практика «круговых отписок», когда жалобы многократно перенаправляются в те же самые инстанции или даже тому же должностному лицу, на действия которого они поданы, а также формальные ответы без фактического разрешения вопроса лишь усиливают правовой нигилизм и ощущение беспомощности граждан. Практика показывает, что прокурорский надзор может реализовываться и через возбуждение уголовных дел в отношении должностных лиц за бездействие, повлекшее тяжкие последствия [30]. Однако данный механизм не всегда реализуется последовательно: высокие требования к доказыванию причинно-следственной связи, формализм при рассмотрении жалоб и корпоративная солидарность внутри правоохранительной системы зачастую препятствуют его эффективному применению. Показательно, что даже обращение в суд по делу против Генеральной прокуратуры, касавшееся практики «круговых отписок», завершилось отказом истцам [31], тогда как в другом деле, связанном с обжалованием отказа в личном приёме, требования истца были удовлетворены. Подобная непоследовательность судебной практики усиливает правовую неопределённость и снижает уровень доверия граждан к институтам государственной власти.

Отсутствие действенного механизма регрессных исков и преобладание формальных процедур создают в обществе устойчивое представление о том, что интересы граждан отодвигаются на второй план по сравнению с интересами системы. Это не только подрывает компенсаторную и превентивную функции гражданско-правовой ответственности, но и деформирует восприятие государства: оно начинает восприниматься не как гарант прав и свобод, а как структура, уклоняющаяся от выполнения собственных обязательств.

Следует учитывать, что недавние изменения, связанные с расширением функций Министерства внутренних дел, направлены на совершенствование системы обеспечения законности. Однако реальная эффективность может быть оценена лишь после длительного периода применения и всестороннего анализа правоприменительной практики [32].

Выводы

Проведённый анализ показал, что институт гражданско-правовой ответственности государства за вред, причинённый бездействием органов дознания и следствия, несмотря на наличие нормативных гарантий, закреплённых в Конституции и Гражданском кодексе Республики Казахстан, реализуется ограниченно и не обеспечивает в полной мере эффективной защиты прав граждан.

Во-первых, выявленные результаты указывают на системные проблемы: формальный подход к рассмотрению жалоб, практика «списанных обращений», низкий размер компенсации морального вреда, отсутствие механизма регрессных требований к должностным лицам и дефицит бюджетных средств, что приводит к затруднениям исполнения судебных решений.

Во-вторых, сопоставление с международными стандартами, установленными Международным пактом о гражданских и политических правах (1966 г.) и практикой Европейского суда по правам человека (*Kudła v. Poland*, *Mikheyev v. Russia*), выявило существенный разрыв: в отличие от европейской модели, казахстанская правоприменительная практика не обеспечивает адекватной компенсации, что снижает доверие граждан к институту государственной ответственности.

Научная ценность исследования заключается в выявлении взаимосвязи между бездействием государственных органов и подрывом общественного доверия, а также в обосновании необходимости рассматривать институт компенсации как ключевой элемент укрепления верховенства права. Практическая значимость работы выражается в разработке предложений по закреплению прямой обязанности государства компенсировать вред, причиненный бездействием органов дознания и следствия (статья 922 ГК РК), унификации методики оценки морального вреда, внедрению регрессных исков к должностным лицам и гармонизации национальной практики с международными стандартами.

Результаты исследования могут быть использованы при совершенствовании законодательства, формировании единообразной судебной практики, повышении эффективности деятельности органов дознания и следствия, а также в развитии механизмов парламентского и общественного контроля. Реализация предложенных мер будет способствовать укреплению доверия граждан к государственным институтам и повышению устойчивости правовой системы в целом.

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А.Г. Жайлина, Т.К. Акимжанов

Анықтау және тергеу органдарының әрекетсіздігінен келтірілген зиян үшін мемлекеттің азаматтық-құқықтық жауапкершілігі

Мақалада Қазақстан Республикасында азаматтық-құқықтық жауапкершілік институты, атап айтқанда, анықтау және тергеу органдарының әрекетсіздігі нәтижесінде келтірілген зиянды өтеу мәселелері қарастырылған. Зерттеудің мақсаты — ұлттық заңнама мен құқық қолдану тәжірибесіндегі олқылықтарды айқындау және оларды халықаралық құқықтық стандарттармен салыстыру. Әдістемелік негізін салыстырмалы-құқықтық талдау, тарихи-құқықтық тәсіл және құқық қолдану тәжірибесін талдау құрайды. Нәтижесінде өтемақы төлеудің шектеулілігі, моральдық зиянды бағалау әдістемесінің болмауы, талап-арыздардың сирек қолданылуы сияқты жүйелі проблемалар анықталды. Қорытындыда азаматтық-құқықтық жауапкершіліктің тиімді жүзеге асырылуы құқық үстемдігін нығайтудың, азаматтардың мемлекетке сенімін арттырудың және әлеуметтік тұрақтылықты қамтамасыз етудің маңызды шарты екендігі тұжырымдалған.

Кілт сөздер: азаматтық-құқықтық жауапкершілік, өтемақы, моральдық зиян, құқық қолдану тәжірибесі, конституция, құқық үстемдігі, ЕҚЫҰ, талап-арыздар, құқықтық нигилизм, әлеуметтік тұрақтылық.

A.G. Zhailina, T.K. Akimzhanov

Civil liability of the state for damage caused by the inaction of inquiry and investigation authorities

This article examines the institution of state civil liability for damage caused by the inaction of investigative authorities in the Republic of Kazakhstan. The aim of the study is to identify gaps in national legislation and law-enforcement practice and to compare them with international legal standards. The methodology includes a comparative legal analysis, historical-legal approach, and the study of judicial practice. The findings highlight systemic challenges, such as limited compensation payments, the lack of a unified methodology for assessing moral damage, the formal handling of complaints, and the absence of consistent recourse actions against responsible officials. The article concludes that effective implementation of state civil liability is essential for strengthening the rule of law, restoring public trust in state institutions, and ensuring social stability.

Keywords: civil liability, compensation, moral damage, judicial protection, Constitution, rule of law, ECHR, recourse actions, legal nihilism, social stability.

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Comparative Legal Analysis of International and National Legal Norms Regulating the Protection of Personal Data

The research aims to summarize the development of national norms by analyzing international standards that lawfully regulate the protection of personal data, one of the issues in safeguarding the rights and freedoms of individual. It emphasizes the importance of Kazakhstan's accession to international instruments protecting personal data. The relevance of the research is determined by the problem of ensuring data security, which at the present stage has become a priority issue. The law has revealed instances that pose risks, particularly due to the absence of the clear provisions regulating the storage of citizen's personal data. The authors highlight that with the rapid development of digitalization in Kazakhstan, cases of personal data dissemination have increased, underscoring the necessity of improving national legal norms. Furthermore, the research raises issues of exercising control over the use of personal data and strengthening liability in cases of unlawful dissemination. Due to the weakness of the current legal mechanism for the protection of personal data, cybercrime is gaining momentum in society, negatively affecting citizens. One of the solutions to the problem is the improvement of national legislation that lawfully regulates the protection of personal data. Within the scope of the study, the authors formulated proposals for the establishing legal mechanisms in the current legislation to regulate the procedures for processing, storing, and destroying personal data, as well as for addressing actions related to their preservation.

Keywords: personal data, collection, processing, and storage of personal data, protection of personal data, comparative legal analysis, directive, convention, European Union, USA, international legal norms, GDPR.

Introduction

The Constitution of the Republic of Kazakhstan, adopted by national referendum on 30 August, 1995, became a fundamental step in building a democratic state governed by the rule of law, where the rights and freedoms of individual and the citizen must be especially protected. The provisions enshrined in the Basic Law of Kazakhstan testify to a categorical rejection of the totalitarian approach to the “individual-state” problem. Under the constitutional system, the state is created to resolve vital issues of ensuring existence, while the individual becomes the main factor forming the essence of the state.

The new Kazakhstani statehood radically changes the nature of the relations between the individual and the state. “Not the individual for the state, but the state for individual” — this is the fundamental formula of their interaction. The priority of the individual over the state allows us to determine the place of the person in civil society. This place is not defined by the state, it is inherent to the person from the outset and is realized through their abilities and initiative. Thus, the content of Chapter 2 of the Constitution of the Republic of Kazakhstan is subordinated to the main principle: the rights and freedoms of the individual and the citizen are the highest value of the state. Consequently, all branches of power and all parts of the state mechanism serve the main purpose, which is to ensure and protect the rights and freedoms of the individual and the citizen, as well as their legal status.

The foundation of the legal status of the individual and the citizen consists of personal (civil) rights and freedoms. Most of them are absolute in nature, that is, they are not only inalienable, but also not subject to restriction (the right to life, freedom of nationality, freedom of conscience and religion, etc.). Along with this, certain rights and freedoms (e.g., the right to the protection of personal data) may be restricted by the state, which makes their legal protection especially relevant and significant.

The modern system of international law in the field of personal data, as well as the basic national laws, relies on a number of international documents. These acts are closely interconnected through the methods of

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regulating the protection of personal data and make it possible to examine the stages of the formation of international standards in this area.

The purpose of the research is to develop proposals aimed at improving national legislation on personal data protection by conducting a comparative legal analysis of international and national norms that lawfully regulate the protection of personal data.

