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Әскери қызметшілердің құқықтарын қорғау тетіктері: салыстырмалы-құқықтық талдау

Мақала Қазақстан Республикасы және кейбір шет мемлекеттердегі әскери қызметшілердің құқықтарын қорғау тетіктеріне салыстырмалы-құқықтық талдау жүргізуге және жеке тұлғаның құқықтарына конституциялық кепілдіктер мен әскери тәртіп талаптары арасындағы тепе теңдікті қамтамасыз ету бойынша тиімді жақтарын анықтауға арналған. ХХІ ғасырда қазіргі орын алып жатқан кез келген мемлекеттік немесе жеке қатынас түрі алдымен адам құқықтарының жүзеге асырылуымен, оларды қорғау тетіктерінің толықтығымен тікелей байланысты. Зерттеу мақсаты — шет елдердегі әскери қызметшілердің құқықтарын қорғау ерекшеліктеріне салыстырмалы-құқықтық талдау жүргізу арқылы тиімді құқық қорғау үлгісін анықтау. Зерттеу барысында салыстырмалы-құқықтық, формальды-заң, жүйелік құрылымдық және адам құқықтарын қорғау бойынша тәжірибелерге талдау жүргізу әдістері қолданылды. Зерттеу аясында Қазақстан Республикасының, Ресей Федерациясының, Германия, Швеция Республикаларының, Америка Құрама Штаттарының әскери саладағы заңнамаларына талдаулар жасалды. Нәтижесінде әскери қызметшілердің құқықтарын қорғауда ведомствалық, соттық, парламенттік, халықаралық бақылауды қамтитын көпдеңгейлі құқық қорғау үлгісінің тиімділігі анықталып отыр. Қазақстан мен Ресейде адам құқықтарын қорғау үлгісі көбіне әкімшілік, орталықтандырылған негіздегі тетіктер басым болса, өзге мемлекеттерде тәуелсіз бақылау рөлінің маңыздылығы жоғары сипатқа ие. Зерттеу қорытындысы Қазақстан заңнамасын жетілдіру және әскери қызметшілердің құқықтарын қорғаудың институционалдық тетіктерін енгізуді қажеттігін нақтылайды. Адам құқықтарына қатысты заңнамаларды түзету енгізу және қорғаудың тиімді шараларын енгізу тәжірибелік мәнге ие.

Кілт сөздер: әскери қызметші, құқық, бостандық, қорғау, омбудсмен, әскер, тетік, ұлттық құқық, халықаралық стандарттар, бақылау.

Kipicne

Әскери қызметшілердің құқықтарын қорғау қазіргі құқық саласының күрделі, әрі көптеген пікірталас тудырып отырған мәселенің бірі. Әскери қызмет өзінің табиғаты бойынша бекітілген конституциялық құқықтар мен бостандықтардың мемлекеттің қорғаныс қабілеттілігі және белгілі бір әскер саласындағы тәртіптің талаптарына байланысты шектеулер орын алатын қызмет түрі болып келеді. Алайда, мұндай шектеулер жайдан жай қойыла салмайды, олар тиісті заң қағидаларын сақтай отырып заңды негізде және демократиялық қоғам қажеттілігіне пара-пар сәйкес дәрежеде болуы қажет.

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Зерттеудің өзектілігі бірқатар факторларға негізделеді. Біріншіден, адам құқықтары саласындағы халықаралық стандарттардың нығаюы жағдайындағы әскери қызметшінің құқықтық мәртебесінің түрленуі. Екіншіден, әскери қызметшілердің еңбек құқықтарын жүзеге асыру және жауапкершілік мәселелері мен әлеуметтік кепілдіктерге байланысты даулар. Үшіншіден, жаһандану дәуірінде ұлттық құқық қорғау үлгілерін жетілдіру қажеттігі.

Қазақстан Республикасындағы әскери қызметшілердің құқықтық мәртебесі 2012 жылы қабылданған «ҚР Әскери қызмет және әскери қызметшілердің мәртебесі туралы» Қазақстан Республикасының заңымен [1], Ресей Федерациясында 1998 жылы қабылданған «Әскери қызметшілердің мәртебесі туралы» заңымен [2], Германияда 2005 жылы қабылданған «Әскери қызметшілердің құқықтық мәртебесі туралы» заңымен (Gesetz über die Rechtsstellung der Soldaten) [3], Америка Құрама Штаттарында 1950 жылы қабылданған Біртұтас әскери әділет кодексі (Uniform Code of Military Justice) [4] және 2002 жылы қабылданған Американдық әскери қызметшілерді қорғау туралы (American Service-Members' Protection Act) [5] және тағы басқаларымен реттеледі.

Бірнеше мемлекеттердің әскери қызмет саласын және әскери қызметшілердің құқықтарын қорғауы бойынша салыстырмалы талдау құқық қорғау тетіктерінің даму заңдылықтары мен тиімді үлгілерін анықтауға мүмкіндік береді.

Жұмыста Қазақстан, Ресей, Германия және АҚШ сияқты мемлекеттердің құқық жүйелеріне салыстырмалы-құқықтық талдау жүргізу негізінде әскери қызметшілердің құқықтарын қорғау тетіктерінің ортақ әрі тиімді үлгісін әзірлеу зерттеуіміздің мақсатын айқындап отыр.

Қойылған мақсаттар келесі негізгі міндеттердің шешілуі негізінде орындалады:

- әскери қызметшілердің құқықтық мәртебесінің нормативтік-құқықтық негіздеріне талдау жасау;
- Қазақстан Республикасы және шет мемлекеттердің заңнамаларына талдау жүргізу;
- қорғау тетіктеріндегі кемшін тұстарды анықтап, жақсарту бойынша ұсыныстар әзірлеу;
- зерттеу мәселесі бойынша ғылыми көзқарастарды топтастыру, сыни тұрғыда баға беру.

Әр мемлекетте адам құқықтарын қорғау саласында әртүрлі тетіктерінің қалыптасқаны байқалса да, олардың көбісі адам құқықтары жөніндегі халықаралық стандарттарды сақтауға тырысатыны көрінеді. Мемлекеттерде тек жалпы стандартқа деген қатынасы, олардың жүзеге асырылуы әртүрлі. Салыстырмалы талдау жүргізіліп отырған мемлекеттердің адам құқығының басымдығы теориясын ұстанатындары олардың жалпы халықаралық стандарттарды барынша интеграциялауы, соттық бақылауды жүзеге асыруларынан байқалады. Мысалы, Германия мен Швед мемлекеттері кеңейтілген парламенттік бақылауды дамытып отыр, АҚШ болса сот кепілдіктеріне және әскери әділет институтына көбірек назар аударады, Қазақстан мен Ресей мемлекеттері орталықтандырылған әкімшілік үлгіні сақтап келеді.

Ғылыми әдебиеттерге жүргізілген зерделеу жұмыстары көптеген еңбектердің жекелеген ұлттық үлгілерге, соттық немесе соттан тыс қорғау немесе қадағалау мәселелеріне арналған. Адам және азаматтың құқықтары мен бостандықтарының қорғалуы мәселелерінің теориялық және тәжірибелік сұрақтары А.Ф. Сулейманов пен А.В. Кацайлиди еңбектерінде көрініс тапқан. Шет елдердегі әскери қызметшілердің құқықтарын қорғаудағы қызметі, тәуелсіз бақылау, азаматтық бақылау, құқықтық ағарту сұрақтарының және Конституциялық Сот қызметінің әскери қызметшілердің құқықтарын қамтамасыз етуде маңыздылығы жайындағы мәселелер С. Valea, К. Sofia, М. Янович, С. Хантингтон, М.Т. Жунусова сияқты ғалымдардың еңбектерінде қарастырылады.

Онымен қоса, қорғау тетіктерінің салыстырмалы зерттеу дәрежесі толық зерттеу жүргізуді қажет етеді. Әскери қызметшілердің құқықтарын қорғау үлгілерінің құрылымдық топтамасы, халықаралық стандарттардың ішкі құқықтық режимге ықпалы, салыстырмалы талдауларға қатысты зерттеулер жеткіліксіздігі байқалады.

Біз көпдеңгейлі құқық қорғау жүйесі тұжырымдамасын негізге ала отырып, әскери қызметшілердің құқықтарын тиімді қорғауды қамтамасыз ету — ішкі әкімшілік тетіктері, халықаралық кепілдіктер, құқық үстемдігі және құқықтық мәдениет пен құқықтық сауаттылықты арттыру шаралары бірігіп, үйлесім тапқан жағдайда мүмкін болады деп пайымдаймыз. Сонымен қатар әскери қызметшілердің құқықтарын қорғаудағы тиімді үлгі әскери тәртіп пен адам құқықтары арасында тепе-теңдік орын алғанда болары сөзсіз.

Әдістер мен материалдар

Әскери қызметкерлердің құқықтарын қорғау тетігіне, оларды әр мемлекеттерде қамтамасыз ету сұрақтарын жан-жақты зерттеуді жүргізуде зерделенген отандық және шет елдік ғалымдардың ғылыми еңбектері зерттеудің теориялық негізін құрады. Және де мемлекетіміздегі адам құқықтарына қатысты құқықтық актілер: адам және азамат құқықтарының бастауы бекітілген — «Қазақстан Республикасының Конституциясы» [1], әскери қауіпсіздік пен қорғанысты қамтамасыз етуші әскери қызметшінің құқықтық мәртебесін арттыруда маңызды болып табылатын Қазақстан Республикасы жалпы әскери қызмет саласын реттейтін «Әскери қызмет және әскери қызметшілердің мәртебесі» туралы Қазақстан Республикасының Заңы [2], Қазақстан Республикасындағы «Адам құқықтары жөніндегі уәкіл туралы» ҚР Конституциялық Заңы [3], «Қазақстан Республикасының Қорғаныс және Қарулы Күштері туралы» ҚР заңы және де адам құқықтары бекітіліп, қарастырылған халықаралық құқықтық құжаттар, стандарттар, Ресей Федерациясының «Әскери қызметшілердің мәртебесі туралы» заңы [4], Германияда «Әскери қызметшілердің құқықтық мәртебесі туралы» заңы (Gesetz über die Rechtsstellung der Soldaten) [5], Америка Құрама Штаттарының «Біртұтас әскери әділет кодексі» (Uniform Code of Military Justice) [6], «Американдық әскери қызметшілерді қорғау туралы» заңы (American Service-Members' Protection Act) [7] және тағы басқалары зерттеудің нормативтік негізін құрады.

Зерттеудің теориялық негізі болған ғылыми еңбектер мен нормативтік актілерді зерделеуде талдау қолданылды, жалпы адам құқықтарын бекіткен отандық және халықаралық актілерді зерделеу барысында салыстырмалы-құқықтық әдіс қолданылса, әскери қызметшілердің негізгі құқықтарының пайда болуы, бекітілуі және дамуы сұрақтарын қарастыру барысында тарихи және нормативтік талдау әдістері пайдаланылды.

Қолданылған әдістер Қазақстан Республикасы және кейбір шет мемлекеттердегі адам құқықтары және әскери қызметшілердің құқықтарының қамтамасыз етілуі деңгейін анықтауда, баға беруде, салыстырмалы талдау жүргізу негізінде қорытындылар жасап, тиімді ұсыныстар әзірлеуде септігін тигізді.

Және зерттеу барысында мемлекеттердегі әскери қызмет, әскери қызметшілердің құқықтарының бағыттарына арналған келісімдер, халықаралық ұйымдардың актілері, есептері, сонымен қатар зерттеуге қатысты ғалымдардың ғылыми еңбектер мен ізденістері сараланды.

Аталған тақырыпты кеңінен аша түсу мақсатында болашақ отан қорғаушылар, әскери міндетті азаматтардың арасында әскери қызметшілердің құқықтық мәртебесі, жалпы құқықтары мен міндеттері жайында көзқарастарын, ойларын білу үшін жүргізілген сауалнама нәтижелері зерттеу міндеттерін шешуде, ұсыныстар әзірлеуде өз көмегін берді.

Нәтижелер

Әскери қызметшінің құқықтық мәртебесі мемлекет қорғанысындағы міндеттермен байланысты арнайы шектеулермен және жалпы азаматтық құқықтармен сипатталатын арнайы құқықтық мәртебе түрі. Әдетте мемлекет және құқық теориясында мәртебе құқықтар мен міндеттердің жиынын және оларды жүзеге асырудағы берілген кепілдікпен анықталады. Әскери қызметшіні өзге мемлекеттік қызметшілерге қарағанда мемлекеттен жоғары заңдық бағыныштылыққа ие болуы өзгешелейді. Олар жүріс-тұрыс қозғалысының шектелуі, қарапайым азаматтарға берілген әрекеттердің әскери қызметшіге заңмен тыйым салынуы, арнайы тәртіптік режим, жауапкершілікке тартудың ерекше тәртібінің болуы сияқты ерекшеліктерден тұрады.

Алайды, бұл тыйым салулар мен шектеулер олардың жалпы құқықтарының шектелуді және құқықтық қорғау тетіктерінің оларға қатысы жоқ дегенді білдірмейді. Әр мемлекет өздерінің құқықтық жүйесіне, ұстанатын саясаттарына және мемлекет қорғанысы бағыттарын реттеуіне байланысты әртүрлі құқықтық реттеуді, әскери қызметшілерді құқықтық қорғаудың өздеріне тән тетіктерін енгізеді, жүзеге асырады.

Бірқатар мемлекеттерге қалыптасқан әскери қызметшілердің құқықтарын қорғау тетіктерін зерттей келе, Қазақстан Республикасында, Ресей Федерациясында, Германия, АҚШ және Швеция елдерінің барлығы жалпы халықаралық-құқықтық бағытта біржақты болғанымен ұлттық үлгілерінде институционалдық құрылымы бойынша айырмашылықтары бары анықталды. Талдау жасалып отырған мемлекеттердің барлығы халықаралық құқықтың негізгі қағидаларын, адам құқығы

саласындағы халықаралық стандарттарды сақтауға міндетті. Алайда, орындалуы тиіс міндеттемелердің іске асырылу тәсілдері әрқалай қалыптасқан.

Жүргізілген салыстырмалы-құқықтық талдау зерттеліп отырған мемлекеттерде әскери қызметшілердің құқықтарын қорғау тетіктерінің келесідей көп деңгейлі құрылымын анықтауға мүмкіндік берді. Олар: 1) Конституциялық кепілдіктер (құқықтардың жалпы деңгейі); 2) Салалық заңнама (әскери қызметшілердің арнайы мәртебесі); 3) Шағым берудің әкімшілік процедуралары; 4) Сотта және соттан тыс қорғау тетіктері (әскери және азаматтық соттар); 5) Парламенттік бақылау; 6) Халықаралық құқықтық тетіктер.

Қазақстан Республикасында әскери қызметшілердің құқықтық мәртебесі 2012 жылы 16-ақпанда қабылданған «ҚР Әскери қызмет және әскери қызметшілердің мәртебесі туралы» Қазақстан Республикасының заңымен анықталады. Заңға сәйкес қорғау тетігі лауазымды тұлғаның шешімдеріне сотқа шағымдану, ақшалай ризық пен әлеуметтік төлем кепілі, тәртіптік өндіріс, республика азаматтары ретінде адам құқықтары жөніндегі уәкілге жүгіну құқығы сияқты негізгі кепілдіктер мен құқық қорғау тетіктерін қамтиды.

Отандық құқық қорғау тетігі үлгісінің ерекшелігі ретінде дауларды шешудің әкімшілік тәсілдерінің басым болуы және салыстырмалы түрде тәуелсіз әскери құқық қорғау институттарының жеткіліксіздігін айтуға болады.

Ресей Федерациясында 1998 жылы 27-мамырда қабылданған «Әскери қызметшілердің мәртебесі» туралы заңда әскери қызметшілердің құқықтарын сот арқылы қорғай алатыны, әлеуметтік кепілдіктердің кең көлемінің қарастырылуы, әскери горнизондық соттар арқылы, жоғары бас қолбасшы — Президентке арыздана алатыны, Ресей аумағындағы адам құқықтары жөніндегі Уәкілге көмек алу үшін жүгіне алатыны, әскери прокуратура тарапынан бақылау қарастырылған. Дегенмен, әскери қызметшілердің құқықтарын қорғау ісімен айналысатын шетелдік заңгер адвокаттар биліктің әкімшілік органына жіберілген құқықтарды қорғауға қатысты арыз шағымдар кепілді түрде жылдам қарастырылатынын, алайда құқық бұзушылықтар орын алғаны жөніндегі шағымдар әрқаз әкімшілік тәртіпте қарастырылмайтыны байқалады [8]. Ресейлік үлгі әскери әділетпен жүйесінің басымдығымен сипатталады, алайда парламенттік мамандандырылған бақылау жоқ.

Швецияда әскери қызметшілердің құқықтарын қорғаудың құқықтық тетігі жалпы құқықтық институттар арқылы жүзеге асырылады. Швеция мемлекетінің қарулы күштері демократиялық, құқықтық мемлекет қағидалары шеңберінде қызмет атқарады және әскери қызметшілер құқықтар мен бостандықтардың кең азаматтық кепілдіктерге ие. Сонымен бірге швед азаматтары жалпы қорғанысқа қатысуға міндетті. Оған сәйкес барлық азаматтар соғыс және соғыс қаупі төнген сәтте дайын болып, қажеттілік туған кезде әскери бөлімдерге орналастырылады. Бұл жүйе азаматтардың мемлекеттің қорғанысына қатысудағы құқықтық негізді қамтиды және әскерге шақырылушылар мен әскери қызметшілердің қызмет барысында құқықтарын қатаң сақтауды қамтамасыз етеді. Ел заңнамасы әскери қызметшілердің заңға сәйкес әрекет етіп, өзге тұлғалардың құқықтарына құрметпен қарауды, соның ішінде, құқықтық мемлекеттің негізгі қағидасының айқын көрінісі болып табылатын дауларды тәуелсіз соттарда қарастыру негізін бекітеді [9].

Салыстырмалы талдау АҚШ пен Германияда әскери қызметшілердің құқықтарын қорғау тетіктері көбінесе тәуелсіз бақылау мен сыртқы бақылауға, яғни сот жүйесіне және уәкіл институты қызметіне, әскери соттар мен арнайы құқықтық институттарға бағытталғанын көреміз. Ал, Қазақстан мен Ресейде қорғау тетіктері ішкі әкімшілік және арнайы әскери сот төрелігі қызметі басым. Бұл елдерде сыртқы тәуелсіз бақылау институттарының шектеулі екенін байқаймыз.

Швед моделі — бұл интеграцияланған жүйе, мұнда әскери қызметшілерді құқықтық қорғау адам құқықтары қағидасы және азаматтық соттар арқылы іске асырылады, онымен бірге жаппай қорғаныс (total defence) қызметінде қолданылатын арнайы тәртіптік нормаларда сақталады.

Қол жеткізілген нәтижелердің жаңалығын келесілер құрайды:

Кешенді салыстырмалы үлгі зерттеу жүргізілген мемлекеттердегі әртүрлі құқықтық жүйені біріктіреді және әскери қызметшілердің құқықтарының қорғалуы тек заңды сипаттағы нормалардың болуына ғана емес, оларды институционалдық іске асыру тәсілдеріне де (тәуелсіз омбудсмендер, уәкілдер, азаматтық соттар, бақылаудың өзге де тетіктері арқылы) байланысты екенін анықтайды.