Methods and materials

In the process of writing the article, general and general scientific methods (induction and deduction, analysis, systematization), special scientific methods (the historical method, generalization), as well as specific methods (comparative legal analysis, the formal legal method) were used.

The research was carried out through the analysis of international legal norms regulating the protection of personal data, as enshrined in such documents as the Universal Declaration of Human Rights adopted by the United Nations General Assembly, the International Covenant on Civil and Political Rights, the Convention for the Protection of Individuals with regard to the Automated Processing of Personal Data (ETS No.108, Strasbourg), as well as the General Data Protection Regulation of the European Union of 2016 (GDPR—General Data Protection Regulation). In addition, a comparative legal analysis of national norms enshrined in the legislation of states was conducted.

Results

The adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948 fundamentally changed the situation. Article 12 of the Universal Declaration of Human Rights states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” [1].

This right is also enshrined in Article 17 of the International Covenant on Civil and Political Rights [2], Article 16 of the Convention on the Rights of the Child [3], as well as in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [4].

The inability of the state to guarantee the right to the protection of personal data undermines the safeguarding of other rights and freedoms associated with it: freedom of expression, the right to peaceful assembly, the right to free access to information, the principle of non-discrimination, and ultimately the stability of constitutional democracy. For this reason, Article 17 of the International Covenant on Civil and Political Rights (New York, 19 December 1966) elaborates broadly on the inadmissibility of unlawful interference and formulates it as follows: “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” [2]. According to it, everyone has the right to be protected from such attacks.

A major step in the development of the international system of personal data protection was the adoption of the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data by the Council of Europe on 28 January 1981 (ETS No. 108, Strasbourg). This Convention entered into force on 1 October 1985 and is the first binding international instrument designed to protect individuals from abuses arising from the collection and processing of data [5]. In addition, the Convention regulates the transborder flow of personal data.

The Convention not only provides guarantees in the collection and processing of personal data, but also prohibits such collection and processing if national legislation cannot provide the necessary safeguards for certain “sensitive” data, such as information about a person’s race, political opinions, health status, religious beliefs, or sexual life. Furthermore, the Convention grants individuals the right to be informed in due time about the collection of data relating to them and, if necessary, to request its rectification. The rights set out in the Convention may only be restricted in cases of threats to common interests, such as the protection of public order and the security of society and the state.

The Convention also imposes restrictions on regard to the transborder flow of personal data. In particular, it limits the transfer of data to states that do not ensure an adequate level of protection. The main reason for the development of the Convention was the need to harmonize the national legislation of European countries in the field of personal data. In this regard, in 1981, the European Commission published recommendations for European Union member states concerning the conclusion of appropriate agreements on the implementation of the Convention. Currently, more than 45 European countries are parties to it.

It should be noted that Kazakhstan is not a party to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, Strasbourg, January 28, 1981) [6]. Nevertheless, the approaches and principles enshrined in national legislation are close in content to the provisions of the aforementioned Convention. Kazakhstan's accession to this international document would be of great importance, as it would allow investigations into violations of the rights of our citizens in the field of personal data protection jointly with authorities of the participating countries.

The main purpose of the Convention is to ensure respect for the rights and fundamental freedoms of every individual, regardless of nationality or residence, within the territory of the participating states, in particular the right to privacy in relation to the automatic processing of personal data ("data protection").

In 1995, the European Parliament and the Council of the European Union adopted the Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data (No. 95/46/EC) [7]. The main purpose of the Directive is to implement Article 100a of the Treaty establishing the European Economic Community, which provided for the creation of a single internal market. Directive 95/46/EC on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data was repealed in accordance with Article 94 of Regulation No. 2016/679 of the European Parliament and of the Council of the European Union [8].

On 11 March 1996, the Directive on the Legal Protection of Databases (No. 96/9/EC) [9] was adopted, the main purpose of which was to form a uniform character of database protection in the European Union member states.

These directives of the European Union oblige the member states to ensure the proper quality of the information collected and processed (the collection and processing of data must be defined by law and carried out strictly in accordance with its provisions), as well as to guarantee the protection of information and to establish appropriate supervisory and control authorities. Particular attention in the directives is paid to the means of ensuring the confidentiality of personal data and the rules for their cross-border transfer.

Along with the above-mentioned documents, the European Union has adopted several directives aimed at regulating the protection of personal data in various fields. In particular, in the field of electronic communications, the Directive on Privacy and Electronic Communications (No. 2002/58/EC) was adopted, which establishes requirements for the processing of personal data and the protection of privacy [10]. The purpose of this Directive is to harmonize national regulations necessary to guarantee an adequate level of protection of fundamental rights and freedoms.

One of the most important steps in the development of personal data protection was the adoption of the General Data Protection Regulation (GDPR) by the European Union in 2016 [11]. The adoption of this act contributed to the formation of a culture of ensuring data confidentiality by every individual and also became a driving force for further strengthening digital human rights. Violations related to the collection, processing and storage of personal data damage not only the reputation of public authorities and private companies, but also undermine the trust of consumers of these services. Therefore, according to the new regulation, the protection of personal data has become not merely another task for the European Union, but also a new approach to shaping a culture of thinking and behavior within each organization and among individuals.

The Regulation established stricter requirements for the consent of personal data subjects, increased transparency with regard to how and for what purpose data are collected, processed, transmitted or destroyed. According to many researchers, the GDPR became an important step in the field of personal data protection for a number of reasons. First, the Regulation definitively changed the approaches to the processing of personal data in all sectors of the European Union. Second, its provisions increased the knowledge of specialists and individuals on issues of personal data. Third, the Regulation granted individuals broad powers to control the use of their data. Fourth, citizens of the European Union became more informed and aware of their rights to personal data protection. These conclusions are confirmed by the results of a survey conducted in 2019 within the framework of the Eurobarometer project [12]: 67 % surveyed citizens of the European Union indicated that they are familiar with the Regulations, 36 % know the consequences of non-compliance with the Regulations may entail, and 57 % are aware that each country has a specialized authority responsible for the protection of personal data [13].

At present, almost all European Union member states recognize the effect of the General Data Protection Regulation (GDPR) and have brought their national legislation into compliance with its requirements. For example, Sweden adopted the Personal Data ACT (Personuppgiftslagen), while in Germany these relations are regulated by the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG).

Thus, modern European law in the field of personal data protection, which has accumulated extensive experience of formation and is still being improved today, can be described as the most pragmatic. In accordance with it, all objects and subjects requiring protection, and its economic effectiveness has been proven in practice.

Kazakhstan, like other countries of the world, is actively developing an innovative economy, in which various industries are undergoing digital transformation. Digitalization is currently a key factor contributing to economic growth and is a national-level priority for Kazakhstan.

Along with the active process of digitalization, intensive information processing is also observed in the country. In the National Development Plan of the Republic of Kazakhstan until 2029, one of the priority tasks is the optimization of regulation in the field of personal data protection (priority 2) [14].

By Resolution of the Government of the Republic of Kazakhstan, the Concept for the Development of Digital Transformation, Information and Communication Technologies, and Cybersecurity for 2023–2029 was approved, which addresses issues related to the protection of personal data. One of the principles of the development of the field of information and communication technologies and cybersecurity is the principle of trust, which includes the protection of privacy and personal data, as well as monitoring digital security [15].

In the Concept of Legal Policy until 2030, approved by the President of the Republic of Kazakhstan, the obligation to revise the legislation on personal data protection in accordance with its basic principles is established. In addition, taking into account international experience, a draft of the Digital Code is currently being developed [16].

In Kazakhstan, a regulatory and legal framework is gradually being formed to govern legal relations connected with the collection, processing, and control of personal data. The legislation regulating the protection of citizens' personal data is based on the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" adopted on 21 May 2013, as well as on the Law of the Republic of Kazakhstan "On Dactyloscopic and Genomic Registration", the Law of the Republic of Kazakhstan "On Electronic Document and Electronic Digital Signature", the Law of the Republic of Kazakhstan "On National Security of the Republic of Kazakhstan", and other laws, supplemented by government resolutions and orders from authorized ministries.

Article 18 of the Constitution of the Republic of Kazakhstan states: "1. Everyone shall have the right to inviolability of private life, personal or family secrets, protection of honor and dignity. 2. Everyone shall have the right to confidentiality of individual deposits and savings, correspondence, telephone conversations, postal, telegraph, and other messages. The limitation of this right shall be permitted only in cases and according to the procedure directly established by law" [17].

In order to implement the above-mentioned constitutional guarantees, on 21 May 2013, the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" was adopted. In accordance with paragraph 2 of Article 1 of the said Law: "personal data are information relating to a specific or determinable subject of personal data, recorded on electronic, paper and (or) other material carriers" [18]. Expanding this definition, personal data includes information in electronic or paper form, or such information must be recorded on other carriers (disks, flash drives, etc.). In our view, the issue of the legal status of individual information transmitted orally has not been fully resolved.

By Order of the Minister of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan dated 29 August 2024, No. 526/NK, a list of personal data of individuals included in the state electronic information resources was approved [19]. According to the order, the following information is classified as personal data: individual's last name, first name, patronymic, transcription of last name and first name, , date of birth, place of birth, nationality, gender, marital status, citizenship, individual identification number, digital photograph, signature, legal address, and details of the identity document.

A comparison of the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" with foreign legislation showed that the Kazakhstani law is distinguished by a rather high degree of specificity and comprehensiveness. At the same time, practice demonstrates that many aspects of ensuring the security of personal data remain insufficiently regulated. Thus, Article 2 of the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" states that the purpose of the Law is to ensure the protection of rights and freedoms of individuals and citizens in the collection and processing of their personal data [18]. Paragraph 1 of Article 1 defines the concept of "collection of personal data", defining it as "actions aimed at obtaining personal data". Unfortunately, the law does not define the concept of "processing of personal data". In addition, in our opinion, the norm provided in Article 2 of the Law does not cover actions related to

the storage of personal data. In other words, measures related to ensuring the integrity, confidentiality and accessibility of citizens' personal data are not clearly defined.

Discussion

Contradictions in the development of legal protection of personal data are noted in the works of many scientists [20; 33–35]. The concept of “protection of personal data” is conditional, since it is not the data itself that are protected from unlawful or arbitrary use, but its bearer—the individual. At the same time, personal data should not be completely removed from circulation; however, the procedures for their collection, storage, and processing must be clearly regulated so that the rights of the personal data subject are adequately safeguarded.

As mentioned above, the protection of personal data is closely connected with the right to privacy. As a legal category, this right took shape in 1928, when the United States Supreme Court Justice L. Brandeis stated that the United States Constitution provides for the “right to be let alone” and the “right to privacy”. This statement has serious scientific foundations. As early as 1890, the young Boston lawyer L. Brandeis, together with Justice S. Warren, prepared and published an article “The Right to Privacy”, which for the first time raised legal and ethical issues arising from the practice of active interference in private life.

The earliest precedent for the protection of personal data arose in 1965, when the United States Supreme Court considered the *Griswold* case. In its decision, it was indicated that the right of a person to privacy had existed long before the Bill of Rights. As a result, the American legal doctrine recognized the right to “privacy”, i.e., the right of every person to control their “personal living space” and to be protected against the unjustified seizure of personal documents. This implies that the individual independently decides what information about them, to what volume, and in what form to transfer to third parties.

L. Brandeis's formulation of the “right to privacy” underwent significant changes in the 21st century. Whereas previously state interference in private life was strictly prohibited, over time there appeared an increasing number of legitimate grounds for collection and processing of information related to private life. The acceleration of this process in the United States was largely due to the events of 11 September 2001 in New York and the subsequent counter-terrorism campaign. In 2002, the Sarbanes-Oxley Act was adopted, with its primary focus not on the protection of personal data, but on maximizing the transparency of databases to prevent threats to public security.

The Russian scientist Yu. Travkin notes: “The spread of the European approach to personal data issues and its recognition in almost all countries of the world, from Central and Eastern Europe to Canada, the Asia-Pacific region and Latin America, is not an accidental. In all of these states, a legal framework concerning personal data has developed, but the content of the relevant laws is a clear reference to the legal system developed in Europe can be traced” [21]. This opinion is difficult to dispute. As mentioned above, the development of Kazakhstan's current legislation on personal data is also oriented towards the European model.

The absence of personal data in the law of norms regulating the storage leads to risks and threats confirmed by practice. Such risks arise from the loss of control over personal data, as cases of loss of electronic and paper carriers of personal data are not uncommon in domestic practice. For example, in 2017 the personal data of clients of the former Qazkom bank (now Halyk Bank) were discovered at a landfill. At first glance this may seem like an ordinary situation, but such information should have been kept in the bank's archive and destroyed using shredder in accordance with the established rules of archival storage and destruction of documents. The Qazkom Bank press service apologized, promised to identify and punish those responsible, but the result was only the dismissal of the head of the bank's branch in Astana, while the further fate of the clients' personal data remained unknown [22].

An example of the loss of personal data in electronic form can be seen in the following case. In 2019, the complete data of about 11 million citizens were leaked from the database of the Central Election Commission's to the Internet. That same year, the Association of Legal Entities “Center for Analysis and Investigation of Cyberattacks” (TSARKA) identified the fact of the leakage of Kazakhstani citizens' personal data. The complete database of 11 million citizens became available online. In August 2019, the Ministry of Internal Affairs of the Republic of Kazakhstan initiated pre-trial proceedings under case No. 197115031001878, opened on 22 July 2019, for the unlawful distribution of restricted-access electronic information resources under Part 1 of Article 211 of the Criminal Code of the Republic of Kazakhstan. However, the proceedings were terminated due to the absence of elements of criminal offense [23].

Conclusion

In conclusion, it should be noted that in the Republic of Kazakhstan, which is integrated into the global political and economic information space, there has been a significant impetus for the digitalization of the activities of state bodies and private structures. In our view, insufficient attention to the new opportunities of digitalization of society, as well as to its risks and threats, leads to the loss of the right to exercise state power in Kazakhstan, which belongs to the local population.

The formation of electronic government has not only led to a change in the relationship between the state and society, but has also reduced the cost of administering many tasks. At the same time, along with such positive changes in the Kazakhstani information system, there is a clear trend towards an increase in real threats to the information security of the Republic.

We consider it important to examine the issue of Kazakhstan's accession to the the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which would provide the right to investigate violations of the rights of our citizens in the field of personal data protection committed by operators of states that are parties to the Convention. This is of fundamental importance, since the purpose of the Convention is to ensure respect for the rights and fundamental freedoms of individual, regardless of citizenship or place of residence, and in particular, the right to privacy in relation to the automatic processing of personal data.

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Дербес деректердің қорғалуын құқықтық реттейтін халықаралық және ұлттық құқықтық нормаларға салыстырмалы-құқықтық талдау

Жүргізілген зерттеу азаматтың құқықтары мен бостандықтарын қамтамасыз ету мәселелерінің бірі — дербес деректерді қорғауды құқықтық реттейтін халықаралық нормаларға талдау жүргізу арқылы ұлттық нормаларды жетілдіру бойынша қорытындылар шығаруға бағытталған. Дербес деректерді қорғауға бағытталған халықаралық актілерге қосылудың маңыздылығы атап өтілген. Зерттеу тақырыбының өзектілігі қазіргі кезеңде басты назар аударатын дербес деректердің қауіпсіздігін қамтамасыз ету мәселесімен байланысты. Жұмыста азаматтардың дербес деректерін сақтау жөнінде құқықтық норманың болмауы себепті тәуекелдер мен қауіпке әкеліп соққан жағдайлар қарастырылған. Авторлар Қазақстанда цифрландырудың дамуымен бірге дербес деректердің таралып кету жағдайларының жиілеп кетуіне, ұлттық құқықтық-нормаларды жетілдіру қажеттігіне басты назар аударады. Сонымен қатар, дербес деректерді пайдалануды бақылау жүргізу, заңсыз таралған жағдайда жауапкершілікті жетілдіру мәселелері талқылауға шығарылған. Дербес деректерді қорғаудың құқықтық тетігінің әлсіздігі салдарынан кибералақтық қоғамда белең алуда, соның салдарынан азаматтар зардап шегуде. Бұл мәселені шешудің бір жолы — дербес деректерді қорғауды құқықтық реттейтін ұлттық заңнаманы жетілдіру. Авторлар қолданыстағы заңнамада дербес деректерді өңдеу, сақтау, жою тәртібін реттейтін құқықтық тетіктерді анықтау, дербес деректерді сақтауға қатысты әрекеттерді реттеу жөнінде ұсыныстарын тұжырымдайды.

Кілт сөздер: дербес деректер, дербес деректерді жинау, өңдеу, сақтау, дербес деректерді қорғау, салыстырмалы-құқықтық талдау, директива, конвенция, Еуропалық одақ, АҚШ, халықаралық-құқықтық нормалар, GDPR.

Сравнительно-правовой анализ международных и национальных правовых норм, регламентирующих защиту персональных данных

Проведение исследования направлено на подведение итогов по совершенствованию национальных норм путем проведения анализа международных норм, правомерно регулирующих защиту персональных данных — одного из вопросов обеспечения прав и свобод гражданина. Подчеркивается важность присоединения к международным актам, направленным на защиту персональных данных. Актуальность темы исследования обусловлена проблемой обеспечения безопасности персональных данных, которая на современном этапе является главной в стране. В работе рассмотрены риски и случаи, возникшие вследствие отсутствия правовых норм, регламентирующих хранение персональных данных граждан. В условиях активного развития цифровизации в Казахстане участились случаи незаконного распространения персональных данных. Автор акцентирует внимание на необходимости совершенствования национальных правовых норм. Кроме того, вынесены на обсуждение вопросы проведения контроля за использованием персональных данных и совершенствования ответственности в случае их незаконного распространения. Из-за слабого правового механизма защиты персональных данных кибермошенничество набирает обороты в обществе, в результате чего страдают граждане. Одним из путей решения данной проблемы является совершенствование национального законодательства, регламентирующего защиту персональных данных. Авторами сформулированы предложения по установлению в действующем законодательстве правовых механизмов, регулирующих процедуру обработки, хранения, уничтожения персональных данных, регулирование действий, связанных с хранением персональных данных.

Ключевые слова: персональные данные, сбор, обработка, хранение персональных данных, защита персональных данных, сравнительно-правовой анализ, директива, конвенция, Европейский союз, США, международно-правовые нормы, GDPR.