Шведтік үлгіні гибриді модель ретінде бөліп айтуға болады. Онда қорғау тетіктері азаматтық құқықтық жүйеге және тәртіптік ережелермен біріктірілген. Бірақ сонымен бірге қоғамның жалпы құқықтық контекстінде әскери қызметшілердің құқықтары мен бостандықтарын қамтамасыз етуге баса назар аударылады. Бұл тәсіл әкімшілік рәсімдердің үстемдігі бар модельдерден (Қазақстан,

Ресей) және әскери әділет институционализациясы бар модельдерден (Германия, АҚШ) ерекшеленеді.

Швециядағы әскери қызметшілердің тәртіптік жауапкершілігі қолданыстағы азаматтық заңнамадан ажыратылмағаны көрсетілген, бұл жеке әскери әділет қолданылатын жүйелермен салыстырғанда құқықтық кепілдіктерді күшейтеді.

Қол жеткізілген нәтижелер терең салыстырмалы-құқықтық талдау ретінде алға қойылған мақсаттар мен міндеттерге сәйкес келеді. Нәтижелер: әскери қызметшілердің құқықтарын қорғаудың ұлттық тетіктерінің мазмұны мен ерекшеліктерін анықтайды; халықаралық стандарттармен салыстырулар жасалынды; әскери қызметшілер құқықтарының қорғалу деңгейіне әсер ететін негізгі институционалдық факторларды айқындайды; тәуелсіз сыртқы құқық қорғау институттары жоқ жүйелердегі әлсіз тұстарды анықтайды. Мысалы, Швецияда қорғаныс тетіктері демократиялық сот төрелігінің жалпы құқықтық принциптеріне негізделіп, *total defence* контекстінде қолданылатын тәртіптік нормаларды қолдана отырып, әскери қызметшілерге азаматтық соттарға қол жеткізуге және олардың әскери иерархиядан тыс құқықтарын құрметтеуге мүмкіндік береді. Бұл адам құқықтарын қорғаудың халықаралық стандарттарына сәйкес келеді және ұлттық жүйенің қорғаныс саласындағы құқықтық мемлекет пен заң үстемдігінің міндеттерін жүзеге асыратынын көрсетеді.

Талқылау

Зерттеу барысында әскери қызметшілердің құқықтарын қорғаудың әртүрлі тұжырымдамалық тәсілдері талданды. Ғалымдардың, сарапшылардың және құқықтық жүйелердің ұсынылған ұстанымдары мәселені сипаттап қана қоймай, теориялық ережелердің ішкі құқықтық жүйелер мен халықаралық стандарттардағы құқық қолдану тәжірибесімен сыни тұрғыдан байланыстыруға мүмкіндік береді.

Адам және азаматтың құқықтары мен бостандықтары әркез жалпы мемлекет пен құқық дамуы кезеңіндегі басты маңызды сұрақтардың қатарынан табылып келеді. Оған дәлел ретінде әлемдік деңгейде Біріккен Ұлттар Ұйымы қабылдаған «Адам құқықтары туралы» Жалпыға бірдей декларация бекіткен адамның құқықтары мен бостандықтарының мемлекеттердің өз заңдарына енгізуін айтуға болады [10]. Бұл үрдіс Қазақстан Республикасының Конституциясында көрініс тауып, кепілдік берілген адам құқықтары мен бостандықтары тізімімен жалғасып отыр. Осы ретте әскери қызметшілерінің құқықтық мәртебесімен байланысты сұрақтар маңыздылыққа ие. Негізгі құқықтарды мойындау, бекіту, оларды жүзеге асыру және қамтамасыз ету сұрақтары да үнемі күн тәртібінде тұратын мәселелердің қатарында. Әскери қызметтегі адам құқықтары мен бостандықтарын қорғау механизмі бұл мемлекет тарапынан жүргізілуі тиіс кешенді шаралардың шеңберінен тұрады. Мемлекеттегі саяси, қорғаныс, қауіпсіздік және өзге мемлекеттермен ынтымақтастық саласындағы өмірінің үнемі өзгеріп, дамып отыруы елдегі әскери қызмет саласына деген көзқарастың нақтыланып, дамуымен шартты болып келеді.

Әскери қызметтегі адам құқықтарын қорғауды қамтамасыз ету сұрақтары отандық және шет елдік ғалымдардың еңбектерінде қарастырылғанымен әлі күнге дейін өзіндік дербес ғылыми зерттеу бағыты ретінде қалыптаспаған. Қазақстандық заң ғылымында адам құқықтары мен бостандықтарының іргелі негізі адам құқықтарын конституциялық құндылық ретінде қарастырған ғалымдар ұстанымы әскери қызметшілердің құқықтарының шектелуі шектеріне деген теориялық негізді қалыптастырады.

Ғалым А.Ф. Сулеймановтың пікірінше, адам және азаматтың құқықтары мен бостандықтарының қорғалуы мәселелерінің теориялық және тәжірибелік тұрғыда оң шешімін табуы мемлекет пен қоғамның тағдырына тікелей ықпал етеді. Бұл пікірде тағы маңызды мәселе мемлекет пен қоғам тағдыры онда өмір сүріп жатқан азаматтардың сол мемлекетті қорғауға, қауіпсіздігін қамтамасыз етуге деген дайындығы деңгейіне байланысты. Ол дайындық алдымен азаматтардың құқықтық қорғалуы дәрежесіне, жан-жақты қамтамасыз етілуіне тәуелді [11; 38].

Адам құқықтары мен бостандықтарын қамтамасыз ету тәжірибесінде 2022 жылғы конституциялық реформа нәтижесінде құрылған Қазақстан Республикасының Конституциялық Сотының қызметінің маңызы зор.

Зерттеуші М.Т. Жунусова Қазақстан Республикасының аумағында азаматтардың құқықтары мен бостандықтарын қамтамасыз етуді реттейтін институционалдық негіздердің дамуын және қалыптасуына зерттеу жасай келе, Қазақстан Республикасының Конституциялық Соты институты

және басқа да құралдар бұл бағыттағы жұмыстарды тиімді атқарылуының кепілі бола отырып құқық қорғаушылық механизмдердің тиімділігін арттырады деп санайды [12; 53].

Сонымен бірге шет елдік ғалым D.C. Valea адам құқықтарын қорғау механизміндегі маңызды мекеме Конституциялық Соттың жалпы міндеттерін саралай отырып, аталмыш мекеменің негізгі міндеттерінің дұрыс орындалуы мемлекеттегі жалпы адам құқықтарының сақталуын және адам құқықтарының зиян келтіретін қандай да бір халықаралық келісімдердің жасалмауына кепіл болуы тиіс және де олар қабылдаған барлық шешімдер құқықтық ағарту шараларын қамтамасыз ету үшін жариялануы тиіс екенін мәлімдейді [13].

Бүгінгі күні расымен де ел азаматтарының өз құқықтарын қалпына келтіру мақсатында қайта құрылған Конституциялық Сотқа жүгіне алуы тәртібі мемлекет тарапынан азаматтар үшін жасалып отырған маңызды қадам. Бұл да бір әскери қызметшілердің құқықтарының қорғалуы саласында өз орнын алар тиімді әрі қажетті қадамдардың басы болмақ.

C. Хантингтон «The Soldier and the State» классикалық зерттеуінде Қарулы Күштерді азаматтық бақылау демократияның элементі ғана емес, сонымен қатар тәртіп пен жеке құқықтар арасындағы қақтығыстарды шешуде әскери қызметшілердің құқықтарын сақтаудың кепілі екенін атап өтеді [14].

M. Янович армия қоғамнан оқшауланбауы керек және әскери қызметшілердің құқықтары құқықтық мемлекеттің жалпы тетіктеріне енуі керек деген тезисті дамытады. Бұл тәсіл азаматтың құқықтық мәртебесі мен әскери қызметшінің қызметтік мәртебесі арасындағы алшақтықты азайтады, құқықтық қақтығыстар қаупін азайтады [15].

Германияның «Staatsbürger in Uniform» доктринасы және соған сәйкес зерттеулер әскери қызметшілер заң субъектілері азаматтар болып қала беретінін көрсетеді. Германия Федеративтік Республикасында парламенттік комиссар институты (Wehrbeauftragter) жұмыс істейді, ол әскери қызметшілердің құқықтарының сақталуын тәуелсіз бақылауды жүзеге асырады және Парламентке азаматтық қадағалауды күшейтетін және құқықтық механизмдерге сенімділікті арттыратын бұзушылықтар туралы хабарлайды.

Швед моделін зерттей келе, әскери қызметшілердің құқықтары мемлекеттік билік пен азаматтық бақылау тетіктерінің үйлесімі арқылы қорғалатынын, бұл жеке құқықтар мен қызметтік міндеттерді біріктірудің мысалы ретінде қызмет ететінін айтады [16].

Еуропалық адам құқықтары сотының шешімдері әскери қызметшілердің негізгі адам құқықтарына бағынатындығын растайды. Smith and Grady V. United Kingdom ісінде жеке өмірге құқықты бұзатын биліктің әрекеттері заңсыз болып табылады және қызметтік мәртебесіне қарамастан заңды қорғауды талап етеді [17].

Жоғарыда келтірілген ұстанымдарды салыстыру барысында ғалымдардың көпшілігі әскери қызметшілердің құқықтарын қорғауды процедуралық ашықтықты, сот бақылауын және сыртқы тәуелсіз қадағалауды қамтамасыз ету қажеттілігі туралы ойға келісетіні байқалады. Бұл ретте Батыс елдерінде тәуелсіз соттарға жүгіну және халықаралық құқықтық тетіктерді тарту мүмкіндігін қоса алғанда, парламенттік бақылау мен рәсімдердің тәуелсіздігіне баса назар аударылады.

ТМД елдерінде әкімшілік-орталықтандырылған модель сақталып отыр, онда қолбасшылық пен әскери әділет шешуші рөл атқарады, бұл халықаралық стандарттар негізінде сот кепілдіктері мен рәсімдік қорғау тетіктерін күшейтуді талап етеді.

Қорытынды

Қарастырылған мемлекеттерде әскери қызметшілердің құқықтарын қорғау тетіктерін салыстырмалы-құқықтық зерттеу әскери қызметшілердің құқықтарын құқықтық қамтамасыз етудің негізгі компоненттерін анықтауға және жүйелеуге мүмкіндік берді. Біріншіден, барлық елдердегі әскери қызметшілердің құқықтарын қорғаудың жалпы құрылымдық деңгейіне, конституциялық кепілдіктер, салалық заңнама, лауазымды тұлғалардың шешіміне шағымданудың әкімшілік рәсімдері, сот арқылы қорғау, мамандандырылған бақылау институттары және халықаралық-құқықтық тетіктер кіреді. Бұл құқықтық қорғаудың көп деңгейлі сипатын көрсетеді.

Екіншіден, посткеңестік елдерде шағымдану тетіктері мен әскери иерархияның ішкі рәсімдері басым, ал сот арқылы қорғау негізінен мамандандырылған әскери соттар мен прокурорлық қадағалау арқылы жүзеге асырылады. Ресейлік ғалымдар әскери қызметшілердің соттарға жүгіну санының арту тенденциясы сот қорғауының маңыздылығының артуын көрсетеді, дегенмен әскери басқару органдарының құқықтарын сақтау деңгейі салыстырмалы түрде төмен болып қалады, бұл қолданыстағы тетіктердің мәселесін көрсетеді.

Германиядағы әскери қызметшілердің құқықтарын қорғау жүйесі Парламенттік комиссар институты (Wehrbeauftragter des Bundestages) арқылы сыртқы бақылау тетіктеріне біріктірілген, бұл әскери қызметшілердің тәуелсіз бақылау органына тікелей қол жеткізуіне мүмкіндік береді.

Швед жүйесі әскери қызметшілерді құқықтық қорғаудың жалпы азаматтық-құқықтық жүйеге интеграциялануын көрсетеді, онда қарулы күштердегі тәртіптік нормалар мен сот төрелігі құқықтық мемлекеттің жалпы қағидаларына бағынады және даулар оқшауланған әскери институттардан тыс қарастырылады.

Осылайша, жүйеленген нәтижелер әскери қызметшілердің құқықтарын қорғаудың тиімділігі тек құқықтық нормалардың болуымен ғана емес, сонымен қатар соттардың институционалдық құрылымымен, ұстанымдарымен, сыртқы бақылаудың болуымен және азаматтық құқық қорғау институттарымен интеграция дәрежесімен анықталатынын растайды.

Жүргізілген зерттеу барысында қол жеткізілген нәтижелер Қазақстан Республикасындағы әскери қызметшілердің құқықтарын қорғау механизмін жетілдіру бойынша төмендегідей бірқатар маңызды ұсыныстар жасауға мүмкіндік берді.

Бірінші, әскери қызметшілердің құқықтарын қорғау тетігін жетілдіру үшін елімізде парламенттік уәкіл немесе әскери адамдардың құқықтарын қорғау жөніндегі арнайы уәкіл институтының енгізілуі жайында ұсыныс беріледі. Бұл елдегі әскери қызметшілердің құқықтық жағдайын жетілдіруге, мемлекетке деген сенімдерін арттыруға ықпалы етуі тиіс.

Екінші, әскери қызмет туралы заңнаманы заңдылық қағидасына және сәйкес мөлшерлікке негізделген әскери қызметшілердің құқықтарын шектеудің нақты анықталған критерийімен толықтыру қажет. Бұл жеке тұлға құқықтарын қорғау мен мемлекеттің қорғанысы мүдделері арасындағы тепе-теңдікті қамтамасыз етуге мүмкіндік береді.

Үшінші, әскери қызметшілердің құқықтық мәдениет деңгейін көтеру. Бұл мақсатта жүйелі түрде құқықтық білім беру, әскери даярлық бағдарламаларына адам құқықтары туралы пәнді енгізу және де қорғау механизмдері жайында түсіндіру жұмыстарын жүргізу.

Зерттеудің тәжірибелік құндылығы зерттеуде ұсынылған талдау нәтижелерін заң шығарушы органдардың өз қызметтерінде құқықтық қамтамасыз етудің тиімділігін арттыруға бағытталған ұлттық заңнаманы жетілдіру кезінде пайдалана алуында. Сонымен бірге анықталған модельдер сот және әкімшілік процедураны реформалау бойынша ұсыныстар әзірлеуге тәжірибелік сипат береді, бұл тәуелсіз қорғау тетіктерін күшейтуге, нығайтуға негіз бола алады.

Зерттеуіміздің ғылыми құндылығы құқықтық жүйелердің деректерін академиялық талдаудағы олқылықтың орнын толтыратын институционалдық және процестік қорғау деңгейлерін қамтитын жүйелі салыстырмалы модельдің ұсынылуында жатыр. Және де ұлттық заңдарды, халықаралық міндеттемелерді салыстырады, бұл әскери құқықтық қорғау саласында салыстырмалы-құқықтанудың теориялық негізін күшейтеді.

Зерттеу нәтижелері әскери қызметшілердің құқықтарын қамтамасыз етуге бағытталған нормативтік актілерді әзірлеуде, қорғаныс саласын басқаруды жүзеге асыру барысында, құқық қорғау қызметінде, ғылыми зерттеулер жасау барысында, жоғары оқу орындарында салыстырмалы-құқықтану пәндерін оқыту кезінде пайдаланылуы мүмкін.

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Р.Б. Ботагарин, М.Н. Абыласимов

Механизмы защиты прав военнослужащих: сравнительно-правовой анализ

В статье проводится сравнительно-правовой анализ механизмов защиты прав военнослужащих в Республике Казахстан и некоторых иностранных государствах, а также определяются эффективные стороны по обеспечению баланса между конституционными гарантиями прав физического лица и требованиями воинской дисциплины. Любой вид государственных или частных отношений в XXI веке в первую очередь напрямую связан с реализацией прав человека и полнотой механизмов их защиты. Целью исследования является определение эффективного правоохранительного механизма путем проведения сравнительно-правового анализа особенностей защиты прав военнослужащих в разных странах. В ходе исследования были использованы методы сравнительно-правового, формально-правового, системно-структурного анализа и изучения правозащитных практик. В рамках исследования проведен анализ законодательства Республики Казахстан, Российской Федерации, Федеративной Республики Германии, Швеции, Соединенных Штатов Америки в воинской сфере. В результате определена эффективность многоуровневой правоохранительной модели, включающей внутриведомственный, судебный, парламентский, международный контроль в защите прав военнослужащих. В то время как в Казахстане и России господствуют преимущественно административные, централизованные механизмы защиты прав человека, роль независимого контроля в других государствах значительно выше. Итоги исследования уточняют необходимость совершенствования казахстанского законодательства и внедрения институциональных механизмов защиты прав военнослужащих. Практическое значение имеет корректировка законодательства, касающегося прав человека, и внедрение эффективных мер защиты.

Ключевые слова: военнослужащий, право, свобода, защита, омбудсмен, армия, механизм, национальное право, международные стандарты, контроль.

R.B. Botagarin, M.N. Abylasimov

Mechanisms for protecting the rights of military personnel: a comparative legal analysis

The article provides a comparative legal analysis of the mechanisms for protecting the rights of military personnel in the Republic of Kazakhstan and several foreign countries, and identifies effective measures to ensure a balance between constitutional guarantees of individual rights and the requirements of military discipline. The purpose of the study is to determine an effective law enforcement mechanism through a comparative legal analysis of the specifics of protecting the rights of military personnel in different countries. The research employs comparative legal, formal legal, systemic-structural, and human rights analysis methods. The study analyzes the legislation of the Republic of Kazakhstan, the Russian Federation, Germany, Sweden, and the United States in the military sphere. As a result, the effectiveness of a multi-level law enforcement model has been determined, including interdepartmental, judicial, parliamentary, and international oversight in protecting the rights of military personnel. The findings highlight the need to improve Kazakhstan's legislation and introduce institutional mechanisms for the protection of military personnel's rights. The refinement of human rights legislation and the implementation of effective protection measures are of practical importance.

Keywords: soldier, law, freedom, protection, ombudsman, army, mechanism, national law, international standards, control.

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Digital identity as an element of the constitutional legal status of migrants

This article examines digital identity as a constitutional component of migrants' legal status in the context of the digitalization of migration governance and public administration. The aim of the study is to determine the constitutional and legal nature of migrants' digital identity and to assess its impact on the content, implementation, and protection of fundamental rights and freedoms. The research is based on formal-legal, doctrinal constitutional, systemic-structural, and comparative legal methods. These approaches made it possible to analyze digital identification mechanisms in relation to constitutional principles of equality, proportionality, legal certainty, and privacy protection, as well as to identify risks arising from automated decision-making and digital control. The results demonstrate that digital identity is evolving from a purely technical tool into an autonomous legal construct that directly influences migrants' constitutional status. The study reveals that digital identification facilitates administrative integration while simultaneously increasing risks of excessive surveillance, formalization of legal status, and reduced transparency in rights-protection mechanisms. The conclusions emphasize the need for a constitutionally oriented regulatory framework for migrants' digital identity. Such a framework should strengthen human rights guarantees, ensure judicial and parliamentary oversight, and align national regulation with international human rights standards. The findings contribute to the development of constitutional and migration law doctrine under conditions of digital transformation.

Keywords: digital identity, migrants, constitutional legal status, digital governance, migration law, constitutional law, personal data, biometric data, algorithmic decision-making, digital public administration, human rights protection, equality and non-discrimination.

Introduction

The contemporary stage of global societal development is characterized by profound digital transformation of socio-economic processes, exerting a systemic impact on legal institutions and public governance. Digitalization affects not only forms of economic activity and communication, but also fundamental legal constructions related to personal identification, the exercise of rights, and mechanisms of state control. Under these conditions, migration—traditionally understood as the spatial movement of populations involving a change of country or place of residence—acquires new characteristics that are not fully captured by classical legal categories.