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The register of unscrupulous suppliers as a tool for protecting state interests and preventing violations in the procurement sphere

The public procurement system represents a set of relationships directly linking state authorities and suppliers. Integrity and reliability of contracting parties serve as key guarantees of stability in civil turnover. This, in turn, is defined as the principal objective of the public procurement system, namely, the effective management of public finances and the state budget, as well as the protection of public interests. This article addresses both theoretical and practical issues of civil-law liability of unfair counterparties arising within the sphere of tender relations in Kazakhstan. The purpose of the study is to identify the scope of civil-law liability of unfair suppliers in public procurement, to strengthen this liability, to emphasize the significance of the Register of Unfair Suppliers, and to develop relevant legislative proposals. The research applies a comparative analysis of domestic and foreign legislation, supported by judicial practice, in order to achieve the stated objectives. The study also proposes the introduction of the concept of an “unfair supplier” into the Law of the Republic of Kazakhstan “On Public Procurement” and other normative acts, as well as the integration of registers of unfair suppliers across procurement-related platforms. The methodological framework of the study includes formal-logical, analytical and synthetic, comparative-legal, general-state, statistical, and historical-legal methods.

Keywords: tender, public procurement, civil liability, unfairness, penalty, contracting authority, supplier, register, contract, portal.

Introduction

The Head of State, in his 2023 Address to the People of Kazakhstan, emphasized the necessity of introducing a new procurement system through the reform of the public procurement sector. The objective of the new system is to increase supplier accountability and to strengthen the principles of transparency and efficiency [1]. In civil law relations, the issue of liability consistently remains one of the most relevant and enduring subjects of scholarly and practical significance.

The functioning of the public procurement system in the Republic of Kazakhstan is regulated by the Law of the Republic of Kazakhstan “On Public Procurement”, the Civil Code of the Republic of Kazakhstan, the Rules for the Implementation of Public Procurement, the Rules for the Formation and Maintenance of Registers in the Field of Public Procurement, as well as other regulatory legal acts [2; 172].

In the Republic of Kazakhstan, within the framework of public procurement procedures, the integrity and reliability of suppliers constitute an essential criterion for contracting authorities when concluding agreements, given the significant volume of budgetary funds allocated to public procurement and the large number of contracts concluded. In tender relations, it is impossible to assess in advance the degree of reliability of suppliers with respect to the proper fulfillment of their contractual obligations. At the same time, it is necessary to take into account the high risk of the emergence of unscrupulous counterparties within this system, which ultimately leads to adverse legal consequences. In practice, identifying an unscrupulous supplier and preventing the conclusion of a contract with such a party poses considerable challenges, since the supplier cannot be determined until the completion of the tender procedure.

The issue of reliability and quality has become one of the fundamental criteria in the contemporary business sector. Trust in suppliers directly determines the quality of services rendered, work performed, and goods delivered. Access to information on unscrupulous suppliers enables the prevention of adverse legal consequences. It is well established that databases and specialized registers exist, containing information on suppliers who have violated public procurement rules or failed to meet qualification requirements. The primary purpose of establishing a register of unscrupulous suppliers is to alert participants in civil turnover to unreliable (dubious) companies or those failing to comply with prescribed standards of quality, ethics, and

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legality. The maintenance of such a register may be regarded both as a sanction imposed on unscrupulous suppliers and as a valuable instrument for various stakeholders in the process of selecting potential contractors in the future.

Methods and materials

This study as its basis used the Law of the Republic of Kazakhstan “On Public Procurement”, the Rules for the Implementation of Public Procurement, the Procedure for Procurement in the Quasi-Public Sector, and other regulatory acts within the framework of public procurement legislation, as well as periodical publications. The research, applying general scientific theoretical methods of cognition, examined issues of civil liability of suppliers; additionally, methods of analysis, synthesis, historical-legal inquiry, generalization, and logical reasoning were utilized.

By applying statistical analysis, indicators were obtained based on an examination of registers of unscrupulous suppliers maintained on procurement platforms. On the basis of judicial practice, the causes and consequences of the inclusion of unscrupulous suppliers in such registers in Kazakhstan were identified. A comparative legal analysis was conducted of the civil liability of unscrupulous suppliers in the field of public procurement and of the regulatory frameworks governing registers of unscrupulous suppliers in the Republic of Kazakhstan and in foreign jurisdictions.

Results

The concept of bad faith in commercial relations originates from the broader evolution of legal thought. Historical and legal analysis demonstrates that this concept can be traced back to Ancient Roman Law. In Ancient Rome, the regulation of trade relations between sellers and buyers was of particular significance. The institution of *nexum* was among the earliest mechanisms designed to ensure good faith in the Roman commercial sphere. The first norms establishing liability for bad faith conduct in trade relations were reflected in the Law of the Twelve Tables (451–450 BCE): the Third Table provided for liability for non-performance of obligations, while the Eighth Table introduced provisions concerning punishment for fraud in commerce [3]. Modern textbooks on Roman law emphasize that debtors were held liable for failure to perform or for improper performance of their obligations. As the sources of Roman law indicate, at the outset the liability of unscrupulous debtors was of a personal character, manifested in severe sanctions, such as imprisonment, enslavement, or even capital punishment. Over time, the forms of liability were gradually humanized, shifting from personal sanctions to property-based sanctions, whereby the debtor was held accountable not for his liberty or life but for his assets. This evolution reflects a fundamental transformation in understanding of the balance between the effectiveness of legal coercion and the humanistic values underpinning the development of commercial law [4; 189]. Opportunistic conduct is traditionally regarded as a phenomenon arising from the interaction of individuals and is directed toward pursuing self-interested objectives within contractual relations [5].

According to Article 8 of the Civil Code of the Republic of Kazakhstan, the principles of good faith, reasonableness, and fairness constitute the fundamental mechanism for regulating civil law relations [6]. The exercise of civil rights must not infringe upon the rights and legally protected interests of other legal subjects, nor cause harm to the surrounding environment. The recognition of bad faith conduct is primarily characterized by the requirement to demonstrate its intentional and malicious nature. Legal doctrine proceeds from the maxim *nullum malum sine culpa* (“there is no wrongdoing without fault”), and the determination of proportionality between fault and the harm caused constitutes an essential element of the administration of justice. By delineating the opposition between the terms “fairness” and “unfairness”, it becomes possible to evaluate the key indicators of actors in commercial relations. According to T.F. Efremova’s lexicographic explanatory dictionary, unfairness is defined as the absence of a sense of responsibility and the failure to perform one’s duties and obligations in a fair and conscientious manner [7]. In addition, in the dictionary of legal terms compiled by domestic authors, “unfairness” is defined as a series of interrelated actions undertaken by a subject in the exercise of their rights in violation of legal principles [8].

The concept of good faith represents a vital dimension of civil-law relations among participants in civil turnover. A.R. Sultanov emphasizes that the evaluation of good faith and unfairness primarily requires an assessment of the extent to which civil turnover conforms to established standards. In this respect, taking into account the legitimate interests of the contracting parties, it is necessary to determine the degree of their informational interaction [9]. Nevertheless, it should be recognized that trust in counterparties engaged in civil-law relations plays a crucial role as a guarantee of the successful performance of contractual

obligations. M.K. Suleimenov, presenting a broad range of perspectives on the concept of good faith, came to the following conclusion: first, good faith is associated with moral and ethical principles grounded in honesty and a considerate attitude toward one's counterparties; second, these principles are applied predominantly within the sphere of obligational legal relations [10]. V.I. Emyanov pointed out the necessity of applying the concept of unfairness in a broad sense, observing that in civil-law relations adverse consequences may arise not only from the direct breach of contract or the commission of a tort. He underscored that indicators of unfair conduct may also be discerned in situations where a person, being aware of the potential adverse consequences of their actions, deliberately acts in bad faith, or where such consequences in fact materialize as a result of the actions undertaken [10].

The register of unfair participants in public procurement operates not only within the domain of public procurement itself but also as an institution of reputational influence, performing a signaling function in private-law relations and enabling counterparties in civil-law transactions to assess the risks of commercial engagement. This, in turn, creates conditions for the prevention of a number of adverse legal consequences in the selection of suppliers. In light of the current circumstances, it is essential to emphasize the necessity of defining the precise legal status of an unfair participant in the field of public procurement and of recognizing the significance of the register of such participants.

Discussion

The Law of the Republic of Kazakhstan "On Public Procurement" establishes the conditions and procedures for recognizing suppliers as unfair, with these provisions aimed at enhancing the liability of business entities and restricting the participation of unfair suppliers in public procurement. However, the legislation does not provide a precise definition of the concept of an «unfair participant in public procurement». In the academic literature, diverse theoretical perspectives have emerged regarding the principal functions and legal nature of the register of unfair suppliers. S.A. Ivanova has observed that the register of unfair suppliers possesses a public-law character. This approach interprets the register as a mechanism of state control directed toward the efficient use of budgetary resources, the safeguarding of fair competition, and the realization of public interests [11]. O.A. Belyaeva has likewise argued that this register constitutes a measure for the protection of the rights of legal subjects in civil turnover and serves as a publicly accessible source enabling the assessment of the reliability of counterparties engaged in such relations [12]. According to A.V. Dyomkina, the inclusion of suppliers (contractors, service providers) in the register of unfair suppliers functions as a mechanism for safeguarding the rights of contracting authorities within the contractual system of procurement of goods, works, and services for state and municipal needs [13]. The author particularly emphasized that the entry of suppliers into the register of unfair suppliers gives rise not only to administrative legal relations but also to civil-law relations. In the Russian Federation, the legal basis for including business entities in the register of unfair suppliers is established by Article 104 of Federal Law No. 44-FL of April 5, 2013, "On the Contract System in the Procurement of Goods, Works, and Services for State and Municipal Needs". This provision regulates the procedure for maintaining the register of unfair suppliers. The register contains information on procurement participants who have evaded the conclusion of a contract, as well as on suppliers (contractors, service providers) who have failed to perform or have improperly performed their contractual obligations. The law prescribes the procedure by which the contracting authority transmits information to the competent federal body, the process of its verification, the rules governing the inclusion and removal of information from the register, and further guarantees open and free access to these data. The maintenance of the register of unfair suppliers (contractors, service providers) is carried out within the unified information system through the publication of the information provided for in this article by the federal executive authority authorized to exercise control in the field of procurement [14]. In her dissertation *Civil-Law Regulation of Contractual Relations in Public and Municipal Procurement in the Russian Federation*, M.V. Shmeleva notes that the inclusion of business entities or state authorities in the register of unfair suppliers or unfair contracting authorities serves to protect the rights of counterparties in contractual relations, thereby combining both regulatory and preventive functions. The author addresses not only unfair suppliers but also undertakes a comprehensive examination of the institution of unfair contracting authorities [15]. V.A. Kondratyev has observed that the inclusion in the register of unfair suppliers of information solely about a legal entity or an individual entrepreneur is insufficient. He proposed that the register should also contain data on individuals involved in the management and support of such business entities. This proposal is linked to the fact that, in recent years, the state has significantly simplified the procedure for establishing such forms of entrepreneurship in order to promote business development,

which has, in turn, led to instances of evading liability [16]. This approach is reflected in Article 28 of the Law of the Republic of Kazakhstan on Public Procurement, adopted in 2024 [17].

However, it is evident that the inclusion of individuals in the register of unfair suppliers gives rise to not only theoretical but also practical challenges. The scholarly approaches discussed provide a comprehensive understanding of this legal institution as one that integrates elements of public and private law, thereby ensuring the protection of legal order in the sphere of contractual relations and the maintenance of economic stability.

In judicial practice, when considering cases where a supplier recognized as the winner of a tender evades the conclusion of a contract, provides information that does not meet the qualification requirements, or fails to fulfill or improperly fulfills its obligations, two types of sanctions may be imposed by the court:

1. The obligation to pay a penalty, including fines and late fees, as well as to perform the contractual obligation.

2. Recognition of the supplier as an unfair participant in the sphere of public procurement and inclusion in the register of unfair participants.

When considering the main causes and consequences, in the first instance, under the Rules on Public Procurement, if the delivery deadlines for goods are delayed and the Supplier fails to fully perform its obligations, the Customer is entitled to withhold (recover) a penalty (fine, late fee) from the Supplier in the amount of 0.1 (zero point one) percent of the total contract value for each day of delay. In cases of improper (partial) performance of obligations, a penalty of 0.1 (zero point one) percent of the value of the unfulfilled obligations is imposed for each day of delay. At the same time, the total amount of penalties (fines, late fees) may not exceed 15 (fifteen) percent of the overall contract value [18]. In certain cases, these amounts do not reach significant levels in comparison with the total value of the tender. This is due to the fact that the smaller the tender amount, the lower the amount of penalties recoverable. Therefore, the improvement of this system necessitates the adoption of specific mechanisms.

In the second case, if a supplier is declared an unfair participant in public procurement by a court decision, it is entered into the register of unfair suppliers for a period of two years, thereby restricting its ability to participate in tenders during this period. Pursuant to subparagraph 4 of Article 8 of the Law of the Republic of Kazakhstan “On Public Procurement”, the following cases warrant inclusion in the register of unfair participants in procurement:

- 1) for providing inaccurate information by suppliers (i.e., for submitting false data in the course of fulfilling contractual obligations, for example, regarding the price of goods, delivery terms, or their quality, etc.);

- 2) for evasion by a potential supplier, recognized as the winner of the tender, from entering into a contract (that is, for refusing to conclude a contract for known or unknown reasons);

- 3) for non-performance by the supplier of obligations under the concluded contract (that is, for refusing to fulfill the obligations stipulated by the contract);

- 4) for improper performance by the supplier of obligations under the concluded contract (that is, for failing to duly perform the contractual obligations, for instance, in the appropriate scope or at the required quality level, etc.) [17].

In general, the contracting authority is obliged, within thirty calendar days from the moment of detecting a violation of the legislation of the Republic of Kazakhstan on public procurement, to file a claim in court seeking recognition of the potential supplier or supplier as an unfair participant in public procurement and requesting their inclusion in the relevant register [18].

Within this framework, the following case may be considered. By a decision of the Specialized Interdistrict Economic Court dated October 2, 2019, rendered upon the claim of the State Institution “Department of Public Procurement of the City of Aktobe”, individual entrepreneur D.B. Kaluov (“Zharyk” IE) was declared an unfair participant in public procurement. It was established that on 27 May 2019, the claimant, acting as the organizer of public procurement, announced an open tender No. 3391132-1 for “Maintenance of green spaces in the territory of the city of Aktobe”. According to the protocol of results dated July 2, 2019, the respondent was recognized as the winner. During the judicial proceedings, the respondent, to confirm the availability of material resources necessary for the performance of contractual obligations, presented information regarding a vehicle of the “GAZ 53A” model, allegedly leased from a third party. However, according to the data provided by the State Institution “Department of Police of the Aktobe Region”, the aforementioned vehicle had been deregistered on 5 April 2017 and therefore could not have constituted the object of a lease. Consequently, the submission of inaccurate information concerning

compliance with qualification requirements by IE D.B. Kaluov served as the basis for recognizing him as an unfair participant in public procurement [19]. Accordingly, any false information relating to qualification requirements and/or documents influencing the tender price proposal constitutes sufficient grounds for declaring a supplier an unfair participant in public procurement.

Judicial practice demonstrates a noticeable increase in the number of cases adjudicated on such grounds.

In the Law of the Republic of Poland On Public Procurement, special legal mechanisms are established to restrict the participation of unfair suppliers in tender procedures. In particular, pursuant to Articles 108 and 109, the contracting authority is vested with the right to limit the participation of suppliers in procurement procedures. Article 111 of the same law stipulates that, on the grounds set forth in Articles 108 and 109, a supplier's right to participate in public procurement may be restricted for a period ranging from one to five years [20]. It should be emphasized that, unlike the legislation of the Republic of Kazakhstan, Poland does not maintain a special state register of unfair suppliers. By contrast, in the Kazakhstani legal system, such a register functions as an effective instrument for the automatic exclusion of unfair counterparties from the procurement sphere. Furthermore, in the Republic of Poland, the contracting authority bears the responsibility for verifying the good faith of participants in public procurement procedures through national and European databases, which, in turn, creates certain challenges.

In the era of digitalization, the establishment and utilization of a register of unfair suppliers on publicly accessible platforms assume particular significance. One of the largest web portals within the public procurement system is the Public Procurement Portal of the Republic of Kazakhstan. Drawing upon data available from the web portal <https://goszakup.gov.kz> [21], reference may be made to statistics concerning suppliers entered into the register of unfair participants based on subparagraph 4 of Article 8 of the legislation on public procurement. Since the introduction of this portal in 2010, a total of 214,552 suppliers have been registered (see Table 1). According to information provided on the web portal <https://goszakup.gov.kz>, in the last two years alone, 17,212 suppliers have been placed on record. This figure continues to increase on a daily basis.

Table 1

Statistical Indicators of the Register of Unfair Participants on the Public Procurement Web Portal for the Period 2010–2025

№	Grounds for Inclusion in the Register of Unfair Participants	Number	%
1	A potential supplier provided questionable information regarding compliance with qualification requirements.	1655	0.8
2	A potential supplier committed a violation of the requirements set forth in Article 6 of the Law on Public Procurement.	1541	0.74
3	A potential supplier evaded the conclusion of a public procurement contract.	35560	17.15
4	A supplier, having entered into a public procurement contract, failed to duly fulfill the requirements for providing performance security and/or to meet the deadlines for its submission.	52084	25.12
5	A supplier failed to perform or improperly performed its obligations under the concluded public procurement contract.	116477	59.18
	Grand total:	220149	100 %

Relying on data provided by the Samruk-Kazyna portal (<https://zakup.sk.kz>), as of 2025, 2,984 suppliers were recorded in the register of unfair suppliers. According to the 2023 annual report of JSC “Samruk-Kazyna”, 924 suppliers were entered into this register, of which 464 were for evading the conclusion of a contract, 376 based on court decisions for failure to perform or improper performance of contractual obligations, 60 for failing to provide the required contract performance security, and 24 for submitting inaccurate or false information in the course of procurement [22]. In accordance with Article 26 of the Rules for Procurement by the Joint Stock Company Sovereign Wealth Fund “Samruk-Kazyna” and legal entities in which more than fifty percent of the voting shares (participation interests) are directly or indirectly owned by JSC Samruk-Kazyna under ownership or trust management, the grounds for inclusion in the register of unfair suppliers are expressly established [23].

Another major platform in the field of procurement is the Eurasian Electronic Portal (<https://mitrowk.kz>). The Eurasian Electronic Portal serves as an online platform for conducting procurement procedures. It is utilized by holdings, national companies, and large commercial organizations for their procurement activities [24]. According to the data provided on this portal, 428 suppliers are currently registered in the register of unfair participants.