The expansion of remote employment, the platform economy, and cross-border telework has led to the emergence of hybrid mobility regimes that combine elements of temporary stay, circular migration, and virtual economic presence [1; 336, 2; 118]. As a result, not only the socio-economic nature of migration is transformed, but also the legal logic governing the determination of migrants' legal status, which increasingly depends less exclusively on the physical crossing of state borders.

Scholarly literature emphasizes that digitalization does not eliminate migration as a socio-legal phenomenon but rather transforms its content and modes of legal regulation. The phenomenon of “digital nomads” illustrates a shift in emphasis from territorial movement to digital participation in the economic and social processes of the host state [1, 338]. This circumstance fundamentally alters approaches to the legal status of migrants, as legally relevant factors increasingly include not only the regime of stay, but also the existence of a stable digital identity that enables access to public services, labor-market infrastructures, and systems of public administration.

In this context, the category of digital identity acquires particular significance. Digital identity is understood as a set of personal, biometric, and behavioral data recorded and processed within public and private information systems. Electronic identifiers (e-ID), digital profiles, migration registration data, and platform-based digital traces are increasingly used as grounds for recognizing individuals as participants in legal rela-

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tions and for adopting legally significant decisions. As contemporary studies indicate, digital identity has become a key “node” of interaction between migration policy, economic activity, and mechanisms of public regulation [2; 120].

The progressive expansion of digital technologies in migration governance objectively increases risks to constitutional rights and freedoms. The automation of identification procedures, interagency data exchange, the deployment of biometric systems, and algorithmic decision-making tools affect such fundamental constitutional rights as the right to privacy, personal data protection, equality before the law, and the right to effective judicial protection. For migrants, these risks are exacerbated by their specific legal status, dependence on administrative procedures, and limited capacity to influence the formation and use of their own digital identity.

The relevance of this issue is particularly pronounced in the Republic of Kazakhstan, where migration processes traditionally play a significant role in socio-economic development and public policy. The Constitution of the Republic of Kazakhstan enshrines the principle of equality of human rights and freedoms regardless of citizenship, while allowing their restriction for foreign nationals and stateless persons exclusively based on law and for the purposes of protecting the constitutional order, public order, and national security [3]. It is precisely constitutional and legal norms that define the permissible scope of state interference in the sphere of personal identification, including its digital forms.

At the same time, analysis of the current legislation of the Republic of Kazakhstan demonstrates that the digitalization of migration governance is developing in a fragmented manner and predominantly within a regulatory-technical dimension. On the one hand, the Law of the Republic of Kazakhstan “On Population Migration” establishes the electronic nature of visa and registration records, effectively transforming the migrant’s legal status into a set of digital entries within the information systems of authorized state bodies [4]. On the other hand, the Digital Code of the Republic of Kazakhstan confers legal significance upon digital authentication and digital verification, including their use in accessing public services and performing legally relevant actions [5].

Simultaneously, the Law of the Republic of Kazakhstan “On Personal Data and Their Protection” classifies biometric data as a category of highly sensitive personal data and establishes special conditions for their processing and protection, including consent requirements and restrictions on cross-border data transfer [6]. Taken together, these normative acts form the legal basis for digital identification; however, they do not ensure its systematic alignment with the constitutional and legal status of migrants as holders of fundamental rights and freedoms.

The insufficient development of constitutional-legal aspects of migrants’ digital identity is also evident in legal doctrine. Despite the active growth of research on digital mobility, platform employment, and the digital economy, questions concerning the constitutional limits of digital control, the permissibility of biometric identification, and the proportionality of interference with individual rights remain fragmented and are often examined outside the framework of constitutional analysis [1; 341, 2; 121]. This results in a disconnect between the normative practice of digitizing migration governance and the doctrinal understanding of its legal consequences.

Under these conditions, addressing digital identity as an element of the constitutional and legal status of migrants appears both theoretically and practically justified. A constitutional-legal analysis makes it possible not only to identify the legal nature of digital identification, but also to determine the permissible limits of state interference in the digital sphere of migration, thereby ensuring a balance between public interests and the protection of fundamental human rights and freedoms.

The aim of this study is to provide a constitutional-legal justification of digital identity as an independent element of the legal status of migrants under conditions of digital transformation of public governance.

To achieve this aim, the following research objectives were formulated:

- to analyze the transformation of migration as a legal phenomenon under digitalization;
- to reveal the legal nature of digital identity in contemporary law;
- to determine the place of digital identity within the system of migrants’ constitutional rights and freedoms;
- to identify constitutional risks arising from the digitalization of migration governance;
- to substantiate directions for constitutionally oriented regulation of migrants’ digital identity.

Classical theories of migration were developed within the framework of industrial and post-industrial societies and conceptualized migration primarily as the spatial movement of populations driven by economic, political, and demographic factors. In the foundational works of S. Castles, H. de Haas, and M. Miller,

migration is analyzed as a structural element of global socio-economic transformations, closely linked to labor markets, state sovereignty, and institutions of citizenship [7; 208]. Within this paradigm, the legal status of migrants is directly derived from territorial presence and the formal legal distinction between citizens and non-citizens.

Developing this approach, R. Skeldon emphasizes the multi-level nature of migration mobility and its connection to globalization and uneven territorial development [8; 117]. Even within these early studies, an increasing complexity of mobility forms is identified—forms that extend beyond classical long-term migration and challenge traditional models of legal regulation based on stable territorial attachment of the subject.

The digitalization of the economy, the expansion of remote employment, and the emergence of cross-border platform-based forms of activity have significantly intensified these trends. As a result, academic literature increasingly refers to the “hybridization” of migration, in which physical movement is combined with virtual economic presence and digital forms of inclusion in host societies. These processes necessitate a re-conceptualization of the migrant’s legal status—not only as a territorially localized subject, but also as a participant in digital public and private legal relations.

A central focus of contemporary research is the analysis of the phenomenon of digital nomads. O. Hannonen was among the first to propose a conceptual definition of digital nomads, emphasizing the absence of stable migration status and their positioning between tourist, labor, and migration regimes [1; 350]. This allows digital nomads to be viewed as an empirical manifestation of the erosion of classical legal categories of migration.

I. Hermann and S. Paris, examining digital nomadism as an intersection of remote work and tourist mobility, argue that existing legal regimes are not designed for individuals who are economically integrated without formal employment or migration status [9; 329]. In this context, legal status is increasingly determined not by the fact of entry or residence, but by forms of digital participation in the economy and public systems.

In the works of S.V. Ryazantsev and N.S. Ryazantsev, digital mobility is emphasized as a non-marginal phenomenon that is becoming a stable component of global migration processes. The authors note that states are compelled to adapt legal regulation—including mechanisms of identification, registration, and control—to new forms of mobility [2; 124]. These conclusions are of fundamental importance for constitutional-legal analysis, as they indicate a transformation in the foundations of migrants’ legal subjectivity.

Alongside studies of digital mobility, a distinct strand of scholarship has emerged focusing on digital identity. Within research on digital governance and e-government, digital identity is defined as a set of personal, biometric, and behavioral data used for individual identification and for granting access to rights and public services.

In the migration context, digital identity acquires particular significance, as it becomes the primary mechanism through which migrants are incorporated into systems of state registration and public administration. As noted by S.V. Ryazantsev, migrants’ digital profiles are gradually replacing traditional documentary forms of status confirmation, thereby strengthening the role of information systems in legally significant decision-making [2; 125].

At the same time, most existing studies concentrate on the technological and administrative aspects of digital identification. Issues concerning its relationship with constitutional rights and freedoms, the limits of permissible digital control, and the legal consequences of identification errors remain insufficiently developed, resulting in a significant doctrinal gap.

A substantial body of literature is devoted to the protection of human rights under conditions of digitalization of public governance. International reports and analytical reviews emphasize that the expansion of digital technologies in the migration sphere is accompanied by increased risks to the right to privacy, personal data protection, and the principle of non-discrimination [8; 210].

Scholars point out that migrants often find themselves in conditions of “information asymmetry”, lacking real control over data collection and processing practices. These risks are further exacerbated by inter-agency and cross-border data exchange, which is characteristic of contemporary migration regimes. In this regard, it is emphasized that constitutional-legal analysis makes it possible to conceptualize digital identity not merely as a technical instrument, but as an element of an individual’s legal status that directly affects the scope and content of their rights.

In Kazakhstani legal scholarship, migration issues have traditionally been analyzed within the framework of public law, particularly constitutional law. Researchers emphasize that the legal status of migrants is

formed as a complex of rights and freedoms enshrined in the Constitution of the Republic of Kazakhstan, sectoral legislation, and international treaties [10; 76, 11; 20].

From a theoretical-legal perspective, S.K. Yessetova substantiates the transformation of classical notions of legal subjectivity under conditions of digitalization, emphasizing that modern law increasingly operates with a legally constructed personal profile [12; 8]. This approach is of fundamental importance for the constitutional understanding of migrants' digital identity.

A.S. Ibraeva, analyzing legal culture in the context of digitalization, notes that the formal introduction of digital institutions without corresponding adaptation of legal consciousness leads to a decline in trust in the state and to the formalization of rights [10; 78]. In the migration context, this reinforces the perception of digital identification as an instrument of control rather than a guarantee of rights.

Thus, an analysis of scholarly literature allows the conclusion that, despite the active development of studies on digital mobility and migration, digital identity as an element of the constitutional-legal status of migrants remains insufficiently theorized. There is a lack of systematic constitutional-legal analysis of its impact on the balance between migrants' rights and the public interests of the state.

The identified doctrinal gap between the practice of digitalizing migration governance and the level of its constitutional-legal conceptualization determines the scientific relevance and originality of the present study.

Methods and materials

The methodological framework of the study is based on the understanding of digital identity as a legally significant constitutional-legal construct through which, in the digital environment, individual rights, freedoms, and obligations are mediated, and legal facts relevant to the realization of a migrant's legal status are recorded. This approach makes it possible to link technically driven identification mechanisms—digital records, authentication, and data processing—with constitutional principles and the limits of permissible state interference in the sphere of human rights.

The general methodological foundation of the study relies on the paradigm of constitutionalism and legal policy, within which constitutional norms and principles function as criteria for assessing the legitimacy of digital governance practices. Constitutionalism in this context is understood as an instrument for evaluating the proportionality of digital identification regimes, while legal policy serves as a mechanism for reconciling the public interests of the state with the necessity of protecting fundamental rights and freedoms of the individual [12; 10].

The logic of the research proceeds from an interdisciplinary understanding of migration and mobility to the legal qualification of digital identity, and further to the assessment of its place within the system of the constitutional-legal status of migrants [13; 5, 14; 18]. This interdisciplinarity is driven by contemporary migration research methodology, according to which migration is conceptualized as a dynamic, multi-phase process, and legal analysis requires consideration of the broader socio-economic and institutional context [15; 310].

The study employs a normative-doctrinal research design, supplemented by elements of comparative legal and risk-oriented analysis. The source base consists of two interrelated bodies of materials.

First, normative legal acts of the Republic of Kazakhstan are analyzed. These include the Constitution of the Republic of Kazakhstan as the primary source defining the legal status of migrants; the Digital Code of the Republic of Kazakhstan, which establishes the legal significance of digital identification and authentication; and the Law of the Republic of Kazakhstan "On Personal Data and Their Protection", which sets constitutionally relevant limits on the processing of personal and biometric data. In addition, legal provisions governing the status of foreign nationals and stateless people are considered [16], as they form a special regime for the exercise of migrants' constitutional rights.

Second, scholarly publications on the methodology of migration studies and the digital transformation of public administration are used to substantiate the appropriate application of interdisciplinary approaches within constitutional-legal analysis. These sources provide the analytical framework for comparing normative legal constructions with actual changes in the legal status of migrants under conditions of digitalization [16; 311].

The core research method is the formal-legal method, applied to identify normative definitions and legal regimes related to digital identity. Within this method, the following are analyzed:

- a) legal definitions of personal and biometric data;
- b) the legal construction of digital authentication as a form of valid expression of will;

c) the status of digital records and electronic identifiers as legally significant facts.

The transition from formal-legal analysis to the assessment of migrants' legal status is carried out through the systemic-structural method. Its application allows digital identity to be examined as the result of interaction among several normative regimes—identification, data processing, and the exercise of constitutional rights. This approach demonstrates that migrants' digital identity is formed not as an isolated technical element, but as a set of legal relationships and procedures that affect the scope and content of their legal subjectivity.

A key role in the study is played by the constitutional-dogmatic method, which is used to interpret constitutional principles in relation to digital identification practices. This method makes it possible to analyze the limits of permissible digital control, the requirements of proportionality and legal certainty, as well as procedural guarantees for the protection of migrants' rights under conditions of digitalization [5; 20].

To test the robustness of the findings, a comparative-legal method in its functional dimension is applied. This involves comparing the logic of digital governance with the logic of constitutional protection of human rights, thereby identifying potential tensions between the goals of enhancing the efficiency of public administration and the requirements of safeguarding individual rights and freedoms.

To connect doctrinal analysis with practical implementation, methods of legal monitoring and documentary analysis are employed, focusing on the functioning of legal norms within the chain “identification—decision-making—legal consequences”. Monitoring is treated as an instrument of legal policy and regulatory quality assessment [15; 310].

In addition, a risk-oriented approach is applied to identify constitutionally significant vulnerabilities associated with migrants' digital identity, including risks of formalization of legal status, procedural opacity, and disproportionate interference with the sphere of private life. These risks are analyzed exclusively in terms of their impact on the realization and protection of constitutional rights and freedoms, which corresponds to the subject matter of the present study.

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Results

The development of digital technologies and the introduction of electronic forms of public governance have led to the emergence of a new legal phenomenon—digital identity—which is gradually becoming a key element in the legal mediation of an individual's status within the state. Unlike classical forms of identification based on paper documents and territorial attachment, digital identity is formed and operates within an informational environment, relying on data aggregates, processing algorithms, and inter-agency digital infrastructures.

From a theoretical and legal perspective, digital identity may be defined as a legally significant set of personal, biometric, and behavioral data used to establish, confirm, and reproduce an individual's legal status in the digital environment. This definition makes it possible to conceptualize digital identity not as a technical attribute, but as a legal construct through which legal relations arise, change, and terminate, and through which constitutional rights and freedoms are exercised.

In Kazakhstani law, elements of digital identity are enshrined fragmentarily yet systematically. Thus, the Law of the Republic of Kazakhstan “On Personal Data and Their Protection” defines personal data as information relating to an identified or identifiable subject of personal data, including biometric data that make it possible to establish a person's identity [6]. The Digital Code of the Republic of Kazakhstan confers legal significance upon electronic identification and digital authentication in the provision of public services and the performance of legally significant actions [5].

Accordingly, digital identity in the legal sense represents a normatively constructed “personal profile” that is used by the state as a primary instrument of interaction with the subject of law. Under conditions of digitalization, this profile becomes the principal “entry point” into the system of rights and obligations, which is of particular importance for migrants, whose physical presence in the state is not always accompanied by a stable legal status.

For theoretical analysis, it is essential to distinguish between digital identity, civil-law identification, and administrative identification, as conflation of these categories leads to methodological errors and an oversimplified understanding of an individual's legal status.

Civil-law identification is traditionally associated with establishing the subject of civil rights and obligations and is based on documents certifying identity, citizenship, or legal capacity. Administrative identification, in turn, serves the purposes of public administration and control, including registration, record-keeping, supervision, and the application of administrative enforcement measures [13; 4].

Digital identity differs from these forms along several key dimensions. First, it is not limited to formal proof of identity but includes a dynamic body of data updated in real time. Second, digital identity is not tied exclusively to a single legal status (citizen, foreign national, temporary resident), but functions as a universal mechanism of inclusion in digital legal relations. Third, it is mediated by algorithmic decision-making, which implies the possibility of automated effects on an individual's legal status without their direct participation.

From the standpoint of legal theory, this signifies a transition from the classical model of "subject—document—legal relationship" to a model of "subject—digital profile—administrative decision". As emphasized by S.K. Yessetova, under conditions of digitalization of public authority, law increasingly operates not with an abstract bearer of rights, but with a legally constructed image of the person formed through procedures of identification and administration [12; 14].

The substantive core of digital identity consists of personal data, including biometric characteristics and digital traces. In legal terms, it is precisely these elements that confer legal significance upon digital identity and transform it into an instrument of regulation.

In the digital environment, personal data acquires a qualitatively different significance compared to traditional forms of record-keeping. They are used not only for identification, but also for behavior prediction, risk assessment, and automated decision-making. Biometric data (facial images, fingerprints, voice parameters) enhance the accuracy of identification, while simultaneously increasing risks of intrusion into private life and the irreversibility of errors [6].

The digital profile formed based on aggregated data becomes a functional equivalent of legal status. In the migration sphere, this is particularly evident: the presence or absence of a correct digital profile effectively determines a migrant's access to registration, employment, social services, and legal protection. In this sense, digital identity ceases to be a neutral tool and becomes a factor of legal inclusion or exclusion.

A theoretical and legal analysis of digital identity is impossible without reference to the evolution of migrants' legal status. Classical migration-law doctrine traditionally viewed migrants primarily as objects of regulation, whose legal position was determined by the fact of border crossing, possession of authorization documents, and the administrative regime of stay [10; 76].

Under conditions of digitalization, this model loses much of its explanatory power. Contemporary forms of mobility, including digital nomads, remote workers, and circular migrants—demonstrate that participation in the economic and social processes of a host state is possible without stable territorial presence. As noted by S.V. Ryazantsev and N.S. Ryazantsev, digital migration blurs the boundaries between residence, employment, and civil-law affiliation [2; 124].

As a result, migrants' legal status is increasingly formed not through classical migration procedures, but through digital mechanisms of identification and registration. Digital identity becomes the key link between the migrant and the state, determining the scope of rights and obligations.

Despite the potential advantages of digitalization (simplification of procedures, reduction of transaction costs), for migrants' digital identity often becomes a source of additional risks and vulnerabilities. This is due to several factors.

First, migrants often have limited access to digital infrastructures and a low level of digital legal literacy, which reduces their ability to control the use of their personal data [10; 79]. Second, information asymmetry between migrants and the state is intensified by the opacity of algorithmic decision-making. Third, errors in digital identification may have cascading consequences, simultaneously affecting multiple dimensions of legal status.

Criminological research indicates that the absence or defects of identification increase the latency of offenses and heighten migrants' vulnerability to arbitrary application of control measures [20]. Digitalization does not automatically eliminate these risks and, in certain cases, amplifies them through the automation of repressive practices.

One of the key theoretical and legal problems of migrants' digital identity lies in the divergence between *de jure* identity, as fixed in normative acts and registries, and *de facto* identity, reflecting migrants' actual participation in socio-economic relations.

De jure identity is formed through formal registration and record-keeping procedures and reflects an "official" legal status. *De facto* identity emerges from everyday practices, digital traces, and economic activity that may not coincide with the formally recognized status. Under conditions of a digital economy, it is increasingly *de facto* identity that is used for administrative decision-making, calling into question traditional guarantees of legal certainty.

As emphasized by Khamzina and Buribayev, in the labor sphere digital platforms effectively create alternative regimes of identification and access to the labor market, bypassing classical labor-law guarantees [11; 22]. Similar processes can be observed in migration governance, where a digital profile may substitute for a formal permit of stay or employment.

From a constitutional-law perspective, this necessitates a rethinking of the criteria of legal subjectivity and the development of mechanisms for protecting individuals from arbitrary "digital exclusion". A theoretical and legal analysis of migrants' digital identity makes it possible to identify the limits of permissible use of digital data and to substantiate the need for procedural safeguards ensuring that digital practices comply with the fundamental principles of the rule of law.