In the new public procurement legislation adopted in 2024 and effective from January 1, 2025, the concept of a unified procurement platform was introduced. The unified procurement platform is defined as the information system of the authorized body in the field of public procurement, which provides a single point of access to electronic procurement services carried out in accordance with the Law of the Republic of Kazakhstan “On Public Procurement” and the Law “On Procurement of Certain Entities of the Quasi-Public Sector”. This platform operates through the portal <https://zakup.gov.kz/> and integrates the public procurement system of the Republic of Kazakhstan, the procurement of the Sovereign Wealth Fund “Samruk-Kazyna”, as well as procurement in the field of subsoil use. An analysis of the functioning of this system demonstrates that, according to the platform’s indicators, 18,552 suppliers are currently listed in the register of unfair participants in procurement [25]. These indicators do not correspond to the statistical data presented by the aforementioned three platforms. On certain platforms, registers of unfair participants are either not provided or access to them is restricted (e.g., <https://mp.kz>, <https://tizilim.gov.kz/>, and others). This, in turn, limits the possibility of obtaining comprehensive information about suppliers in tender relations. It should be noted that these platforms have a private character and cover specific sectors, which complicates the requirement for strict compliance with legal standards. An analysis of judicial practice demonstrates that these systems are not aligned within a unified model. If a supplier is recognized as an unfair participant on the public procurement portal, it is included in the register of unfair suppliers only within that portal and its activities are restricted solely in that framework. However, such restrictions are not extended to other platforms. For instance, if a supplier participates in public procurement on the web portal <https://goszakup.gov.kz/> and violates the grounds stipulated in subparagraph 4 of Article 8 of the Law on Public Procurement, it is recognized as an unfair supplier, yet it retains the ability to freely conduct its activities on other platforms, such as <https://zakup.sk.kz>, <https://mp.kz>, <https://tizilim.gov.kz>, <https://mitwork.kz/>, and others.

Conclusion

In tender relations, the actions of unfair suppliers exert a negative impact not only on the economy but also on society at large. The proper organization and functioning of the procurement system directly affect the quality of services rendered, works performed, or goods supplied, as well as the establishment of trust among the parties engaged in procurement. In conclusion, the following definition may be proposed in accordance with the Law of the Republic of Kazakhstan “On Public Procurement” of July 1, 2024, No. 106-VIII: an unfair supplier is a potential supplier (contractor or service provider) entered into the register of participants in public procurement for failure to perform or for breach of contractual terms concluded through the public procurement web portal or other procurement systems of entities within the quasi-public sector.

To sanction unfair suppliers, the procurement system provides for their inclusion in the register of unfair suppliers, which restricts the supplier’s activities for a period of two years. An analysis of judicial practice demonstrates that the absence of a unified system for maintaining the register of unfair suppliers in the procurement sphere contributes to an increase in the number of such participants. The consolidation of these registers would enhance the accountability of any supplier (entrepreneur) and encourage them to more carefully assess their position and capabilities before engaging in procurement activities. Each contract may involve two or more parties, and in matters of liability, it is inappropriate to consider only the responsibility of suppliers—attention must also be paid to the responsibility of contracting authorities. In judicial practice, the number of cases recognizing contracting authorities as unfair participants is extremely low. At the same time, when violations or errors arise on the part of the contracting authority, such issues are often resolved in a timely manner through the intervention of a third party, namely the procurement organizer. Nevertheless, in practice, situations frequently occur where, due to the contracting authority’s inaccurate specification of technical requirements, the supplier is unable to properly fulfill its obligations, or where the supplier incurs losses as a result of the contracting authority’s refusal to accept the deliverables. Accordingly, it is important to emphasize the necessity of strengthening the liability of both suppliers and contracting authorities.

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немесе жанама тиесілі заңды тұлғалардың сатып алуды жүзеге асыру тәртібі. — [Электрондық ресурс]. — Қолжетімділік тәртібі: https://online.zakon.kz/Document/?doc_id=38404575&show_di=1.

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Жосықсыз өнім берушілердің тізілімі мемлекеттік мүдделерді қорғау және сатып алу саласындағы бұзушылықтардың алдын алу құралы ретінде

Мемлекеттік сатып алу жүйесі мемлекеттік органдар мен жеткізушілерді байланыстыратын қарым-қатынастар жиынтығын білдіреді. Азаматтық айналымның тұрақтылығының негізгі факторларының бірі — келісімшарттық қатынастар тараптарының адалдығы мен сенімділігі. Мемлекеттік сатып алу жүйесінің мақсаты мемлекеттік қаржыны тиімді басқару, бюджет қаражатын ұтымды пайдалануды қамтамасыз ету және қоғамдық мүдделерді қорғау. Мақалада елдің тендерлік ортасында туындайтын жосықсыз контрагенттердің азаматтық-құқықтық жауапкершілігінің теориялық және практикалық аспектілері қарастырылған. Зерттеудің мақсаты — мемлекеттік сатып алудағы жосықсыз жеткізушілердің азаматтық-құқықтық жауапкершілігінің ерекшеліктерін анықтау, оны нығайту, жосықсыз жеткізушілер тізілімін жүргізудің маңыздылығын арттыру және қажетті заңнамалық ұсыныстарды әзірлеу. Зерттеу барысында ұлттық және шетелдік заңнамаға салыстырмалы талдау жүргізілді, сондай-ақ сот практикасы зерделенді. Қазақстан Республикасының заңнамасында «жосықсыз жеткізуші» ұғымын бекіту және сатып алу секторын қолдайтын цифрлық платформаларда тиісті тізімдерді біріктіру ұсынылады. Зерттеудің әдістемелік негізін формальды-логикалық, салыстырмалы-құқықтық, ғылыми-талдамалық, статистикалық және тарихи-құқықтық әдістер құрайды.

Кілт сөздер: тендер, мемлекеттік сатып алу, азаматтық-құқықтық жауапкершілік, жосықсыздық, айыппұл, тапсырыс беруші, жеткізуші, тізілім, келісімшарт, портал.

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Реестр недобросовестных поставщиков как инструмент защиты государственных интересов и предотвращения нарушений в сфере закупок

Система государственных закупок представляет собой совокупность отношений, связывающих государственные органы и поставщиков. Одним из ключевых факторов стабильности гражданского оборота является честность и надежность участников договорных отношений. Целью функционирования системы государственных закупок выступает эффективное управление государственными финансами, обеспечение рационального использования бюджетных средств и защита общественных интересов. Статья посвящена теоретическим и практическим вопросам гражданско-правовой ответственности недобросовестных контрагентов, возникающих в сфере тендерных отношений в стране. Целью исследования заключается в выявлении особенностей гражданско-правовой ответственности недобросовестных поставщиков в сфере государственных закупок, ее усилении, повышении значимости реестра недобросовестных поставщиков и выработке необходимых законодательных предложений. В ходе исследования проведен сравнительный анализ национального и зарубежного законодательства, а также изучена судебная практика. Предлагается закрепление в законодательстве Республики Казахстан понятия «недобросовестный поставщик» и интеграция соответствующих реестров на цифровых платформах, обеспечивающих сферу закупок. Методологическую основу исследования составили формально-логический, сравнительно-правовой, научно-аналитический, статистический и историко-правовой методы.

Ключевые слова: тендер, государственные закупки, гражданско-правовая ответственность, недобросовестность, штраф, заказчик, поставщик, реестр, договор, портал.

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Принципы справедливости и законности в гражданском процессе: взаимосвязь и противоречия

В данной работе рассматривается сложная и многогранная взаимосвязь между принципами справедливости и законности в рамках гражданского процесса. Справедливость, как идеал, призванный обеспечить баланс интересов сторон и защиту их прав, зачастую вступает в противоречие с формальными требованиями законодательства, которые могут порождать нормы, не всегда учитывающие индивидуальные обстоятельства дела и интересы отдельных участников. В ходе анализа акцентируется внимание на том, как гарантии законности, предусмотренные процессуальным правом, могут как содействовать, так и препятствовать принятию и вынесению справедливых решений. Дополнительно рассматривается, каким образом судебная практика и доктрина современного гражданского процесса интерпретируют и реализуют данные принципиальные идеи, подчеркивая необходимость синергии между справедливостью и законностью для обеспечения эффективного и человеческого правосудия. Исследуются возможные пути гармонизации этих двух понятий, что имеет важное значение для дальнейшего развития гражданского процессуального законодательства в соответствии с международными стандартами защиты прав человека.

Ключевые слова: справедливость, законность, гражданский процесс, права сторон, процессуальное право, судебная практика, доктрина, эффективное правосудие, гуманные принципы, гармонизация, международные стандарты, защита прав человека.

Введение

Концепции справедливости и законности в рамках гражданского судопроизводства приобрели значительную роль в судебной системе. Президент нашей страны подчеркнул эту мысль во время своего недавнего выступления на IX съезде судей Республики Казахстан. К.К. Токаев акцентировал внимание делегатов и участников на важности обеспечения подлинной независимости и авторитета казахстанской судебной системы. Он заявил, что справедливый суд является ключевым фактором для стабильности и развития государства [1].

Актуальность проблемы соотношения принципов справедливости и законности в гражданском судопроизводстве сегодня сложно переоценить. В условиях глобализации и стремительных изменений в социокультурной и правовой среде вопросы обеспечения справедливости и законности становятся особенно актуальными. Они не только определяют качество правосудия, но и влияют на доверие граждан к судебной системе, что, в свою очередь, укрепляет правопорядок и стабильность в государстве.

Вопрос соотношения категорий справедливости и законности действительно является одной из ключевых тем юридической науки и в правоприменительной практике. Эти категории часто рассматриваются как взаимосвязанные, но не всегда совпадающие понятия.

Принцип справедливости правосудия, закрепленный как на международном, так и на национальном уровнях, представляет собой основополагающий элемент, обеспечивающий правовую основу для защиты прав и свобод личности. В частности, статья 14 Международного пакта о гражданских и политических правах 1966 года прямо указывает на необходимость обеспечения справедливого судебного разбирательства [2]. Аналогичные положения содержатся в статье 10 Всеобщей декларации прав человека, где закреплено: «Каждый имеет право на справедливый и публичный суд, состоящий из независимой и беспристрастной судьи». Эти положения подчеркивают, что каждое лицо имеет право на справедливое и публичное разбирательство дела, на законное и беспристрастное решение, а также на составление решения суда на основании фактических материалов дела [3].

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Национальные государства, будучи подписантами международных соглашений, обязаны внедрять требуемые для реализации нормы в свои правовые системы, однако это не всегда находит соответствующее отражение в национальном законодательстве отдельно взятой страны. Это затруднение также касается принципа справедливости.

Важно подчеркнуть, что осуществление принципа справедливости в национальных системах правосудия нуждается в комплексном подходе и адекватных механизмах контроля, которые на текущий момент фактически отсутствуют. Это приводит к тому, что суды сталкиваются с затруднениями при принятии судебных решений.

Методы и материалы

В данной статье применён аналитический метод для тщательного изучения ключевых понятий справедливости и законности, а также их взаимосвязи в рамках гражданского судопроизводства. Также был проведён сравнительный анализ различных правовых систем и подходов к этим понятиям. Использовался нормативный подход для анализа действующих законодательных актов, включая Гражданский процессуальный кодекс Республики Казахстан и международные правовые документы, такие как Международный пакт о гражданских и политических правах и Всеобщая декларация прав человека.

Для изучения исторического развития концепций справедливости и законности применялся историко-правовой метод, охватывающий период от древнегреческой философии до современных правовых систем. Этот подход использовался для иллюстрации теоретических идей посредством гипотетических примеров и фактических случаев из судебной практики, что позволило выявить несоответствие между законностью и справедливостью.

Обсуждение

В пункте 5 статьи 6 Гражданского процессуального кодекса Республики Казахстан закреплёно положение, согласно которому законодатель, исходя из принципа законности, наделяет суды полномочиями рассматривать дела с учетом критериев справедливости и разумности [4]. Данная норма акцентирует внимание на необходимости гармоничного сочетания формального соблюдения правовых норм с индивидуальными обстоятельствами конкретных дел, что предполагает обращение суда к морально-этическим и социальным аспектам при вынесении решений.

Возникает вопрос: позволит ли данный подход судебным органам гибко реагировать на разнообразные жизненные ситуации и эффективно обеспечивать защиту прав и законных интересов граждан, способствуя тем самым достижению справедливости в правоприменительной практике?

Противоречие между принципом законности и справедливости можно рассмотреть на гипотетическом примере.

Предположим, существует закон, предусматривающий строгое наказание за кражу вне зависимости от обстоятельств. В соответствии с ним человек, укравший хлеб, чтобы накормить своего голодного ребенка, может быть осуждён и лишен свободы на продолжительный срок. Это в полной мере соответствует принципу законности, согласно которому каждый должен в полной мере соблюдать и не нарушать нормы законодательства, в том числе и уголовного, устанавливающего ответственность за совершение кражи.

С точки зрения законности, законодатель сделал свое дело, и правосудие было применено, так как уголовное правонарушение было совершено, и закон был соблюден. Однако с точки зрения справедливости многие могут считать это решение несправедливым. В данном случае принцип справедливости подсказывает, что наказание за кражу хлеба в таких обстоятельствах непомерно жестоко и не учитывает смягчающие обстоятельства.

Таким образом, здесь возникает конфликт: законность требует соблюдения предписаний закона, в то время как справедливость требует учета моральных и других социальных аспектов, и конкретных обстоятельств.

Это противоречие приводит к необходимости реформы казахстанского законодательства в целях обеспечения его соответствия принципу справедливости, особенно в случаях, когда речь идет о гуманитарных или социально значимых аспектах.

Учитывая вышеизложенное, представляется необходимым провести теоретический анализ взаимосвязи понятий законности и справедливости. Еще в древнем Риме был провозглашен принцип: «*aequum et bonum est lex legum*», что переводится как «справедливость и общее благо — это закон».

законов» [5, 7]. Этот афоризм подчеркивает важность идеи справедливости, которая имеет большую значимость и в контексте законности.

Множество философов уделяли значительное внимание анализу взаимосвязи права и морали, и данная тема занимает важное место в трудах Гегеля. Он объединял понятие справедливости с процессом достижения истины в ходе осуществления правосудия, рассматривая это как единую мощную силу и признавая диалектическую связь между этими категориями. Более того, Гегель подчеркивал, что справедливость должна восприниматься как судьба, при этом она трактуется как нравственное начало, осознанное как подлинная справедливость [6, 4].

Особенно интересно, что современные юристы продолжают развивать эту тему, акцентируя внимание на принципе справедливости в судебных процессах. В этой связи можно отметить, что справедливость как юридическая норма становится не просто дополнением к процессуальному праву, но и его неотъемлемым элементом. Это доказывает, что законность и справедливость неразрывно связаны между собой, формируя целостное представление о правовой системе, где справедливость служит ориентиром для законного регулирующего действия.

Так, по мнению З.Х. Баймолдиной, справедливость является краеугольным камнем правосудия. Ученый предлагает предусмотреть норму-принцип и закрепить, что отправление правосудия по гражданским делам осуществляется на справедливых началах справедливым судом [7].

В свою очередь, Г.Ж. Сулейменова считает, что право на справедливое судебное разбирательство является общепризнанным международно-правовым принципом. Этот принцип означает, что деятельность суда должна осуществляться в интересах общества, государства, личности, а не в интересах одной из сторон процесса либо отдельных граждан, должностных лиц, тех или иных групп [8].

Подобное мнение высказала В.Т. Конусова, которая утверждает, что справедливость, являясь юридической аксиомой, устанавливает идеологические и нравственные основы, а также конкретные правовые гарантии для осуществления права на справедливое судопроизводство [9; 89].

В юридической литературе встречается мнение, согласно которому справедливость выступает критерием нравственных оценок и суждений наряду с добром, честностью, совестью и благородством. Поэтому общество придает справедливости нравственную интерпретацию в контексте функционирования общественных отношений, государства, права [10; 169].

Обобщая доктринальные подходы, можно рассматривать справедливость не только как некое мерило нравственных суждений и оценочное понятие, но и как правовой принцип, занимающий центральное место в общей правовой системе, отражающий демократические ценности современного общества. Общественное понимание справедливости и её интерпретация в контексте правовых отношений дают основание для формирования механизма защиты прав личности и обеспечения социальной справедливости. Это подчеркивает важность стремления к справедливому судебному процессу и необходимость его дальнейшего развития в соответствии с международными стандартами.

На практике суды при принятии решений нередко опираются на принцип справедливости, несмотря на то, что это условие не указано в законодательстве. Так, например, гр. К. подал иск в Бостандыкский районный суд г. Алматы на страховую компанию АО «Жусан Гарант» с требованием о выплате страхового возмещения [11].

В ходе судебного разбирательства выяснилось, что страховая компания действительно имела право отказаться от выплаты по договору из-за нарушения правил дорожного движения со стороны К. Однако пострадавший в результате аварии оказался в тяжелом финансовом положении, ему требовалась операция, и существовала реальная угроза его жизни.

Суд, рассматривая данное дело, столкнулся с противоречием между принципом законности, который обязывал его руководствоваться условиями договора и отказом страховой компании, и принципом справедливости, который требовал учесть тяжелое положение гражданина К.

Согласно принципу законности, суд не может игнорировать условия договора и правила, содержащиеся в страховом законодательстве. Условия об отказе выплачивать возмещение были четко прописаны в договоре страхования и потому были обоснованы и законны.

Согласно принципу справедливости, суд понимает, что отказ страховой компании может привести к серьезным и несправедливым последствиям для гражданина К., который не мог самостоятельно оплатить необходимые медицинские расходы.

В решении суд, ссылаясь на принцип справедливости, принял во внимание жизненные обстоятельства гражданина К. и вынес решение о частичном взыскании со страховой компании. Суд указал, что, хотя страховая компания и имеет основание для отказа в полном объеме, в данном случае, учи-

тывая моральные и этические аспекты, необходимо предоставить гражданину К. минимальную финансовую помощь, достаточную для покрытия его срочных медицинских нужд.

В 2021 году постановлением коллегией по гражданским делам Алматинского городского суда была приостановлена реализация заложенной квартиры сроком на один год. Коллегия при вынесении судебного акта сослалась на моральное и тяжелое жизненное положение ответчика. Судом в данном случае был применен критерий справедливости [12].

Данные дела иллюстрируют, как в гражданском процессе могут возникать разногласия между принципом справедливости и принципом законности. Суды, учитывая конкретные обстоятельства дела, решили действовать в интересах справедливости, несмотря на формальное право. Эти примеры подчеркивают важность гуманного подхода в правосудии, особенно в случаях, где закон может привести к тяжелым последствиям для людей.