The constitutional and legal status of migrants in the Republic of Kazakhstan is formed based on universal principles enshrined in the Constitution of the Republic of Kazakhstan, first and foremost the principle of equality before the law and the courts. According to Article 14 of the Constitution, no one may be subjected to discrimination on any grounds, including origin, social status, nationality, language, place of residence, or other circumstances [3]. This provision is of a universal nature and applies to all people under the jurisdiction of the state, including foreign nationals and stateless people.

Kazakhstani legal doctrine emphasizes that the principle of equality is not identical to the principle of uniformity of legal status. It allows for differentiation of rights and obligations based on citizenship, while excluding arbitrary or disproportionate restrictions on the rights of migrants [10; 78]. Consequently, migrants are recognized as full holders of basic constitutional rights and freedoms, and any limitations must have a clear legislative basis and correspond to constitutionally legitimate aims.

Under conditions of digitalization, the principle of equality acquires an additional dimension. A migrant's digital identity, formed through state information systems, may both facilitate equal access to rights and services and generate new forms of latent discrimination—algorithmic, procedural, or infrastructural in nature. This necessitates an expansive interpretation of the principle of equality that considers digital practices of public administration.

The Constitution of the Republic of Kazakhstan establishes citizenship as a special legal status reflecting a stable political and legal bond between the individual and the state. The Law of the Republic of Kazakhstan "On Citizenship" defines citizenship as a permanent legal connection expressed in a set of mutual rights, duties, and responsibilities of the individual and the state [16, 17].

Citizenship serves as the basis for the exercise of the full range of political rights, as well as several social and public-service rights. Foreign nationals and stateless people, in turn, are excluded from political participation, which corresponds to international practice and the principle of state sovereignty. However, as emphasized in legal doctrine, citizenship does not function as a universal "filter" of legal subjectivity: most personal, socio-economic, and procedural rights extend to non-citizens [17].

In the context of digitalization, the significance of citizenship as a formal legal status is partially transformed. In the digital environment, access to services, procedures, and legal protection is increasingly determined by the presence of a digital identity rather than citizenship alone. This leads to a functional convergence of the status of citizens and migrants in digital legal relations, while simultaneously increasing the risks of exclusion for individuals whose digital identity is incomplete or defective [12; 14].

A special place within the constitutional and legal status of migrants is occupied by the right to freedom of movement, enshrined in Article 21 of the Constitution of the Republic of Kazakhstan. The Constitution guarantees everyone lawfully present on the territory of the Republic of Kazakhstan the right to move freely and to choose their place of stay and residence, as well as the right to freely leave the Republic of Kazakhstan [3].

This right is of key importance for migrants, as it forms the constitutional basis of their internal mobility within the state. At the same time, the Constitution allows restrictions on freedom of movement by law

and solely for the purposes of national security, protection of public order, public health, or the rights and freedoms of others.

The Law of the Republic of Kazakhstan “On the Legal Status of Foreign Nationals” specifies these provisions by establishing regimes of entry, stay, movement, and exit for foreign nationals and stateless persons [16]. The freedom of movement of migrants is thus exercised within the framework of administrative and legal procedures of registration, notification, and control.

The digitalization of these procedures has a significant impact on the realization of freedom of movement. Registration at the place of stay, migration records, notification of the host party, and monitoring of the duration of stay are increasingly carried out in electronic form, transforming freedom of movement into a “digitized right” whose realization depends on the accuracy of digital data and the proper functioning of information systems.

The Constitution of the Republic of Kazakhstan permits restrictions on rights and freedoms, including freedom of movement and the right to privacy, exclusively by law and for strictly defined purposes. In the migration sphere, such restrictions are traditionally justified by the need to protect national security and public order [18].

Under conditions of digitalization, these restrictions take on new forms. Digital monitoring of movements, automated analysis of data on stay, and inter-agency information exchange expand the state’s capacity to control migration processes [19; 93]. However, criminological research demonstrates that the strengthening of digital control is not always accompanied by adequate procedural safeguards and may lead to a de facto narrowing of the scope of migrants’ constitutional rights [20; 330].

This increases the significance of the principle of proportionality and necessitates constitutional and legal assessment not only of normative grounds, but also of digital practices through which restrictions are implemented.

The right to privacy is enshrined in Article 18 of the Constitution of the Republic of Kazakhstan and applies to all persons, including migrants. It encompasses the protection of personal and family privacy, secrecy of correspondence, telephone communications, and other forms of communication [3].

In the digital era, the content of this right expands significantly. Private life is increasingly captured in digital traces, geolocation data, biometric parameters, and electronic profiles. For migrants, this means that the realization of their constitutional status is inevitably associated with intensive data processing that forms their digital identity.

The Law of the Republic of Kazakhstan “On Personal Data and Their Protection” establishes legal guarantees for the processing of personal data, including data relating to foreign nationals and stateless persons [6]. The law enshrined the principles of legality, data minimization, purpose limitation, and liability for violations of data protection regimes.

For migrants, these guarantees are of particular importance, as their digital identity is formed predominantly in the context of migration control, law enforcement activities, and inter-agency information exchange. Studies indicate that a low level of digital legal culture and limited access to data protection mechanisms increase migrants’ vulnerability [11; 14].

The constitutional limits of digital control derive from the aggregate principles of the rule of law, including proportionality, legal certainty, and judicial protection. The use of migrants’ digital identity for control purposes is permissible only where there is a clear legislative basis, transparent procedures, and effective mechanisms for appeal.

Kazakhstani criminal and administrative legislation establishes liability for unlawful interference with private life and the improper use of information [18]. However, as noted in legal doctrine, the current regulation of digital control does not yet ensure a sufficient balance between public interests and the protection of individual rights [13; 2].

Thus, migrants’ digital identity functions not only as an instrument of migration policy implementation, but also as an object of constitutional protection.

Discussion

The analysis of the theoretical, constitutional-law, administrative-law, and criminal-law aspects of migrants’ digital identity makes it possible to conclude that there is a need to develop a coherent, constitutionally oriented digital migration policy in the Republic of Kazakhstan. Under conditions of digitalization of migration processes, traditional approaches based primarily on administrative control and authorization regimes

prove insufficient to ensure a balance between the public interests of the state and the protection of individual rights.

The Constitution of the Republic of Kazakhstan establishes the fundamental guiding principles of legal regulation, including equality, legal certainty, proportionality, and judicial protection. However, the current migration and digital legislation demonstrates a fragmented approach to regulating digital identity, resulting in a gap between constitutional guarantees and the practices of digital administration.

A digital migration policy grounded in constitutional values should proceed from the recognition of migrants' digital identity not merely as an instrument of governance, but also as an object of legal protection. This implies a shift in emphasis from the predominance of the control function toward a model of legal accompaniment of migration, within which digital technologies are used to simplify procedures, enhance legal certainty, and expand migrants' access to rights and services.

Legal doctrine emphasizes that the absence of a constitutional "filter" in the implementation of digital governance solutions leads to the institutionalization of risks—algorithmic discrimination, automation of repressive practices, and erosion of the presumption of innocence [21; 56, 13; 5]. Consequently, digital migration policy should be developed as part of a broader policy of constitutionalizing public authority.

One of the key directions for improving legal regulation is the strengthening of guarantees for the protection of migrants' digital identity. Despite the existence of the Law of the Republic of Kazakhstan "On Personal Data and Their Protection", current norms do not fully consider the vulnerable position of migrants and the expanded use of their data in migration and law enforcement governance.

First, there is a need for normative consolidation of the principle of functional data minimization, which presupposes the collection and processing only of those data that are objectively necessary to achieve legitimate migration governance objectives. The expanded accumulation of data, including biometric information and digital traces, must be justified considering the constitutional principle of proportionality.

Second, it is necessary to develop migrants' procedural rights in the sphere of digital identification. Such rights should include the right to obtain information about the composition and sources of the digital profile, the right to correct errors, the right to temporary suspension of adverse consequences while data are being challenged, and the right to review automated decisions with the participation of an authorized official.

Third, the findings of criminal-law analysis regarding the inadmissibility of using digital identity as an independent basis for inferring unlawful behavior should be considered. Strengthening guarantees for the protection of digital identity should include explicit prohibitions against transforming digital profiles into instruments of a presumption of guilt.

Accordingly, the protection of migrants' digital identity should be regarded as an integral component of the protection of their constitutional-legal status, rather than as a secondary element of digital policy.

The effectiveness of a constitutionally oriented digital migration policy is impossible without the development of mechanisms of judicial and parliamentary oversight over the use of digital identification tools and migration registration systems. Judicial protection is a key guarantee of individual rights and is directly enshrined in the Constitution of the Republic of Kazakhstan.

In the context of digitalization, the importance of judicial review of algorithmic decisions adopted in migration governance and law enforcement increases. Courts should be empowered to assess not only the formal legality of decisions, but also their digital "logic", including data sources, algorithmic correctness, the presence of discriminatory effects, and compliance with the principle of proportionality.

Parliamentary oversight, in turn, should be aimed at a systemic assessment of digital reforms in the migration sphere. Legislative bodies may initiate analyses of law enforcement practice, hear reports from authorized agencies, and adjust the regulatory framework considering identified risks. Kazakhstani legal doctrine emphasizes that parliamentary oversight is an essential element of the democratic balance of public authority, particularly under conditions of technological transformation of governance.

The development of these mechanisms will help prevent the institutionalization of legal gaps and ensure the dynamic conformity of digital practices with constitutional standards.

The integration of international standards in the fields of migration, human rights, and digital governance is of substantial importance for improving national regulation. International organizations, the United Nations, the International Organization for Migration, and the Organization for Economic Co-operation and Development—have developed a set of recommendations aimed at protecting migrants' rights under conditions of digitalization.

UN documents emphasize the need to observe the principles of non-discrimination, protection of privacy, and procedural safeguards when using digital technologies in migration governance. The IOM highlights

the risks of migrants' "digital exclusion" and recommends the development of legal mechanisms to ensure transparency and accountability of digital systems.

OECD recommendations focus on the development of human-centered digital governance, which prioritizes individual rights in the design and implementation of digital solutions. The integration of these standards into Kazakhstani legislation would enhance the quality of legal regulation and ensure its compliance with the international obligations of the Republic of Kazakhstan.

Conclusions

The conducted research allows the conclusion that, under conditions of digitalization of public administration, migrants' digital identity acquires the significance of a key element of their constitutional and legal status. It ceases to function merely as a technical instrument of identification and is transformed into a legally significant construction through which the exercise, restriction, and protection of fundamental rights and freedoms are mediated.

The analysis of the constitutional and legal foundations of digital identification regulation in the Republic of Kazakhstan demonstrates that the development of digital mechanisms of migration governance is carried out in a fragmented manner and predominantly within normative-technical logic. At the same time, there is a lack of a comprehensive constitutional understanding of digital identity as a factor influencing the content of migrants' legal status. This situation generates risks of violations of the principles of equality before the law, legal certainty, and protection of private life, particularly in the context of the expanding use of automated and algorithmic procedures.

The theoretical contribution of the study lies in substantiating migrants' digital identity as an independent element of their constitutional and legal status. The study shows that, under conditions of digital transformation, the traditional territorial—status—based model of migration regulation is complemented by a functional-digital dimension, in which digital inclusion of the individual in the legal space of the state becomes a key prerequisite for the exercise of rights. This approach makes it possible to reinterpret the relationship between public interests and human rights in the field of migration.

The practical significance of the research lies in the possibility of applying the formulated conclusions to the further development of constitutionally oriented regulation of migrants' digital identity. The results obtained may be considered in improving the legislation of the Republic of Kazakhstan in the fields of digitalization and personal data protection, as well as in the development of legal policy aimed at strengthening constitutional guarantees and enhancing trust in the digital institutions of public authority.

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Цифрлық идентификация мигранттың конституциялық-құқықтық мәртебесінің элементі ретінде

Мақала көші-қонды басқару мен мемлекеттік басқаруды цифрландыру жағдайында мигранттардың құқықтық мәртебесінің конституциялық элементі ретінде цифрлық сәйкестілікті зерттеуге арналған. Зерттеудің мақсаты — мигранттардың цифрлық сәйкестілігінің конституциялық-құқықтық табиғатын айқындау және оның негізгі құқықтар мен бостандығының мазмұнына, іске асырылуына және қорғалуына ықпалын бағалау. Зерттеу формальды-заңдық, конституциялық-догматикалық, жүйелік-құрылымдық және салыстырмалы-құқықтық әдістерге негізделген. Бұл тәсілдер цифрлық сәйкестендіру тетіктерін теңдік, пропорционалдылық, құқықтық айқындық және жеке өмірді қорғау сияқты конституциялық қағидаттармен өзара байланыста талдауға, сондай-ақ автоматтандырылған шешім қабылдау мен цифрлық бақылаудан туындайтын тәуекелдерді анықтауға мүмкіндік берді. Зерттеу нәтижелері цифрлық сәйкестіліктің тек техникалық құралдан дербес құқықтық құрылымға айналып, мигранттардың конституциялық мәртебесіне тікелей әсер ететінін көрсетеді. Цифрлық сәйкестендіру әкімшілік интеграцияны жеңілдеткенімен, шамадан тыс бақылау, құқықтық мәртебенің формализациялануы және құқықтарды қорғау тетіктерінің ашықтығының төмендеуі сияқты тәуекелдерді қатар арттырады. Тұжырымдар мигранттардың цифрлық сәйкестілігін реттеудің конституциялық бағдарланған құқықтық негізін қалыптастыру қажеттігін айқындайды. Мұндай модель адам құқықтарының кепілдіктерін күшейтуге, соттық және парламенттік бақылауды қамтамасыз етуге және ұлттық реттеуді халықаралық адам құқықтары стандарттарымен үйлестіруге бағытталуы тиіс. Зерттеу нәтижелері цифрлық трансформация жағдайында конституциялық және көші-қон құқығы доктринасының дамуына үлес қосады.

Кілт сөздер: цифрлық идентификация, мигранттар, конституциялық-құқықтық мәртебе, цифрлық басқару, көші-қон құқығы, конституциялық құқық, дербес деректер, биометриялық деректер,

алгоритмдік шешім қабылдау, цифрлық жариялы басқару, адам құқықтарын қорғау, теңдік және кемсітпеу.

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Цифровая идентичность как элемент конституционно-правового статуса мигранта

В данной статье рассматривается цифровая идентичность как конституционный элемент правового статуса мигрантов в контексте цифровизации управления миграцией и государственного управления. Цель исследования — определить конституционно-правовую природу цифровой идентичности мигрантов и оценить ее влияние на содержание, реализацию и защиту основных прав и свобод. Исследование основано на формально-правовых, конституционно-догматических, системно-структурных и сравнительно-правовых методах. Эти подходы позволили проанализировать механизмы цифровой идентификации в связи с конституционными принципами равенства, соразмерности, правовой определенности и защиты частной жизни, а также выявить риски, возникающие в результате автоматизированного принятия решений и цифрового контроля. Результаты показывают, что цифровая идентичность эволюционирует из чисто технического инструмента в автономную правовую конструкцию, непосредственно влияющую на конституционный статус мигрантов. Исследование выявляет, что цифровая идентификация способствует административной интеграции, одновременно увеличивая риски чрезмерного наблюдения, формализации правового статуса и снижения прозрачности в механизмах защиты прав. Выводы подчеркивают необходимость конституционно-ориентированной нормативно-правовой базы для цифровой идентичности мигрантов. Подобная концептуальная основа должна укреплять гарантии прав человека, обеспечивать судебный и парламентский надзор и приводить национальное законодательство в соответствие с международными стандартами в области прав человека. Полученные результаты способствуют развитию доктрины конституционного права и миграционного права в условиях цифровой трансформации.

Ключевые слова: цифровая идентичность, мигранты, конституционно-правовой статус, цифровое управление, миграционное право, конституционное право, персональные данные, биометрические данные, алгоритмическое принятие решений, цифровое публичное управление, защита прав человека, равенство и недискриминация.

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Challenges and prospects of ensuring security in the legal regulation of space activities

Outer space has long been regarded as an important domain for human survival and development, playing a significance role in scientific and technological progress, resource utilization, and the continuation of civilization. From the stars in classical Chinese mythology to the constellations of ancient Greek mythology, human imagination and exploration of outer space have persisted for thousands of years. The article analyzes the challenges and prospects of ensuring security in the legal regulation of space activities within the framework of international law. The aim of the study is to examine existing legal mechanisms governing outer space and to identify key problems related to its security. The research methods include literature review and comparative analysis. The findings suggest that space-related research has contributed to various fields, including medicine, transportation, and the exploration of rare metals and other resources, potentially alleviating pressure caused by the depletion of Earth's natural resources. At the same time, the inherently international nature of outer space reflects the common interests of humanity and represents a significant advancement in mankind's ability to understand and transform the world. However, legal regulation remains largely national and lags behind technological development, creating both challenges and opportunities. In conclusion, effective governance of outer space requires enhanced international cooperation, improvement of existing treaties, and the development of new legal frameworks to ensure security and equitable access for all countries.

Keywords: international law, outer space law, outer space, outer space activity, outer space rule of law.

Introduction

Outer space is the fourth largest active space pioneered by human beings after land, ocean and sky [1]. The successful launch of the first artificial satellite in 1957 marked the entry of mankind into the space era, and the outer space method was born. In the subsequent nearly 60 years of development, the outer space law has gone through three stages: treaty law, soft law and post-soft law [2]. These three stages correspond to the three historical games between the United States and the Soviet Union, developed countries in space and developing countries, and the United States and Europe and emerging space countries.

The current outer space governance rules are difficult to cover new security challenges. The 1967 Outer Space Treaty did not explicitly prohibit “non-destructive” anti-satellite tests, and there was no definition of the orbit occupation and cross-border flow of data of commercial constellations. The United Nations “Guidelines for the Long-term Sustainability of Outer Space Activities” and other “soft laws” lack coerciveness, resulting in the reduction of rules such as satellite decommissioning and disposal to “paper requirements”—although most countries will stop abandoning rocket wreckage in 2024, there are still enterprises that avoid the obligation to actively deorbit. The draft of the Treaty on the Prevention of the Placement of Weapons in Outer Space proposed by China and Russia has been delayed due to the opposition of individual countries, forming a legal vacuum of “prohibiting the deployment of weapons”.

The explosive growth of commercial aerospace, along with its supervision, has not played a corresponding role, but has instead led to increased chaos. By the time of writing this article, the data survey shows that there are more than 500 private satellite enterprises in the world, but the transnational regulatory standards are not uniform. For example, the United States is relaxed in the orbit approval of the “Star Chain”, China requires satellites to have the ability to deorbit, and developing countries are completely unable to implement supervision due to technological backwardness [3]. More seriously, the allocation of high-track resources still follows the principle of “first-come, first-served”. The United States and Europe occupy more

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than 70 % of low-track high-quality resources with the first-mover advantage, and emerging countries are forced to be deployed in high-risk orbits, which further exacerbates the governance imbalance.

Methods and materials

This article has used the literature analysis method and comparative analysis method.

Literature analysis method—The research in this article is analyzed and summarized through reading international regulations, domestic and foreign references, and the introduction of various materials.

Comparative analysis method—compare and analyze the actual background and practical situation of outer space safety in the paper.

Results

1. Deepening of international multilateral cooperation

At present, the number of space debris has exceeded 128 million, the risk of orbital collision continues to rise, and there are significant differences in the technical level of debris removal and the definition of responsibilities in countries. Therefore, promoting the formulation of unified standards has become the core demand of multilateral cooperation in the field of outer space.

The ISO20893 standard released by the International Organization for Standardization (ISO) in 2021 is a key breakthrough. This standard is led by China, which clarifies the technical requirements for the emission of residual propellant in the final stage of the launch vehicle, the prevention and control of disintegration in orbit, and also stipulates that spacecraft with an orbital altitude of 700 kilometers must be off track within 25 years. At present, this standard has been included in the Space Debris Mitigation Standard Manual by the European Space Agency, and 17 countries around the world have adopted its technical indicators in the design of new launch vehicles, laying a solid foundation for global unified debris management standards. In addition, the Zero Debris Charter launched by the European Space Agency, together with global aerospace enterprises, scientific research institutions and other forces, has set the goal of achieving zero debris increment by 2030. The relevant goals of debris monitoring and cleaning proposed by it are also gradually becoming the consensus of many countries.

In addition, spectrum and orbit are the core strategic resources of space activities. With the mass deployment of satellite constellations, the contradiction of resource scarcity is increasingly prominent. At present, although the International Telecommunication Union (ITU) has a basic distribution mechanism, there are problems such as lagging actual deployment after application and some countries grabbing resources. Therefore, deepening multilateral cooperation will focus on the improvement of rules and fair distribution. ITU is promoting the revision of relevant rules, such as shortening the “occupancy period” of satellite frequencies and orbital resources, avoiding some countries or enterprises from occupying resources for a long time without carrying out substantive activities; at the same time, multilateral cooperation will promote the establishment of a “dynamic adjustment mechanism”, targeting low-orbit satellite constellation-intensive areas, through data sharing Evaluate the orbital utilization rate, guide enterprises to plan satellite layout reasonably, and reduce orbital overlapping conflicts. Taking the Artemis Plan as an example, when many countries jointly built the lunar space station, they have simultaneously negotiated and determined the spectrum allocation scheme of Earth-Moon communication. This model of “project binding resource allocation” is expected to be promoted to the fields of near-earth orbit and deep space exploration in the future.

2. Commercial legislation has become a hot topic

People have never given up the country’s exploration of outer space, and have maintained a high degree of curiosity and desire to explore for thousands of years, which has made the commercial international cooperation in the application of outer space a new boom. Commercial rocket launch, satellite application, space tourism and other commercial new business forms are accelerating, becoming the core engine of the growth of the aerospace industry. In the field of commercial rockets, the iteration of reusable technology has greatly reduced the cost of launch, and the demand for high-frequency launches and mass networking has surged; satellite applications have been extended from traditional communication and navigation to remote sensing monitoring and the Internet of Things, and the large-scale deployment of commercial satellite constellations has become a trend; space tourism has moved from concept to reality, and suborbital brigade The normalized operation of travel and the exploration of rail tourism have been steadily promoted, and the audience of various commercial aerospace services has expanded from the professional field to the mass market. With the diversified development of business forms, the scale of the commercial aerospace market continues to expand, and the number of enterprises in the upstream and downstream of the industrial chain has shown ex-

plosive growth, but the chaos in the development of the industry has also gradually emerged. Some enterprises fall into disorderly competition in order to seize market share. For example, there are excessive grabbing of orbital resources and uneven technical standards in the deployment of low-orbit satellite constellations; the high-risk nature of space activities leads to difficulties in defining accident liability. Once rocket launch failure, satellite collisions and other events occur, it is easy for enterprises to be responsible. There is no clear basis for the guarantee of tourists, third-party loss compensation and other issues. These problems are difficult to effectively regulate by enterprise self-discipline or industry conventions alone, which not only restricts market fairness, but also buries space safety hazards.

Against this background, the intervention of legislation has become an inevitable choice. Special legislation can clarify the core game rules such as market access standards, business operation norms, and responsibility division principles for the unique attributes of commercial aerospace, and draw a compliance red line for enterprises. At the same time, legislation can establish a unified competition supervision mechanism to curb malicious low-price competition, resource hoarding and other behaviors, protect the legitimate rights and interests of compliant enterprises, and enable enterprises to compete within a fair and transparent framework. More importantly, legislation can guide the transformation of the focus of industrial development from “pursuing scale expansion and grabbing market share” to “improving technological innovation ability, ensuring safe operation, and optimizing service quality”, promote the high-quality development of the commercial aerospace industry, not only releasing the vitality of commercialization, but also safeguarding space safety market.

The characteristics of high investment and high risk in the aerospace industry make it difficult for a single country to independently support the development of the whole chain. Regional cooperation has changed from single project collaboration to whole industry chain coordination, which has become an inevitable trend. For example, China and Thailand signed a memorandum of cooperation with the International Lunar Research Station to carry out all-round cooperation on lunar exploration, data sharing and personnel training, which can not only reduce costs, but also unify resources and avoid waste. However, it has to be mentioned that there is a certain implementation dilemma. Due to the large differences in the qualification requirements, responsibility identification, data ownership and other aspects of various countries in space activities, the clear division of powers and responsibilities directly hinders the promotion of regional cooperation. For example, when enterprise A participates in the regional satellite constellation project led by country B, it often faces problems such as unconstrained launch licensing standards, conflicts in the division of accident responsibility, and restricted cross-border flow of in-orbit data.

Therefore, the regional aerospace cooperation agreement in outer space needs to have clear and unified legal application rules in order to reduce compliance costs and dispute risks in cooperation, and provide stronger institutional guarantees for resource integration, technology sharing and market interoperability in the region.

Discussion

Born in the early days of the Cold War, the international rule system, which was led by the government in the aerospace stage, and took the 1967 Outer Space Treaty as the cornerstone. At a time when commercial aerospace is booming and technological updates are changing rapidly, it has been seriously disconnected from reality. The “time gap” of this rule, coupled with the difficulty of forming consensus on the key issues of outer space, together build institutional barriers to the security governance of outer space.

1. The lag of legal rules

The current institutional framework of the core space treaty is based on the era of relatively backward development. Due to the backwardness of laws and regulations and people’s lack of imagination of science and technology, the diversified development trajectory of commercial aerospace has not been predicted at all. The 1967 Outer Space Treaty only established the principle with the general expression of “outer space for the peaceful use of all mankind”, but did not take into account that in today’s 21st century, space tourism has become something that can be easily realized. Therefore, space tourism needs to draw legal boundaries—when the Virgin Galaxy suborbital vehicle carries tourists across the Carmen Line, can tourists apply the astronaut rescue clause? If the failure of the aircraft causes ground damage, is it the responsibility of the launching country in accordance with the Convention on Liability, or is the operating enterprise directly liable for compensation? These practical problems are all unsolved because the treaty does not clarify the “legal status of commercial spacecraft”.

In addition, in the era of the explosion of the commercial aerospace industry, the regulatory gap for the constellation of commercial satellites is more deadly. The treaty does not set the orbital spacing standard and frequency occupancy period of low-orbit satellites, so that giant satellite constellations such as “Star Chain” can seize space resources on a “first-come, first-served” mode. By 2025, the number of satellites in orbit has exceeded 5,000, and orbital overlaps and conflicts with China’s “thousand sail constellation” are frequent. In addition, the constraint of the 1972 Liability Convention is only limited to national behavior. For accidents such as private satellite collisions and space debris pollution, the injured party needs to pursue responsibility through diplomatic channels. For example, in 2023, the Star Chain satellite collided with the Brazilian remote sensing satellite, and it took more than two years to pursue the responsibility and still did not reach compensation. Compensation agreement.

Expressions such as “proper attention to avoid polluting outer space” in the space treaty have become a “flexible clause” that is difficult to implement due to the lack of specific quantitative standards. When the Outer Space Treaty was drafted in 1967, the issue of space debris had not yet been taken into consideration. Today, there are more than 30,000 traceable space debris worldwide, more than 40 % of which come from abandoned satellites that have not fulfilled their deorbit obligations. Although the Long-term Sustainability Guidelines for Outer Space Activities requires “de-orbit within 25 years after the end of the mission”, the document is a “soft law” and is not binding [4]. By 2024, there are still 12 commercial aerospace enterprises to avoid the cost of deorbiting by extending the satellite in orbit. What’s more serious is that the environmental protection rules of the moon, asteroids and other deep space areas are completely blank. Human beings have left 200 tons of garbage on the moon, but there is no treaty that clearly divides the “responsibility for cleaning up space waste”.

2. *Insufficient legal constraints on safety hazards*

As commercial spaceflight enters the “constellation” outbreak period, the deployment plan of the “10,000-level” satellite cluster is pushing outer space security to the edge of danger: Space X “Star Chain” plans to deploy 42,000 satellites, and China’s “Qianfan Constellation” plans to deploy 12,000 satellites. Such large-scale deployment not only aggravates the tightness of orbital resources aggravated the already serious problem of space debris. At present, in the Earth’s orbit, traceable debris with a diameter of more than 10 cm has exceeded 30,000 pieces, and about 1 million small and medium-sized debris from 1 cm to 10 cm. These “space garbage” flying at high speed of 24,000 kilometers per hour may hit the spacecraft at any time and cause chain accidents. However, in the face of such an urgent crisis [5], the governance mechanism with the existing legal system as the core is almost “invalid” and falls into the triple dilemma of “no coercive constraints, no clear responsibilities, and no effective solutions”.

From the rule-level of debris management, there is only one unified guidance document on debris mitigation in the world—the Long-term Sustainability Guidelines for Outer Space Activities adopted by the United Nations Committee on the Peaceful Uses of Outer Space in 2019 [6]. However, this guideline is essentially only a “voluntary proposal”, which is not given any legal coercive force and cannot form a rigid constraint on countries and business entities. As Aarti Holla Maini, head of relevant United Nations agencies, said bluntly: “This code is more like a “paper commitment”, and the real implementation requires countries to take the initiative to implement it. However, in the current complex geopolitical environment, it is difficult for countries to reach a binding treaty consensus on debris management, and the practical role of the code has been greatly reduced Weak [7]”.

This “soft restraint” directly leads to the complete control of the source of space debris out of control. On the one hand, the decommissioning and disposal of commercial satellites has been reduced to the arbitrary behavior of enterprises’ “independent choice”: although the “Guidelines for the Long-term Sustainability of Outer Space Activities” recommend that “deorbitation will be completed within 25 years after the end of the satellite mission”, there are still 12 commercial aerospace enterprises around the world in 2024 that will deliberately extend satellites in order to avoid the cost of deorbitation. In-orbit time, disguised increases the risk of debris. What’s more confusing is that there are still obvious differences in the regulatory standards for the decommissioning of satellites in different countries—the United States only requires low-orbit satellites to be decommissioned within 5 years, with lax standards and limited implementation; although the European Union has formulated mandatory de-orbit rules, it cannot restrain the violations of enterprises in other countries due to the lack of transnational supervision. On the other hand, the “zero accountability” mechanism of anti-satellite tests further aggravates debris pollution: the anti-satellite test carried out in India in 2019 directly produced more than 200 traceable debris, which threatens the safety of other spacecraft by staying in near-ground orbit for a long time. However, because current law does not explicitly prohibit anti-

satellite tests, there are also no corresponding sanction provisions, and India has not been subject to any international accountability. Today, such anti-satellite tests have become the third largest source of near-Gear orbit debris, but there has always been a lack of legal means to contain them.

If the lack of source control makes the debris “continue to add”, then the dilemma of cleaning up the stock of debris makes the crisis “continuously accumulate”. The existing legal system does not define core issues such as “the entity responsible for debris removal” and “the party responsible for cleanup costs”, which has led to the global stock of debris growing at a rate of 5% per year. Meanwhile, the corresponding cleanup capacity is seriously insufficient—the world can remove fewer than 10 large debris objects each year, and the costs are extremely high, while the technology remains limited. For example, the ClearSpace-1 project led by the European Space Agency is capable of capturing and removing only one defunct satellite at a cost of approximately USD 100 million. Similarly, laser-based debris removal technology developed in Japan is suitable only for very small debris with a diameter of less than 1 cm; moreover, due to the lack of clear legal authorization, it risks being misinterpreted as a space weapon, which has generated international controversy and hindered its large-scale application.

More seriously, the attribution of responsibility for “historical debris” remains an unresolved issue. Early space objects launched in the mid-20th century have effectively become “space antiques” after decades in orbit. However, in the absence of international treaties requiring launching states to assume responsibility for the removal of such legacy debris, many of these objects continue to remain in orbit.

This distorted situation, in which those who pollute are not held accountable, has trapped the space debris problem in a vicious cycle characterized by continuous accumulation and unclear responsibility for existing debris, thereby further constraining the sustainable use of outer space [8].

Conclusions

International cooperation has gradually become an inevitable path of development, and the COVID-19 pandemic has accelerated the evolution of unprecedented changes in the world. The security and legal crisis in outer space once again shows that the fate of mankind is shared, the interests of all countries are closely linked, and the world is an inseparable community of destiny. To promote the exploration of outer space, the international community must unite and cooperate to jointly deal with the crisis test of hidden security risks. At the same time, the theme of the era of peace and development has not changed, and cooperation to meet challenges is the only option for the international community. In the era of globalization, it should not be some people who oppose another part, but all people should benefit everyone.

At the level of the legal system, outer space governance will be advanced through a dual approach of “global coordination + regional linkage.” On the one hand, the United Nations framework will retain a central leading role, while foundational instruments such as the Outer Space Treaty will be supplemented and revised to address emerging scenarios and provide clear legal support for international cooperation. On the other hand, regional cooperation will serve as an important complement to global rules [9], as illustrated by multilateral technical coordination under the Artemis program and the cooperative framework of the Sino-Russian International Lunar Research Station. The rules and technical standards derived from these initiatives will further enhance the global governance system. On this basis, by harmonizing standards to reduce technical barriers and improving governance efficiency through the use of digital tools, outer space activities can transition from “disorderly competition” to “cooperative win-win” outcomes, thereby removing regulatory and environmental obstacles to the development of emerging sectors such as space tourism and lunar bases.

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Ғарыш қызметін құқықтық реттеудегі қауіпсіздікті қамтамасыз етудің қиындықтары мен перспективалары

Ғарыш кеңістігі әрқашан адамзаттың өмір сүруі мен дамуының маңызды жалғасы болып саналады және ғылыми-техникалық прогресс, ресурстарды пайдалану және өркениеттің жалғасуы үшін үлкен маңызға ие. Қытайдың классикалық мифологиясындағы жұлдыздардан бастап ежелгі грек мифологиясындағы шокжұлдыздар туралы түсініктерге дейін адамдардың қиялы мен ғарышты зерттеуге деген ұмтылысы мыңдаған жылдар бойы тоқтаған емес. Мақалада халықаралық құқық шеңберінде ғарыш қызметін құқықтық реттеу барысында қауіпсіздікті қамтамасыз етудің мәселелері мен перспективалары талданған. Зерттеудің мақсаты — ғарыш кеңістігін реттеудің қолданыстағы құқықтық механизмдерін талдау және ғарыш қызметінің қауіпсіздігін қамтамасыз етуге байланысты негізгі мәселелерді анықтау. Зерттеуде ғылыми әдебиеттерді талдау және салыстырмалы талдау әдістері қолданылды. Зерттеу нәтижелері ғарыш қызметінің қоғам өмірінің әртүрлі салаларына, соның ішінде медицина мен көлікке әсер ететінін, сондай-ақ сирек металдар мен басқа да ресурстарға қол жеткізуге мүмкіндік беретінін көрсетеді. Бұл өз кезегінде Жер ресурстарының сарқылуына байланысты қысымды азайтуға көмектесуі мүмкін. Ғарыш кеңістігінің халықаралық сипаты адамзаттың ортақ мүдделерін білдіреді және адамдардың әлемді тану мен өзгерту мүмкіндіктерін кеңейтеді. Сонымен қатар құқықтық реттеу технологиялық дамудан артта қалып отыр және көбіне ұлттық сипатқа ие, бұл белгілі бір мүмкіндіктер мен қиындықтарды тудырады. Қорытындылай келе, ғарыш кеңістігін тиімді басқару халықаралық ынтымақтастықты күшейтуді, қолданыстағы халықаралық шарттарды жетілдіруді және барлық мемлекеттер үшін қауіпсіздік пен ғарышқа әділ қолжетімділікті қамтамасыз ететін жаңа құқықтық тетіктерді әзірлеуді талап етеді.

Кілт сөздер: халықаралық құқық, ғарыш кеңістігі құқығы, ғарыш кеңістігі, ғарыш қызметі, ғарыш кеңістігіндегі заң үстемдігі.

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Вызовы и перспективы обеспечения безопасности в правовом регулировании космической деятельности

Космическое пространство всегда являлось важным продолжением существования и развития человечества и имеет большое значение для научно-технического прогресса, использования ресурсов и продолжения цивилизации. Начиная со звезд в классической китайской мифологии и заканчивая представлениями о созвездиях в древнегреческой мифологии, фантазии и стремление людей к исследованию космоса не прекращались на протяжении тысячелетий. В данной статье анализируются проблемы и перспективы обеспечения безопасности в правовом регулировании космической деятельности в рамках международного права. Цель исследования заключается в анализе существующих правовых механизмов регулирования космического пространства и выявлении ключевых проблем, связанных с обеспечением безопасности космической деятельности. В исследовании использованы методы анализа научной литературы и сравнительного анализа. Результаты исследования показывают, что космическая деятельность оказывает влияние на различные сферы жизни общества, включая медицину и транспорт, а также способствует доступу к редким металлам и другим ресурсам, что может помочь снизить давление, вызванное истощением природных ресурсов Земли. Международный характер космического пространства отражает общие интересы человечества и расширяет возможности людей в познании и преобразовании мира. В то же время правовое регулирование отстает от технологического развития и носит преимущественно национальный характер, что создает определенные возможности и вызовы. В заключение подчеркивается, что управление космическим пространством требует между-

народного сотрудничества, совершенствования существующих международных договоров и разработки новых правовых механизмов, обеспечивающих безопасность и справедливый доступ всех государств к космосу.

Ключевые слова: международное право, космическое право, космическое пространство, космическая деятельность, верховенство права в космическом пространстве.

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Institutional Transformation and International Legal Benchmarks in the Practice of Human Rights Reforms in the Republic of Uzbekistan

The subject of the research is the constitutional and judicial reforms in the Republic of Uzbekistan in 2023, with particular reference to their compliance with international human rights standards. The study is also significant as it examines the institutional reforms, the digitalization of the justice system, and the incorporation of international legal norms into the national legislation of the Republic of Uzbekistan. Special attention is paid to the role of the Ombudsman, judicial independence, and procedures for the protection of the rights of vulnerable groups, including women, children, older persons, and people with disabilities. The research is conducted through the prism of the three-dimensional model of reform effectiveness, encompassing normative, institutional, and functional aspects. It also provides a comparative analysis of reforms in Uzbekistan, Kazakhstan, and Kyrgyzstan, identifying both common features and key differences across these countries.

Keywords: constitutional reform, judicial reform, human rights, digital justice, Ombudsman, institutional transformation, international law, comparative analysis.

Introduction

Over the past decade, the Republic of Uzbekistan has undergone a series of institutional reforms aimed at strengthening democratic governance, ensuring constitutional legality, and harmonizing national legislation with international human rights norms and standards [1, 2]. One of the most significant steps in this process was the adoption of the new version of the Constitution of the Republic of Uzbekistan in 2023 [3]. Unlike earlier constitutional amendments, this reform not only introduced textual changes to the Constitution but also initiated structural transformations in the system of public authority, mechanisms of legal responsibility, and the protection of human rights and fundamental freedoms [3, 4].