Бывают и обратные случаи. В Алатауском районном суде г. Алматы было рассмотрено гражданское дело между двумя соседями — М. и С. М. владел земельным участком, на котором располагался его дом, а С. — соседним участком, на котором он также строил жилое здание. В процессе строительства С. установил забор на границе своих участков, не учтя нормы, предписанные коммунальными правилами, требовавшие отступления от границы в 1 метр. М., заметив нарушение, обратился в суд с иском о сносе забора. В ходе судебного разбирательства выяснилось, что забор действительно был установлен с нарушением установленных норм, и суд, принимая во внимание законность фактов, вынес решение в пользу М.: забор подлежал сносу [13].

Несмотря на то, что решение суда было полностью законным и основывалось на действующем законодательстве, оно оказало серьезные негативные последствия для С. Снос забора привел к тому, что его дом оказался под угрозой обрушения, так как забор фактически служил опорой для грунта, который сильно подмыт осадками. Более того, С. вложил значительные средства в строительство, и решение суда поставило под сомнение всю его работу.

С. пытался обратиться в суд с просьбой о пересмотре решения, указывая на сложившуюся ситуацию и справедливость, однако его иск был отклонён, поскольку решение о сносе забора было принято в полном соответствии с законом.

Этот случай поднимает важные вопросы о том, как закон иногда может быть строгим и не учитывать индивидуальные обстоятельства. Хотя суды в обязательном порядке должны следовать законодательству, в таких случаях, как у С., может возникнуть ощущение несправедливости: легитимные действия привели к значительным потерям и неудобствам для законопослушного гражданина.

В таких ситуациях может потребоваться внесение изменений в законодательство, чтобы суды могли учитывать не только букву закона, но и последствия своих решений, или развитие правовых механизмов, позволяющих разрешать подобные конфликты более гибко.

Результаты

Справедливость, как моральный стержень всего гражданского судопроизводства, выступает главным критерием его нравственной обоснованности [10, 170].

В данном случае подчеркивается важность справедливости в контексте гражданского судопроизводства. Справедливость рассматривается как основополагающий критерий, который определяет нравственную обоснованность процесса судебного разбирательства. Это означает, что судебные разбирательства должны не только следовать установленным законам, но и учитывать моральные аспекты, чтобы обеспечить защиту нарушенных прав, свобод и законных интересов сторон.

Несправедливость, произошедшая в ходе судебного разбирательства, вызывает сильную негативную реакцию у общества, что связано с высокими этическими требованиями к судебной системе. Каждая сторона гражданского процесса имеет право на обжалование судебного решения, что является важным средством защиты своих прав и законных интересов. Это право подчеркивает свою значимость благодаря статистическим данным Конституционного суда. За 2024 год 18,7% от общего числа поданных дел опирались на предположение о несогласии с судебными актами [14].

Таким образом, справедливость выступает не просто как идеал, к которому стремятся суды, но и как практическое руководство для решения конкретных дел. Важно, чтобы суды не теряли из виду этот моральный аспект, чтобы их решения были восприняты обществом как справедливые и обоснованные. Это подчеркивает необходимость сочетания правовых норм с нравственными принципами для достижения справедливых и сбалансированных результатов в гражданском судопроизводстве.

Справедливость требует гибкости и адаптации к жизненным реалиям, что подразумевает необходимость анализа каждого случая индивидуально. Это особенно актуально в ситуациях, где человеческие жизни и благополучие зависят от разумного принятия решений судьями и прокурорами. В данном контексте важно, чтобы правовая система была способна реагировать на потребности общества и обеспечивать защиту самых уязвимых его членов.

Выводы

Предложения по внесению изменений в процессуальное законодательство предполагают важные шаги для увязки принципа справедливости с принципами гражданского судопроизводства. Вот краткий итог и основное содержание наших предложений:

Следует ввести принцип справедливости в ГПК РК: в пункте 5 статьи 6 ГПК РК предлагаем заменить фразу *критерий* справедливости фразой *принцип* справедливости. «Если законом или соглашением сторон спора предусматривается разрешение соответствующих вопросов судом, суд обязан разрешать эти вопросы, исходя из критериев разумности и *принципов справедливости*». Данная формулировка будет способствовать закреплению принципа справедливости как одной из ключевых задач гражданского судопроизводства.

Далее, необходимо закрепить и дать авторское определение понятия «справедливости», для чего, по примеру принципов законности и обоснованности, стоит изложить базовое понятие справедливости в Нормативном постановлении Верховного Суда РК. В частности, справедливость может быть определена как принцип, обеспечивающий равные права и возможности для всех участников судебного процесса, основанный на моральных и этических ценностях, а также на соблюдении норм законодательства. Справедливость предполагает, что каждое дело рассматривается с учетом индивидуальных особенностей, с адекватным учетом законодательных норм и правовых принципов, что способствует защите прав и законных интересов сторон.

Упоминание практики Верховного Суда и использование базовых определений принципа справедливости в качестве отсылки создают основу для правовой определенности в данной области.

В заключение следует отметить, что справедливость как моральный стержень гражданского судопроизводства является ключевым принципом, который не только определяет нравственную обоснованность судебного процесса, но и формирует его практическое содержание. Учитывая важность справедливости, необходимо внести соответствующие изменения и дополнения в процессуальное законодательство, которые бы позволили этот принцип более точно закрепить в правовой системе.

Предложенные рекомендации по пересмотру отдельных положений ГПК РК, а также определение понятия «справедливость» в нормативных актах Верховного Суда, создают необходимую основу для достижения высоких стандартов справедливости в судебных разбирательствах. Это, в свою очередь, не только повысит доверие общества к судебной системе, но и обеспечит защиту прав и законных интересов всех участников процесса.

Кроме того, гибкость и адаптивность правовой системы к реальным условиям и потребностям общества будут способствовать тому, чтобы судебные решения воспринимались как справедливые и обоснованные. Необходимо, чтобы суды принимали во внимание индивидуальные обстоятельства каждого дела, исходя не только из буквы закона, но и из нравственных ценностей, тем самым наглядно демонстрируя приверженность принципу справедливости.

Итак, справедливость в гражданском судопроизводстве — это не просто идеал, к которому стремятся юристы, но и практическое руководство в достижении справедливых, сбалансированных и этически обоснованных результатов. Таким образом, для обеспечения полноценного осуществления правосудия необходимо продолжать обсуждение и разработку методов, направленных на более глубокое внедрение принципа справедливости в судебную практику.

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Н.Р. Максатов, Ли Шань

Азаматтық процестегі әділеттілік пен заңдылық принципі: өзара байланыс және қайшылықтар

Мақалада азаматтық процесс шеңберіндегі әділеттілік пен заңдылық принциптері ұғымдары арасындағы күрделі және көп қырлы байланыс қарастырылған. Әділдік тараптардың мүдделерінің тепе-теңдігін және олардың құқықтарын қорғауды қамтамасыз етуге арналған идеал ретінде, көбінесе істің жеке жағдайларын әрдайым ескермейтін нормаларды тудыруы мүмкін заңнаманың ресми талаптарына қайшы келеді. Талдау барысында іс жүргізу құқығында көзделген заңдылық кепілдіктері әділ шешімдерге қол жеткізуге қалай ықпал ететініне және қалай кедергі келтіретініне назар аударылады. Сонымен қатар, сот практикасы мен заманауи азаматтық процестің доктринасы осы принципті идеяларды қалай түсіндіреді және жүзеге асырады, тиімді және адами сот төрелігін қамтамасыз ету үшін әділеттілік пен заңдылық арасындағы синергияның қажеттілігін көрсетілген. Адам құқықтарын қорғаудың халықаралық стандарттарына сәйкес азаматтық іс жүргізу заңнамасын одан әрі дамыту үшін маңызды болып табылатын осы екі ұғымды үйлестірудің мүмкін жолдары зерттелген.

Кілт сөздер: әділеттілік, заңдылық, азаматтық процесс, тараптардың құқықтары, іс жүргізу құқығы, сот практикасы, доктрина, тиімді сот төрелігі, адамгершілік принциптері, үйлестіру, халықаралық стандарттар, адам құқықтарын қорғау.

N.R. Maxatov, Li Shan

The principle of justice and legality in civil proceedings: interrelationships and contradictions

This study examines the complex and multifaceted relationship between the concepts of the principles of justice and legality in the framework of civil procedure. Justice, as an ideal designed to ensure a balance of interests of the parties and the protection of their rights, often comes into conflict with the formal requirements of legislation, which may give rise to norms that do not always take into account the individual circumstances of the case. The analysis focuses on how the guarantees of legality provided for by procedural law can both facilitate and hinder the achievement of fair solutions. Additionally, it examines how judicial practice and the doctrine of modern civil procedure interpret and implement these fundamental ideas, emphasizing the need for synergy between justice and legality to ensure effective and humane justice. Possible ways of harmonizing these two concepts are explored, which is important for the further development of civil procedure legislation in accordance with international standards for the protection of human rights.

Keywords: justice, legality, civil procedure, rights of the parties, procedural law, judicial practice, doctrine, effective justice, humane principles, harmonization, international standards, protection of human rights.

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**КОНСТИТУЦИОННОЕ, АДМИНИСТРАТИВНОЕ, МЕЖДУНАРОДНОЕ, ЭКОЛОГИЧЕСКОЕ
И ЗЕМЕЛЬНОЕ ПРАВО**
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