The reform process is widely viewed as part of a broader strategy of national modernization based on constitutional principles that recognize human rights and human dignity as fundamental values of the state [5]. At the same time, these developments rely on established doctrinal approaches concerning the interaction between national and international law [6]. The constitutional development of Uzbekistan cannot be considered in isolation from the country's international obligations and its participation in global legal processes.

Institutional reforms have particularly focused on strengthening the role of the Ombudsman, expanding mechanisms of parliamentary oversight, enhancing judicial independence, and introducing comprehensive anti-corruption policies [4, 7]. In parallel, the state has actively promoted the digitalization of governance by integrating information and communication technologies into judicial and administrative procedures, thereby increasing transparency, efficiency, and public access to justice [8].

However, the implementation of large-scale institutional and digital transformations is not without challenges. The success of constitutional and judicial modernization depends not only on the legal design of reforms but also on the institutional capacity to effectively implement them. Transitional legal systems often face risks related to regional disparities, the digital divide, and insufficient professional training among judicial and administrative personnel.

In this context, empirical analysis plays a crucial role in evaluating the effectiveness of reforms. The integration of statistical data on judicial efficiency, the handling of complaints, and the accessibility of justice, combined with case-based assessments of institutional practice, makes it possible to conduct an objective evaluation of reform outcomes. Furthermore, comparing Uzbekistan's reform trajectory with that of other

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Central Asian states allows researchers to identify both regional patterns and the distinctive features of the Uzbek model of constitutional transformation.

The scientific novelty of this research lies in the interpretation of the 2023 constitutional reform as a multi-level institutional transformation carried out in the context of digitalization, which is examined through comparative analysis and in connection with the requirements of international human rights instruments. The study also has practical significance, as its findings may serve as a guideline for policymakers, judges, and civil society actors in developing effective mechanisms aimed at strengthening the protection of human rights, reinforcing the rule of law, and increasing the transparency and accountability of public institutions in the Republic of Uzbekistan.

The research demonstrates that the constitutional reform of 2023 represents a systemic transformation designed to enhance the protection of human rights and freedoms and to modernize the institutional framework of governance in accordance with contemporary constitutional and international legal standards. In this context, the analysis of the reform requires a comprehensive examination of its institutional structure, legal foundations, and practical mechanisms of implementation.

Accordingly, the present study examines Uzbekistan's constitutional and judicial reforms undertaken in 2023 as elements of a unified and coherent system aimed at transforming state institutions and strengthening the protection and promotion of human rights in accordance with international standards [1, 3, 5]. Particular attention is paid to the interaction between constitutional norms, institutional practices, and the growing role of digital technologies in the implementation of these reforms. The research also explores how these mechanisms function within the broader framework of international and domestic human rights instruments, as well as their practical implications for the development of modern governance and the rule of law in Uzbekistan [6, 9, 10].

Methodologically, the present study will follow a three-layered approach in its investigation of Uzbekistan's constitutional and judicial reforms, including:

- The normative level: constitutional amendments, laws, and international treaties.
- The institutional level: judicial bodies, the Ombudsman, Parliament, executive branches, and civil society.
- The functional level: access to justice, procedural justice, digital justice, and social protection [2, 7, 11].

As opposed to traditional approaches, this study will attempt to examine constitutional and judicial reforms in Uzbekistan from the viewpoint of a process of institutional adaptation and implementation, rather than just formal legal instruments. This will, in turn, provide a more accurate understanding of the potential weaknesses of these reforms and their possible consequences, including institutional overloading and the potential for unequal constitutional practices in different parts of the country [4, 12, 13].

Previous studies on constitutional and judicial reforms in Uzbekistan have mostly focused on constitutional and legal instruments, paying little attention to their actual implementation and social consequences. This study, on the other hand, will attempt to enrich its research scope by including various indicators of judicial performance, certain judicial decisions demonstrating the practice of new constitutional norms, and elements of a case study to show how Uzbekistan's digital justice technologies operate in practice [12, 14, 15].

There will also be a special part of this study, which will attempt to apply the models of Kazakhstan and Kyrgyzstan to assess the trends of judicial reforms and constitutional modernization in the region and to identify the peculiarities of Uzbekistan's constitutional and judicial reforms. The research will also have a comparative perspective by using the example of Kazakhstan and Kyrgyzstan to analyze the trends in the region regarding the reform of the judiciary and the modernization of the constitutional system in the region [16, 17].

In order to systematize the main institutional and legal characteristics of constitutional reforms in Central Asia, a comparative analysis of Uzbekistan, Kazakhstan and Kyrgyzstan is presented in Table 1.

Comparative Analysis of the Compliance of National Legislation with International Human Rights Standards and Constitutional Reform Processes in Uzbekistan, Kazakhstan and Kyrgyzstan

Analytical Criterion	International Legal Framework	Uzbekistan	Kazakhstan	Kyrgyzstan
Constitutional guarantees of human rights	Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (ICCPR)	The 2023 Constitution establishes the priority of human rights, expands the catalogue of fundamental rights and introduces the principle of human dignity	The 2022 constitutional amendments strengthened guarantees of citizens' rights and improved the balance between branches of power	The 2021 Constitution contains a broad catalogue of human rights and freedoms
Right to a fair trial	ICCPR, Art. 14	Judicial reforms aim to strengthen judicial independence and procedural guarantees	A Constitutional Court was established in 2022, allowing citizens to submit direct petitions	The Constitutional Court examines issues of constitutionality of legal acts
Socio-economic rights	International Covenant on Economic, Social and Cultural Rights (ICESCR)	The Constitution establishes the concept of a social state and guarantees social protection	National legislation provides state programmes for social support	Socio-economic rights are constitutionally guaranteed, though implementation challenges remain
Gender equality and women's rights	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	National programmes promoting gender equality are being implemented	State gender policy programmes are implemented	Legislation includes measures aimed at protecting women's rights
Rights of the child	Convention on the Rights of the Child (CRC)	Legislation is aimed at strengthening child protection and family institutions	National programmes on child protection are implemented	Legal mechanisms for the protection of children's rights are established
Protection against torture and ill-treatment	Convention against Torture (CAT)	Criminal liability for torture has been strengthened and monitoring mechanisms introduced	National legislation provides criminal liability for torture	Legal mechanisms exist to investigate cases of ill-treatment
Rights of persons with disabilities	Convention on the Rights of Persons with Disabilities (CRPD)	New social guarantees and inclusion programmes have been introduced	Social integration programmes for persons with disabilities are implemented	Legislation provides measures for social support of persons with disabilities
Institutional human rights protection mechanisms	UN Paris Principles relating to National Human Rights Institutions	The role of the Ombudsman and parliamentary oversight mechanisms has been strengthened	The Commissioner for Human Rights operates as an independent institution	The Ombudsman reviews citizens' complaints
Digitalization of justice and access to justice	UN recommendations on access to justice	Electronic court systems and digital judicial platforms are actively developing	E-justice systems and online judicial services are expanding	Digitalization of justice is developing gradually
Level of harmonization with international law	Core UN human rights treaties	Active reform process and gradual expansion of compliance with international standards	Relatively high level of institutional integration of international norms	Formal compliance with international standards exists, although institutional challenges remain

As demonstrated in Table 1, all three Central Asian states have incorporated the fundamental international human rights conventions into their national legal systems. However, the scope of constitutional reforms and the effectiveness of institutional mechanisms for human rights protection vary depending on national legal traditions, governance models and the pace of legal reforms.

Special attention is paid to risks associated with institutional and digital transformation. These include difficulties of norm implementation at the regional level, uneven professional preparedness of judicial personnel, risks of data protection violations in electronic justice systems, and barriers to access for socially vulnerable groups lacking digital resources or legal awareness [9, 14, 18].

Thus, the object of research includes not only the formal content of reform acts but also their practical realization, institutional effects and social consequences, which allows evaluation of reform effectiveness through both qualitative and quantitative indicators of legal accessibility and institutional performance [12, 13, 19].

Methods and materials

The study combines general scientific and special legal methods to examine constitutional reform, judicial modernization, and the implementation of international human rights standards in Uzbekistan [3, 9, 10].

The normative basis of the study includes the Constitution of the Republic of Uzbekistan (2023) [3], the Law on the Ombudsman [8], publications on constitutional reform in Uzbekistan [4, 5], and basic international human rights instruments, such as the UDHR, ICCPR, CEDAW, CRC, and CAT [11, 14, 20, 21, 22].

The empirical basis of the study includes publicly available statistical information on the activities of the court, the period of court proceedings, and the provision of electronic justice services, the activity reports of the UN monitoring bodies [12, 23], and some judicial decisions to reflect the practical implementation of the constitutional rights and freedoms.

The formal-legal method is used to interpret constitutional and legislative norms [3, 4]. The comparative legal method is used to evaluate the degree of conformity between national legislation and international human rights standards, and to compare the constitutional reform processes in Uzbekistan, Kazakhstan, and Kyrgyzstan [9, 16, 17].

In order to assess the degree of compliance of national legislation with international human rights standards, a comparative analysis of constitutional reforms and institutional human rights protection mechanisms in Uzbekistan, Kazakhstan and Kyrgyzstan is presented in Table 1.

The institutional method is used to evaluate the activities of the court, the Ombudsman, the Parliament, and executive agencies in the context of constitutional reform and the implementation of international human rights standards [7, 11, 12]. The functional method focuses on the accessibility of justice, the provision of electronic justice, and the activities of the executive agencies, the Ombudsman, and the Parliament to protect the rights and freedoms of the population [8, 18].

Quantitative methods, such as the period of court proceedings, the number of complaints, and the provision of electronic justice, are used as auxiliary methods to evaluate the effectiveness of constitutional reform, and the analysis of the practice of the court to evaluate the internalization of international human rights standards [12, 13, 14].

The relationship between the research objectives and the key findings is summarized in Table 2.

Table 2

Relationship between Research Objectives, Key Findings and Identified Risks

Research objective	Key findings	Identified problems and risks
To assess the impact of constitutional reform on human rights protection	The 2023 Constitution expanded the catalogue of rights and social guarantees in line with international standards [1, 5].	Uneven regional implementation; limited public awareness; gaps in secondary legislation [4, 13].
To analyze the integration of international standards into national law	National legislation increasingly reflects the provisions of the UDHR, ICCPR, CEDAW, CRC and CAT [5, 6, 7, 8, 10].	Delays in practical application; selective incorporation of treaty norms; insufficient judicial interpretation of international law [6, 12].
To examine institutional mechanisms for rights protection	The strengthened status of the Ombudsman improved parliamentary oversight and complaint procedures [2, 11].	High caseload; limited enforcement powers; insufficient territorial coverage [11, 13].
To evaluate judicial modernization	Judicial reforms enhanced independence, procedural guarantees and professional standards [6, 12, 21].	personnel shortage; inconsistencies in judicial practice; remaining administrative influence [12, 21].
To assess the impact of digitalization on justice	Electronic court systems and e-government tools reduced procedural delays and improved transparency [12, 14].	Risks of data protection violations; digital divide; limited access for elderly and rural populations [14, 18].
To analyze anti-corruption reforms	Transparency in public administration increased and institutional safeguards were strengthened [15].	Formal compliance without behavioral change; institutional resistance to accountability mechanisms [15].
To examine gender equality reforms	Gender policies correspond to CEDAW obligations and SDG 5 objectives [7, 24, 25].	Persistence of cultural barriers; weak judicial enforcement of anti-discrimination norms [24].
To analyze protection of vulnerable groups	Social protection measures correspond to international standards and national development priorities [8, 18].	Insufficient targeting; fragmentation of services; dependence on digital access [18].
To assess the implementation of anti-discrimination norms	Minority protection and racial equality norms were progressively incorporated into legislation and administrative practice [26, 27].	Lack of statistical monitoring; low litigation rates; insufficient doctrinal development [26].

Results

The reforms implemented in 2023 resulted in the formation of a multi-level system of human rights protection combining constitutional reform, institutional transformation and international legal standards.

At the constitutional level, the expansion of rights and enhancement of social guarantees strengthened the normative foundation of the legal system and reaffirmed the principles of dignity, equality and social justice [1, 3, 5]. In the new Constitution, there is the incorporation of key aspects of international human rights thinking, as reflected in the UDHR and ICCPR [5, 6].

In terms of measures for gender equality, there is compliance with CEDAW Convention requirements and Sustainable Development Goal 5 [7, 24, 25]. Child protection systems also comply with CRC Convention requirements [8, 20], while there is compliance with CAT Convention requirements on torture prevention [10].

In terms of institutional reform, there is the strengthening of the Ombudsman's powers, which led to the improvement of parliamentary oversight, including the clarification of complaint handling [2, 11]. The judicial reform push has led to greater judicial independence, clarity on judicial procedures, and higher standards of judicial professionalism, which support fair trial requirements [6, 12, 21].

In terms of modernization of the judicial system, there is the digitalization of the judicial system, which has led to faster judicial delivery, including the electronic management of judicial cases, which has led to greater access to justice [12, 14]. The anti-corruption reforms have led to greater transparency, including the reduction of systemic corruption risks [15].

However, there are risks associated with institutional reform, including the risks associated with rapid expansion, which may necessitate greater capacity, training, and funding for the new guarantees, while the existence of regional differences may create challenges for the implementation of constitutional standards.

In terms of digitalization, there may be risks associated with data protection, including cybersecurity risks, which may create disparities between the haves and have-nots, including the elderly, while the digitalization of justice may speed things up, while also creating barriers for those who may not be digital literate or may not have access to the internet, while judicial practices may be increasingly shaped by constitutional requirements, including international treaties, which may indicate the gradual internalization of international human rights standards, although there may be concerns over the interpretation of international treaties, which may necessitate training on international human rights law, while protection policies for vulnerable groups may be compliant with international requirements, including Sustainable Development Goal 5, while UN monitoring reports may indicate positive developments on treaty compliance, which may be positive for building trust, including greater transparency, accountability, and digitalization of justice [12, 14, 15, 19].

Discussion

The constitutional reform implemented in the Republic of Uzbekistan in 2023 should be interpreted not merely as a formal amendment to constitutional provisions, but rather as a broader process of structural transformation aimed at redefining the relationship between the state, society, and the individual within the framework of modern constitutionalism. From a doctrinal perspective, the reform reflects a transition toward a constitutional model in which the protection of human dignity, fundamental rights, and the rule of law constitutes the normative core of the legal system. Such transformation corresponds to contemporary theories of constitutional development that emphasize the evolution from declarative constitutional frameworks toward the effective institutionalization of rights through enforceable legal mechanisms, independent judicial institutions, and accountable governance structures.

In this context, previous academic studies emphasize that the development of constitutionalism in the Republic of Uzbekistan should be examined within a broader theoretical and legal framework of interaction between international and national legal systems. A number of scholarly works demonstrate that the incorporation of international legal standards into the national legislative system presupposes not only the formal ratification of international treaties, but also the gradual institutional adaptation of mechanisms for their implementation, as well as the evolution of legal doctrine within the national legal order [28]. Such an approach makes it possible to interpret constitutional reforms as an element of a broader process of legal modernization and the gradual integration of the national legal system into the contemporary international legal order.

A key analytical aspect of the reform under consideration is the dynamics of interaction between national constitutional law and international human rights standards. The incorporation of internationally recognized principles enshrined in such universal instruments as the Universal Declaration of Human Rights

and the International Covenant on Civil and Political Rights demonstrates a growing tendency toward the convergence of national legal systems with the global human rights protection regime. At the same time, the results of the present study indicate that the effectiveness of such normative convergence depends not only on processes of legislative harmonization, but also on the interpretative activity of judicial bodies and the practical internalization of international legal norms within national law-enforcement practice. The existence of differences in judicial interpretation and the uneven application of international standards across various regions of the country indicates the continuing need for further doctrinal development of these issues, methodological support for law-enforcement activities, and systematic professional training of judges and legal practitioners engaged in the application of international human rights law.

The process of constitutional transformation should also be analyzed in the context of broader institutional and politico-legal changes initiated through the implementation of national development strategies aimed at improving the system of public administration, enhancing the efficiency of public governance, and strengthening the transparency of state institutions. The results of previously conducted studies demonstrate that the implementation of strategic reforms in Uzbekistan has contributed to the gradual modernization of public administration mechanisms and the strengthening of constitutional guarantees of human rights and freedoms [16, 29, 30]. These processes have formed an institutional environment in which constitutional modernization has become increasingly interconnected with the development of international cooperation and the establishment of modern democratic governance mechanisms.

An important dimension of the reform is also the institutional modernization of the justice system through the integration of digital technologies. The introduction of electronic court systems, online judicial case-management platforms, and digital public services reflects the global trend toward the digitalization of public administration and judicial governance. From a functional perspective, such technological innovations contribute to improving procedural efficiency, transparency, and accessibility of justice. At the same time, the digital transformation of legal institutions generates new regulatory challenges related to personal data protection, cybersecurity, issues of algorithmic accountability, and the risks of social inequality associated with the existence of the digital divide. In this regard, ensuring the long-term sustainability of digital justice initiatives requires the development of comprehensive legal safeguards and the formulation of inclusive public policies aimed at preventing situations in which technological progress may undermine the principle of equal access to justice.

The reform of the constitutional and legal system also addresses issues of social justice, gender equality, and the protection of vulnerable population groups in accordance with the international legal obligations of the Republic of Uzbekistan. The expansion of legal guarantees aimed at combating discrimination, ensuring gender equality, and protecting the rights of the child reflects the state's implementation of obligations arising from international treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Academic studies devoted to the achievement of gender equality and the implementation of the Sustainable Development Goals demonstrate that contemporary legal reforms in Uzbekistan are increasingly oriented toward international standards aimed at ensuring equality, social justice, and the protection of vulnerable social groups [24, 25].

At the same time, the presence of formally established legal guarantees cannot guarantee their effective implementation in practice. The presence of existing structural barriers, including regional differences in institutional capabilities, heterogeneity of law enforcement practices, and low levels of legal awareness among some social groups, may affect the effectiveness of the practical implementation of these guarantees. In this regard, recent studies of issues of racial discrimination and implementation of international conventions against discrimination highlight the need for further development of institutional capabilities aimed at preventing discrimination and ensuring the principle of equality before the law [26, 27].

An important factor in the sustainability of constitutional reform is also the development of institutions of public oversight and civil society institutions. The expansion of the powers of the Ombudsman institution, as well as the development of parliamentary oversight institutions, contributes to the creation of a system of institutional oversight aimed at preventing the abuse of power and increasing the transparency of public institutions. In this regard, the reform process in Uzbekistan is characterized by a model of gradual institutional consolidation, where constitutional guarantees are supplemented by administrative reforms, modernization of the judicial system, and expansion of forms of public participation in governance.

A comparative legal analysis of the experience of other Central Asian countries reveals that the approach adopted by Uzbekistan can be regarded as a particular model of the state-driven modernization of the legal system with the aim of achieving a balance between the stability of institutions and the dynamism of

legal changes, as well as the deepening of international legal integration. At the same time, recent studies have found that the evolution of international legal institutions, particularly the system of the United Nations, plays an increasingly significant role in the formation of global human rights standards and, accordingly, national processes of legal reforms [19]. In this regard, the constitutional reform of 2023 can be viewed not only as an internal process of legal transformation but also as an essential part of the general process of transformation of the modern international legal system, which plays a considerable role in the evolution of national constitutional regulation.

Conclusions

The constitutional and institutional reforms implemented in the Republic of Uzbekistan in 2023 represent a significant stage in the country's ongoing process of legal modernization and democratic institutional development. The analysis conducted in this study demonstrates that the reform should not be understood solely as a revision of constitutional text; rather, it constitutes a comprehensive transformation of the institutional architecture of governance aimed at strengthening the protection of human rights, enhancing judicial accountability, and aligning national legal practices with internationally recognized legal standards.

From a doctrinal perspective, the reform reflects the consolidation of a constitutional paradigm centered on the principles of human dignity, equality before the law, and the supremacy of constitutional norms. The expansion of fundamental rights, the strengthening of judicial guarantees, and the development of institutional oversight mechanisms collectively contribute to the formation of a more coherent and resilient constitutional system. At the same time, the integration of international human rights standards into the national legal framework demonstrates Uzbekistan's increasing participation in the global legal order and its commitment to fulfilling international legal obligations.

The empirical findings presented in this study indicate that the reform has already produced measurable institutional effects, including improvements in judicial procedures, enhanced mechanisms of parliamentary and ombudsman oversight, and increased transparency through the introduction of digital governance and electronic justice systems. However, the analysis also reveals that the effectiveness of constitutional reform ultimately depends on the capacity of legal institutions to translate normative commitments into consistent and equitable legal practice. Persistent challenges—such as regional disparities in implementation, the need for further professional training of legal practitioners, and the risks associated with digital inequality and data protection—highlight the importance of continued institutional strengthening and coordinated policy development.

From a policy perspective, the findings of this research suggest that the long-term sustainability of constitutional reform requires targeted measures aimed at strengthening institutional capacity and ensuring effective implementation of legal norms. In particular, expanding judicial training in international human rights law, improving coordination among constitutional institutions, and promoting nationwide legal awareness programmes could significantly enhance the practical realization of constitutional guarantees. In addition, the continued development of digital justice systems should be accompanied by comprehensive regulatory frameworks addressing cybersecurity risks, personal data protection, and equal access to technological infrastructure.

Future research should focus on the long-term evaluation of judicial practice, the accessibility and effectiveness of digital justice mechanisms, and the evolving role of oversight institutions in safeguarding constitutional rights. Comparative studies of constitutional modernization processes in other Central Asian states may also contribute to a deeper understanding of regional legal transformations and the diversity of institutional approaches to implementing international human rights standards.

Overall, the experience of Uzbekistan demonstrates that constitutional reform should be understood as a continuous and multidimensional process rather than a single legislative event. The effectiveness of constitutional transformation depends not only on the adoption of progressive legal norms but also on the ability of institutions, legal professionals, and civil society to ensure their consistent implementation in practice. In this sense, the Uzbek reform model contributes to the broader scholarly discussion on constitutional modernization in transitional legal systems and provides valuable insights into how national legal reforms can interact with international human rights standards to strengthen the rule of law and democratic governance in contemporary societies.

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Өзбекстан Республикасындағы адам құқықтары саласындағы реформалар тәжірибесіндегі институционалдық трансформация және халықаралық-құқықтық өлшемдер

Мақалада 2023 жылы Өзбекстан Республикасында жүзеге асырылған конституциялық және сот реформалары қарастырылып, олардың халықаралық адам құқықтары стандарттарына сәйкестігі талданған. Зерттеуде институционалдық өзгерістер, сот жүйесінің цифрландырылуы және халықаралық құқық нормаларын ұлттық заңнамаға енгізу мәселелері зерделенген. Ерекше назар Омбудсмен институтының рөліне, сот тәуелсіздігіне, процессуалдық кепілдіктерге және әйелдер, балалар, қарт адамдар мен мүгедектігі бар тұлғалар сияқты осал топтардың құқықтарын қорғау тетіктеріне аударылады. Зерттеу үш өлшемді әдіснамалық модельге негізделген, яғни нормативтік, институционалдық және функционалдық. Бұл тәсіл реформалардың тиімділігін және олардың практикалық нәтижелерін жан-жақты бағалауға мүмкіндік береді. Қазақстан және Қырғызстанмен жүргізілген салыстырмалы талдау өңірлік үрдістерді және Өзбекстан реформалары моделінің ерекше қырларын анықтайды. Зерттеу барысында жетістіктермен қатар бірқатар мәселелер де көрсетілген, атап айтқанда реформалардың өңірлер бойынша біркелкі жүзеге аспауы, цифрлық теңсіздік тәуекелдері және сот кадрларының кәсіби әлеуетіндегі олқылықтар. Зерттеу нәтижелері Өзбекстандағы 2023 жылғы реформалар адам құқықтарын қорғауды, құқық үстемдігін және институционалдық ашықтықты нығайтуға бағытталған жүйелі тәсілді көрсететінін дәлелдейді.

Кілт сөздер: конституциялық реформа, сот реформасы, адам құқықтары, цифрлық сот төрелігі, Омбудсмен, институционалдық трансформация, халықаралық құқық, салыстырмалы талдау.

М.А. Рахимова

Институциональная трансформация и международно-правовые ориентиры в практике реформ в сфере прав человека в Республике Узбекистан

В данной статье рассматриваются конституционные и судебные реформы, реализованные в Республике Узбекистан в 2023 году, с акцентом на их соответствие международным стандартам прав человека. В исследовании анализируются институциональные преобразования, цифровизация правосудия и интеграция международно-правовых норм во внутреннее законодательство. Особое внимание уделяется роли омбудсмена, независимости судебной власти, процессуальным гарантиям и механизмам защиты уязвимых групп населения, включая женщин, детей, пожилых людей и лиц с инвалидностью. Исследование основано на трехмерной аналитической модели — нормативной, институциональной и функциональной, что позволяет провести комплексную оценку эффективности реформ и их практических результатов. Сравнительный анализ с Казахстаном и Кыргызстаном выявляет региональные тенденции и уникальные особенности узбекской модели реформ. В работе определяются как достижения, так и существующие проблемы, включая неравномерность реализации реформ в регионах, риски цифрового неравенства и недостатки профессиональной подготовки судебных кадров. Полученные результаты демонстрируют, что реформы 2023 года в Узбекистане представляют собой системный подход к укреплению защиты прав человека, верховенства права и институциональной прозрачности.

Ключевые слова: конституционная реформа, судебная реформа, права человека, цифровое правосудие, Омбудсман, уязвимые группы, институциональная трансформация, международное право, сравнительный анализ.

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Legal Limits on the Use of Digital Evidence in Cybercrime Cases: Examining the right to privacy in the EU, and the Republic of Kazakhstan

Cybercrime investigations increasingly rely on intrusive digital techniques that can interfere with private life. This article identifies minimum procedural safeguards that reconcile effective cybercrime enforcement with respect for privacy. Using doctrinal and comparative legal analysis, it benchmarks Kazakhstan's regulation of intrusive investigative measures against standards developed by the European Court of Human Rights and relevant European Union requirements, with reference to practices in selected member states. The study examines four techniques: interception of communications, access to traffic and location data, remote access to digital devices, and the use of commercial spyware. The comparison shows that vague statutory bases and weak supervision can turn crime-control tools into surveillance. At a minimum, privacy-compatible enforcement requires prior independent authorization, clear limits on scope and duration, auditable rules for data handling (storage, access, sharing, deletion), effective oversight and accountability, post-measure notification when it no longer jeopardizes investigations, and accessible remedies. The article concludes with priority reforms for Kazakhstan to strengthen legal certainty and oversight while preserving investigative capacity.

Keywords: cybercrime, surveillance, privacy, intrusive measures, metadata, digital evidence, proportionality, ECtHR, procedural safeguards, commercial spyware.

Introduction

Digital technology has expanded cybercrime and, at the same time, the investigative toolkit used to respond to it. Interception, covert device access and large-scale data collection often operate in secrecy and can cut deeply into private life. When the legal basis is drafted broadly or procedural checks are thin, legitimate investigation can slide into disproportionate interference. This article therefore maps the minimum legal and procedural safeguards that should accompany such measures, using European human rights jurisprudence and Kazakhstan's evolving regulatory framework as the core points of reference. It explains how the ECtHR has interpreted and adjusted the principles of proportionality and legal certainty under Article 8 of the ECHR. Scholars like Robert Alexy [1] and Aharon Barak [2] have shaped the test around legality, legitimate aim, necessity, and balancing. In surveillance law, there is an ongoing debate about how proportionality works in practice. Some focus on security and point to the scale and speed of cyber threats, arguing that broader legislative powers are needed, as Orin Kerr's flexible approach to digital searches demonstrates [3]. Others, including David Cole [4] and Neil Richards [5], warn that secrecy and technology gaps can lead to abuse. They call for stronger judicial oversight, narrower legal authorization, and strict safeguards before and after surveillance.

These disagreements surface in debates over bulk interception and metadata retention. Some say that communications metadata differs from content data and does not require strong safeguards. Others argue that metadata can reveal private information about people. European case law and academic writing increasingly support this view. There is also debate about how much freedom authorities should have in national security and cybercrime cases. Some scholars argue that greater flexibility is needed in complex situations. Others warn that excessive discretion can weaken legal standards and oversight. The literature is also split between those who focus on legal rules and those who use social or empirical methods to study safeguards in practice.

The biggest disagreements are about remote device access and commercial spyware. Unlike traditional interception, spyware can secretly and continuously collect a wide range of data from digital devices. Scholars writing on the Pegasus case and "mercenary surveillance", including Rowan Philp [6], argue that spyware blurs the line between targeted interception and general searches. This challenges current proportionality standards. They see spyware not only as more intrusive but also as a new kind of state power. They argue that this requires new safeguards.

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On the other hand, some scholars who focus on security see spyware as a more advanced version of existing investigative tools. They believe that current judicial approval systems can handle these technologies with proper oversight. The main debate is whether spyware should be regulated as interception or as a general digital search, given its broad, secretive nature. This issue relates to key principles established under Article 8 of the ECHR. These include foreseeability, scope limitations, effective oversight, and protection against abuse. It also ties into broader debates in surveillance studies. For example, David Lyon [7] analyzes how constant monitoring and counter-terrorism tools become standard law enforcement practices.

Even though research on this topic has grown since the Pegasus Project, there is still no clear way to link the level of technological intrusion to the safeguards needed. Most studies focus on exposing abuse or making broad human rights arguments. Few connect the European Court of Human Rights' proportionality rules to specific digital investigative powers. This article seeks to fill that gap by creating a system that aligns investigative measures with the core procedural protections in European human rights law. It explains how to balance effective investigations with the protection of private life under the rule of law. As surveillance expands, policymakers face a new challenge. How long can human rights principles stay strong if advanced spyware keeps moving faster than legal safeguards?

The demand for effective investigative tools is easy to understand when set against current incident levels. The UK Cyber Security Breaches Survey 2025 reports that 43 % of organisations experienced cyber incidents or attacks in the past year [8]. In Germany, studies on economic crime estimate annual losses of EUR 289.2 billion, with cyberattacks accounting for a substantial share [9].

In Kazakhstan, official Ministry of Internal Affairs reporting on the results of 2025 confirms both the scale and complexity of cyber-enabled offending. According to the Ministry, 40 % of all registered offences are fraud, and 60 % of those fraud cases are committed through the internet [10]. Year-end official reporting also states that 84.5 million fraudulent calls were blocked in 2025, 13 call centers were dismantled, and 56 criminal cases were investigated in relation to so-called "droppers" [11]. These figures help explain why investigations increasingly turn to privacy-intrusive measures such as interception, access to traffic and location data, covert monitoring, searches of digital devices, and, in some cases, commercial spyware.

The article proceeds in three steps. First, it summarizes the ECtHR's approach under Article 8 and the safeguards the Court expects for covert surveillance. Second, it reviews key EU requirements governing access to and retention of communications data. Third, it assesses Kazakhstan's rules on digital evidence and online investigative measures, read together with national cybersecurity policy.

In Kazakhstan, the relevant rules are dispersed across several intersecting regimes: national security, information and communication technologies (ICT) and information security regulation, criminal law on informatization and communications offences, and new digital regulation. Key instruments include the Law on National Security [12], Government Resolution No. 832 on ICT and information security [13], Chapter 7 of the Criminal Code [14], the Digital Code [15] and the Concept of Cyber Shield of Kazakhstan [16]. Taken together, these sources reflect a growing policy emphasis on strengthening investigative capacity while acknowledging constitutional limits and privacy safeguards.

Against that backdrop, the article specifies what "minimum safeguards" should mean in practice when digital evidence is collected through interception, access to metadata, remote device measures, or commercial spyware. The analysis uses ECtHR standards and EU member-state practice as benchmarks and then tests the Kazakh framework against them. The goal is practical: recommendations that increase legal certainty and oversight without weakening lawful cybercrime enforcement.

Future research can sharpen these findings by testing how safeguards operate in practice (for example, how authorisation, logging and oversight work in real investigations), by tracking new surveillance techniques, and by expanding the comparison to additional jurisdictions. Such work would help specify how security objectives can be pursued without normalising routine, unchecked intrusion into private life.

Methods and materials

The paper combines doctrinal analysis of legislation and case law with a structured comparison of safeguards across jurisdictions. For the ECtHR strand, the analysis focuses on Article 8 standards for secret surveillance and interception, with reference to *Klass and Others v. Germany*, *Roman Zakharov v. Russia*, and *Big Brother Watch and Others v. the United Kingdom*.

For the comparative strand, the article contrasts the EU, ECtHR standards and Kazakhstan across four dimensions: the legal bases for intrusive measures; the authorisation and oversight architecture; data-handling rules (retention, access and deletion); and available remedies. Alongside primary sources, the re-

view draws on secondary legal literature, policy analysis and publicly available materials on the deployment and regulation of mercenary spyware.

To connect doctrine with practice, the study also uses incident statistics, sector reports and publicly reported cases. The ECtHR tests of legality, legitimate aim, necessity and proportionality serve as the organising framework for assessing interception, metadata access, remote device measures and commercial spyware, and for identifying the safeguards that should accompany these powers.

Finally, the comparative findings are checked against publicly available information on cyber incidents and surveillance tools. This step reduces the risk of purely abstract conclusions and supports recommendations focused on legal certainty, independent oversight and workable safeguards for cybercrime investigations.

Results

Digital evidence in cybercrime cases ranges from basic requests for subscriber or IP information to highly intrusive measures such as real-time interception, remote device access, and large-scale or cross-border data acquisition. The degree of intrusion depends not only on whether content is accessed, but also on the breadth of associated communications data. Even where content is never read, metadata (time, location, duration and counterparties) can reveal sensitive aspects of private life.

Commercial surveillance software refers to tools produced by private vendors that covertly collect, extract or intercept data from devices. Products such as Pegasus and Predator are marketed as counter-terrorism and anti-crime tools, yet reporting across jurisdictions shows their use against journalists, activists, public figures and private citizens [17]. Because such tools can activate microphones and cameras, access media files and extract stored data without the user's knowledge, the resulting interference is often comprehensive rather than limited. Amnesty International's Security Lab published a forensic methodology report explaining technical traces associated with Pegasus infections and attempted infections [18].

Kazakhstan also illustrates these broader risks. Amnesty International reported Pegasus infections on the mobile devices of several Kazakhstani civil society activists in 2021. These episodes underline a practical gap between formal legal limits and effective oversight: where notification, transparency and independent control are weak, the risk of excessive or misdirected surveillance increases, and trust in digital investigations erodes [18].

On this basis, the investigative measures in cybercrime cases can be grouped by their level of intrusion. Each group is equipped with basic procedural safeguards, in line with ECtHR standards and common European practices.

1. Highly intrusive actions require prior independent authorization. This includes interception of communications, remote device access, or use of commercial spyware. These measures must rely on clear legal grounds, have strict time limits, and be overseen by an independent authority.

2. Moderately intrusive measures, such as the collection of metadata and limited access to communications data, must be guided by a clearly defined purpose and scope. These actions require established protocols for data minimization, retention, and deletion, as well as comprehensive audit trails.

3. Low-intrusiveness actions include requesting basic subscriber or IP information and using aggregated datasets. Clear guidelines must control data storage and deletion. When possible, notification and mechanisms for seeking remedies should be provided.

This classification clarifies each category and links it to minimum safeguards. It promotes legality, necessity, and proportionality. It also encourages transparency and public trust in cybercrime investigations.

On this basis, the article proposes a typology of investigative measures by intrusiveness and links each type to a baseline set of safeguards derived from ECtHR standards and European practice. The typology helps identify areas where the legal framework leaves broader discretion to investigative authorities.

A major challenge in legal regulation is distinguishing between traditional interception of communications and direct access to digital devices. Traditional interception is relatively well-regulated in many jurisdictions, including Kazakhstan. However, current legal policies usually lack explicit provisions for remote device access or government hacking. Such practices may constitute a significantly more intrusive form of surveillance.

Where these minimum safeguards are defined in law and applied in practice, digital evidence can be gathered effectively without undermining the right to private life. The comparative analysis therefore treats safeguards not as obstacles to investigations but as conditions for lawful evidence-gathering and for maintaining public trust in cybercrime enforcement.

These concerns are reflected in the legal tests applied in Europe. Under Article 8 of the ECHR [19], any interference with private life must be “in accordance with the law”, pursue a legitimate aim (including the prevention of crime), and be “necessary in a democratic society”. The ECtHR has consistently stressed that secrecy increases rather than reduces the need for “adequate and effective safeguards against abuse” [20]. In cybercrime investigations, operational efficiency therefore cannot substitute for a clear legal basis and robust procedural guarantees. Kazakhstan’s constitutional framework also recognizes data protection. Since 1995, Article 18 of the Constitution guarantees privacy and the confidentiality of correspondence and communications, providing a baseline for assessing digital investigative powers [21]. In addition, constitutional amendments are currently under public and expert discussion: the published draft of the new constitutional text explicitly guarantees protection of personal data against unlawful collection, processing, storage, and use, including in the digital sphere, thereby elevating personal data protection to the constitutional level [22].

Kazakhstan’s approach to cybersecurity law has evolved from fragmented regulations to a cohesive legal framework. Foundational legislation formed the basis for later advancements. A key milestone was the 2015 Law “On Informatization”, establishing regulations for information systems, electronic resources, government databases, and information security [23]. The 2017 “Cyber Shield of Kazakhstan” [16] was built on these efforts by developing national protection for information infrastructure, enhancing cyber-resilience, and formalizing incident response. Its explicit policy objectives enabled the development of new institutions and legal instruments. Further progress came with the 2026 Digital Code of Kazakhstan, consolidating digital technology, data, information systems, and security regulations [15]. These developments show Kazakhstan’s shift from fragmented to comprehensive digital and cybersecurity management. For cybercrime investigations, the key question becomes how these instruments translate into concrete limits, oversight and data-handling rules that protect privacy while allowing lawful evidence collection.

Applying the typology of digital investigative measures by level of intrusiveness helps analyze how Kazakhstani law provides procedural safeguards and highlights areas where officials have broad discretion. For highly intrusive actions like interception, spyware use, or remote device access, prior independent approval, legal grounds, strict time limits, and oversight are essential. Moderately intrusive measures, such as metadata or limited communications data collection, need a clear purpose and scope, rules for data minimization and deletion, and thorough audit trails. Less intrusive actions, such as requesting subscriber information or aggregated data, should follow transparent rules for information storage and deletion and provide notification and remedies where possible. Clearly stated and enforced safeguards allow authorities to lawfully collect evidence without violating privacy, fostering confidence in cybercrime enforcement.

Discussion

Judicial practice of the ECtHR

Privacy and freedom of expression may be restricted, but only under the established three-part test: the interference must be prescribed by law, pursue a legitimate aim, and be necessary and proportionate in a democratic society. “Prescribed by law” requires accessible and foreseeable rules and safeguards that constrain discretion, which is particularly important for covert surveillance. Necessity and proportionality require that any measure be tightly limited in scope and duration, subject to effective independent oversight and remedies, and applied without discrimination [20].

In cybercrime cases, the ECtHR is the key European benchmark for assessing covert surveillance under Article 8. Its judgments translate legality, necessity and proportionality into operational requirements for interception and other forms of digital data collection. Interception of content is treated as especially sensitive because it exposes intimate communications and is typically conducted in secrecy.

The Court’s interception jurisprudence therefore insists on safeguards that make the circumstances and procedures foreseeable. Put differently, the legal framework must do more than authorise interception: it must embed controls that prevent routine or open-ended monitoring.

Klass and Others v. Germany and *Roman Zakharov v. Russia* illustrate this point [24, 25]. Both cases emphasise that interference must be “in accordance with the law”, pursue a legitimate aim, and be accompanied by practical safeguards that make necessity and proportionality real rather than rhetorical. The Court points, for example, to limits on affected persons and qualifying *offences, time limits, retention and destruction rules, supervision arrangements and avenues for challenge*.

Big Brother Watch and Others v. the United Kingdom extends the same logic to bulk regimes. The Grand Chamber accepted that bulk interception is not automatically incompatible with the Convention, but it

required “end-to-end” safeguards: authorisation, selection, examination, storage and oversight must each be constrained and reviewable [26].

Cyber incidents create pressure for speed and technical sophistication. ECtHR case law nevertheless treats safeguards as non-negotiable. Operational convenience does not justify bypassing legality, independent authorisation, effective oversight or remedies, even in serious security contexts.

Across this jurisprudence, a recurring set of minimum safeguards can be distilled: accessible and foreseeable laws; limits on affected persons and qualifying offences; prior independent authorisation; strict time limits and clear extension rules; clear rules for handling, retaining and deleting collected data; independent oversight; and effective remedies and, where compatible with the investigation, notification.

The Grand Chamber in *Big Brother Watch* reaffirmed that even with bulk interception, “end-to-end” safeguards are required. These measures protect private life rights from authorization through data retention to subsequent oversight [26].

ECtHR practice also suggests that safeguards do not only protect privacy: they support the reliability of digital evidence and the legitimacy of enforcement. Conversely, episodes involving commercial spyware show how secrecy, weak oversight and limited transparency increase the risk of arbitrary interference and downstream evidentiary disputes.

Judicial practice of the European Union member states

Within the EU, rules on digital evidence operate alongside a broader data-protection and cybersecurity framework. The GDPR sets baseline requirements for lawful processing, storage and deletion of personal data and protects rights such as access, rectification and erasure [27]. In parallel, cybersecurity instruments (including NIS2) push organisations toward risk management, incident reporting and resilience measures [28].

European courts generally treat proportionality and independent control as the organising principles for digital evidence. They draw a clear line between indiscriminate surveillance and targeted monitoring: large-scale collection requires explicit legal authority, specified purposes and strong external oversight. Targeted measures, by contrast, are more easily justified when they rest on concrete suspicion and are time-bound.

Recent CJEU debates have been shaped by investigations into encrypted communication services, notably EncroChat and Sky ECC. These platforms offered modified devices and secure messaging that complicated conventional interception. Public reporting indicates that EncroChat had roughly 66,000 users across 122 countries before its 2020 dismantling and that investigators relied heavily on large datasets captured through technical operations.

The CJEU has not directly ruled on the substantive legality of the underlying hacks; its analysis has instead focused on the procedural conditions for cross-border use of the resulting data. On 30 April 2024, in Case C-670/22, *M.N. (EncroChat)*, the Court considered whether European Investigation Orders (EIOs) issued by a German public prosecutor could be used to obtain EncroChat data collected in France.

The Court held that a public prosecutor may issue an EIO to request transfer of data already collected in another EU country, provided that the same rules would apply domestically and that national courts can review the measure for compliance with fundamental rights. It also clarified that Article 31 of Directive 2014/41/EU treats “interception of telecommunications” in functional terms, capturing operations that provide access to communications data regardless of the precise technical pathway.

As to remedies, the Court indicated that exclusion of evidence is not automatic even where violations are found. Admissibility remains largely governed by national law, but fair-trial rights set limits: if the defence cannot effectively test key evidence obtained through an EIO, a court may need to disregard that evidence to preserve fairness [29].

In *Ekimdzhev and Others v. Bulgaria*, the Court determined that Bulgaria’s surveillance and data retention framework lacked sufficient safeguards. Although nominally “targeted”, ambiguous legal standards, restricted judicial oversight, and inadequate remedies rendered the regime comparable to mass surveillance. The Court underscored that the mere existence of such legislation may infringe upon privacy. Safeguards must be effective in practice rather than solely in theory [30].

In *Tele2 Sverige and Watson*, the CJEU held that European Union law prohibits indiscriminate data retention. Only targeted retention for the investigation of serious crime is permissible, provided it is subject to stringent conditions and prior review by a court or an independent authority. The Court established that mass data collection contravenes EU privacy standards, except in exceptional national security circumstances. Investigative access must be subject to robust independent oversight [31].

After *Ekimdzhiev and Tele2*, the Court further tightened access to communications metadata. In *H.K. v Prokuratuur*, it required prior independent authorization—preferably judicial—before law enforcement may access such data, save for genuine emergencies. Allowing prosecutors to authorise access on their own was found incompatible with proportionality and effective legal protection. Therefore, only an independent party may authorize access to communications metadata; this authority should not be granted to the public prosecutor [32].

In *M.N. (EncroChat)*, the CJEU addressed cross-border use of previously collected EncroChat data. It confirmed that an EIO may be used to request transfer of such data and that prosecutors may issue EIOs where national law permits. Necessity and proportionality remain required; the Court indicated that individualized suspicion for every user is not always mandatory. It also recognised that confidentiality of hacking methods does not automatically bar evidence, provided defence rights are respected; where the defence cannot effectively challenge the material, exclusion may be necessary. The judgment reiterated notification duties in cases of transnational interception [33].

Taken together, these cases point to a pragmatic but rights-constrained line: large investigations and cross-border cooperation are possible, but only under a framework that preserves independent oversight and fair-trial guarantees. Admissibility is therefore linked to both the lawfulness of collection and the defence's ability to challenge it.

In this sense, proportionality and independent control are not abstract ideals but practical conditions for the sustainable use of digital evidence. Successes against encrypted-crime networks do not remove the need for targeted powers, clear legal authority, strict retention rules and effective remedies.

Digital Surveillance and Human Rights in Kazakhstan

Cybercrime and internet-enabled fraud remain a significant enforcement challenge in Kazakhstan, increasing the practical demand for reliable digital evidence collection and preservation. Official Ministry of Internal Affairs reporting indicates that fraud now accounts for 40 % of all registered offences in the country, and that 60 % of those fraud cases are committed through the internet. Year-end official reporting for 2025 also states that 84.5 million fraudulent calls were blocked, 13 call centers were dismantled, including centers operating abroad, and 56 criminal cases were under investigation in relation to so-called “droppers” [10, 11]. These indicators help explain why law-enforcement authorities increasingly rely on privacy-intrusive investigative tools such as interception, access to traffic and location data, covert monitoring, searches of digital devices, and other digital tracing measures. At the same time, broader official reporting on countering cybercrime shows the growing institutional emphasis on preventive, technical, and investigative responses, which further reinforces the need for clear legal bases, independent authorization, and effective oversight consistent with human rights standards [34].

Kazakhstan's rules on digital evidence are spread across national security legislation, information-security regulation and criminal procedure, which makes the framework difficult to navigate and weakens transparency for data subjects [35]. This fragmentation also complicates accountability: different bodies may rely on interception, remote device access or large-scale data collection without a single, legible set of procedural guarantees.

International and domestic law permit interference with private life only for limited aims (for example, national security or crime prevention) and only through procedures that make those limits operational. In Kazakhstan, the reported gap between formal rules and day-to-day practice points to deficits in transparency, notification and external control especially where intrusive measures are conducted covertly.

Kazakhstan's experience also mirrors a broader pattern: commercial spyware enables sophisticated surveillance with limited accountability. Tools originally developed for counter-terrorism have been documented as being used against journalists, activists and public figures in multiple countries [36]. Where procurement and deployment are opaque, it becomes difficult to assess legality, necessity and proportionality in concrete cases.

International responses to spyware are evolving. Courts and regulators in other jurisdictions have begun to impose consequences on vendors whose tools facilitate unlawful surveillance. For example, in 2025 a U.S. court ordered NSO Group to stop targeting WhatsApp users and addressed damages in related litigation [37]. Although the proceedings occurred outside Kazakhstan, they signal a wider regulatory shift toward vendor accountability.

Kazakhstan's information infrastructure also remains vulnerable to cyberattacks, as the 2024 iSoon data leak illustrated. Such incidents highlight how dependence on particular technology ecosystems can create

systemic exposure. From a safeguards perspective, they also matter because insecure systems amplify the harm of surveillance: data extracted unlawfully or retained excessively becomes easier to misuse or leak.

Against this background, Kazakhstan can strengthen the legal framework for digital surveillance through a small set of priority measures: require prior judicial authorization for the most intrusive powers; assign clear competence rules and independent oversight; set explicit limits on scope, duration and permissible methods; and adopt enforceable rules on storage, access, logging, deletion and, where compatible with investigations, notification. These measures are aimed at improving legality and accountability, not at constraining lawful cybercrime enforcement.

Beyond legal design, alignment with international standards depends on routine “effectiveness-and-rights” reviews of investigative powers, clear operational guidance and institutional capacity for oversight. The objective is straightforward: evidence should be obtained in a manner that courts can trust and that individuals can contest when limits are exceeded.

Conclusions

This article examined the expanding digital investigative powers in the context of cybercrime and assessed the safeguards required for privacy and human rights. A comparative analysis shows that digital evidence may be lawfully obtained only when intrusive powers are matched by enforceable safeguards. Both ECtHR and EU frameworks require prior independent authorization for intrusive measures, clear limits, effective oversight, strong data-handling requirements, and meaningful remedies. Without such safeguards, privacy is threatened and the legitimacy of enforcement undermined.

Kazakhstan has initiated reforms to align more closely with these standards, including adopting the Digital Code and enhancing constitutional protections for personal data. Article 18 of the Constitution safeguards the privacy of correspondence and personal data, while the Digital Code (2026) clarifies the management of data, digital technologies, information systems, and cybersecurity. Chapter 7 of the Criminal Code and Government Resolution No. 832 further delineate procedures for accessing digital data. Nevertheless, regulatory fragmentation and limited oversight continue to create legal uncertainty. To address this, Kazakhstan should prioritize establishing specific, enforceable rules for independent authorization, oversight, data retention and deletion, and accessible remedies based on ECtHR and EU benchmarks, ensuring clear and actionable protections for digital investigations.

A key contribution of this analysis is the typology that categorizes investigative powers by their level of intrusiveness and aligns each category with specific, actionable safeguards derived from ECtHR and EU practice. This framework offers policymakers a practical method for calibrating protections to the risks associated with different investigative measures.

As surveillance technologies evolve rapidly and operate across borders, legal frameworks require periodic review and recalibration. For Kazakhstan, the primary recommendation is to develop and rigorously implement a comprehensive system of independent authorization, clear procedures, and strong oversight mechanisms for digital investigations. This is essential for translating international best practices into effective, practical safeguards that maintain the balance between security and rights protection.

Ultimately, robust safeguards are not obstacles but the foundation of lawful and effective evidence-gathering, enabling sustainable cybercrime enforcement and fostering enduring public trust. As digital challenges accelerate, Kazakhstan’s commitment to strong legal and institutional protections will determine its success in protecting both security and fundamental rights.

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Д. Өтеген

Киберқылмыс істеріндегі цифрлық дәлелдемелерді пайдаланудың құқықтық шектері: Еуропалық одақ және Қазақстан Республикасы тәжірибесінде жеке өмірге қол сұқпаушылық құқығын талдау

Киберқылмыстарды тергеу барған сайын жеке өмірді құрметтеу құқығына елеулі қол сұғатын цифрлық тәсілдерге сүйенеді. Мақала киберқылмыстарды тиімді қадағалауда жеке салаға қол сұғылмаушылықты сақтай отырып, үйлестіруге мүмкіндік беретін ең төменгі іс жүргізу кепілдіктерін анықтайды. Доктриналық және салыстырмалы-құқықтық талдау арқылы Қазақстан Республикасындағы инвазивті тергеу шараларының құқықтық режимі Адам құқықтары жөніндегі Еуропалық соттың практикасы, Еуропалық одақтың талаптары және Еуропалық одаққа мүше жекелеген мемлекеттердің тәжірибесімен жүйелі түрде салыстырылады. Төрт кең таралған әдіс қарастырылды: хабарламаларды қолға түсіру, трафик пен орналасу деректеріне қол жеткізу, сандық құрылғыларға қашықтан қол жеткізу және коммерциялық шпиондық бағдарламалық жасақтаманы қолдану. Талдау құқықтық негіздің бұлыңғырлығы мен бақылаудың жеткіліксіздігі қылмысқа қарсы шараларды бақылау құралдарына айналдыруға қабілетті екендігін көрсетеді. Құқық қолданудың жеке өмірге қол сұғылмаушылық құқығымен үйлесімділігі, кем дегенде, алдын ала тәуелсіз рұқсат алумен, тақырыпқа нақты шектеулер мен мерзімдермен, деректермен жұмыс істеудің тексерілетін ережелерімен (сақтау, қол жеткізу, беру, жою), тиімді қадағалау және есеп беру, бұл тергеуге қауіп төндірмейтін шара аяқталғаннан кейін тұлғаға хабарлау және қолжетімді құқықтық қорғау құралдары арқылы қамтамасыз етіледі. Қорытындыда Қазақстан үшін құқықтық айқындық пен қадағалауды күшейтетін, бірақ тергеу әлеуетін сақтайтын басым реформалар ұсынылады.

Кілт сөздер: киберқылмыс, бақылау, жеке өмір, интрузивті шаралар, метадеректер, цифрлық дәлелдемелер, пропорционалдық, ЕАҚС, процессуалдық кепілдіктер, коммерциялық шпиондық бағдарламалар.

Д. Утеген

Правовые пределы использования цифровых доказательств по делам о киберпреступлениях: обеспечение права на неприкосновенность частной жизни в практике ЕС и Республики Казахстан

Расследования киберпреступлений всё чаще опираются на инвазивные цифровые методы, способные существенно затрагивать право на уважение частной жизни. Статья определяет минимальные процессуальные гарантии, позволяющие сочетать эффективное преследование киберпреступлений с соблю-

дением неприкосновенности приватной сферы. На основе доктринального и сравнительно-правового анализа проводится сопоставление правового режима Республики Казахстан с подходами Европейского суда по правам человека и требованиями Европейского союза с учётом практик отдельных государств — членов Европейского союза. Рассматриваются четыре распространённые техники: перехват сообщений, доступ к данным трафика и местоположения, удалённый доступ к цифровым устройствам и применение коммерческого шпионского программного обеспечения. Показано, что расплывчатые правовые основания и недостаточный контроль способны превращать меры борьбы с преступностью в инструменты наблюдения. Совместимость правоприменения с правом на частную жизнь обеспечивается, как минимум, предварительным независимым санкционированием, чёткими пределами по предмету и срокам, проверяемыми правилами обращения с данными (хранение, доступ, передача, уничтожение), эффективным надзором и отчётностью, уведомлением лица после завершения меры, когда это не ставит под угрозу расследование, и доступными средствами правовой защиты. В заключение предлагаются приоритетные реформы для усиления правовой определённости и контроля при сохранении следственного потенциала.

Ключевые слова: киберпреступность; наблюдение; частная жизнь; интрузивные меры; метаданные; цифровые доказательства; пропорциональность; ЕСПЧ; процессуальные гарантии; коммерческое шпионское ПО.

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International and national practices of mediation in conflict resolution and nuclear disarmament: analysis of legal mechanisms and instruments

Amid rising conflict intensity and persistent risks of nuclear escalation, mediation is treated as a legal and institutional mechanism of de-escalation complementing non-proliferation and disarmament regimes. The study aims to identify, compare and assess international and national mediation practices in armed conflict settlement and nuclear disarmament negotiations, and to map key legal instruments (mandates, procedural guarantees, and interfaces with verification and sanctions compliance). The study's original contribution lies in developing a legal checklist of mediation design parameters, introducing the concept of "verifiable confidentiality" and constructing a multilevel model linking international mediation standards, domestic implementation, and verification mechanisms. The methods combine comparative law and doctrinal analysis of treaties and soft law standards, case studies, and institutional review of mediator mandates. The results show that effectiveness increases when powers and neutrality criteria are predefined, transparency is ensured while protecting confidentiality, and mediation is legally linked to monitoring and implementation mechanisms, including safeguards. A multilevel model aligning international norms with national implementation is proposed, expanding crisis prevention options and informing mediation statutes, envoy mandates, and protocols for disarmament talks.

Keywords: Mediation, international law, national legal mechanisms, conflict resolution, nuclear disarmament, negotiation processes, multi-level mediation.

Introduction

The relevance of this study stems from the fact that the growing number and complexity of modern armed conflicts is accompanied by an exacerbation of nuclear risks and higher demands on the quality of negotiation procedures. In such circumstances, mediation acts not only as a diplomatic practice but also as a legal mechanism that sets standards for the legitimacy and manageability of dialogue, as well as the responsibility of the mediator and the parties. At the same time, the treaty regime for nuclear disarmament is developing: The Treaty on the Prohibition of Nuclear Weapons (further TPNW), which entered into force on January 22, 2021, enshrines a set of prohibitions (including prohibitions on the development, testing, production, acquisition, possession, use, and threat of use) and imposes on states the obligation to prevent and suppress prohibited activities within their jurisdiction [1]. The legal dilemmas of disarmament in a changing strategic environment are systematically discussed in modern foreign literature on international non-proliferation law [2].

The aim of the paper is to analyze international and domestic practices of mediation in conflict resolution and in the process of nuclear disarmament through the prism of legal mechanisms and instruments.

To achieve this aim, the following objectives are set:

- to systematize the normative benchmarks of "effective mediation" (preparedness, consent of the parties, impartiality, inclusiveness, and national ownership) [3];
- to identify legally salient elements of negotiation design (the mediator's mandate, legal status and powers, the confidentiality regime, procedural safeguards, and the role of expert support);
- to relate mediation approaches to disarmament obligations and to verification regimes that build confidence in the irreversibility of the measures adopted [4].

Contradictions are observed in both theory and practice. On the one hand, United Nations guidance documents proceed from the principles of voluntariness, consent of the parties, impartiality, and inclusiveness as conditions for trust and the sustainability of the process [3]. On the other hand, contemporary empirical research indicates that "coercive" mediation—where the mediator simultaneously employs leverage

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through external military support to one of the parties—increases the likelihood that negotiations will begin and that agreements will be concluded, yet reduces their durability [5].

Within the disarmament sphere, an additional tension becomes apparent: the aspiration for confidentiality and flexibility in negotiations conflicts with the need for detailed verification and public demonstration of compliance. According to the United Nations Institute for Disarmament Research (further UNIDIR), verification under the TPNW should be viewed as a cooperative process enabling a State to demonstrate fulfilment of its obligations [4].

The research gap lies in the insufficient integration of the legal theory of mediation with the legal regimes of nuclear disarmament and their domestic implementation: debates on conflict mediation and on disarmament compliance often develop in parallel. The author's position is grounded in an institutional—legal synthesis of these schools. Mediation is conceptualized as a legally formalized technology of conflict management, which makes it possible to refine the set of legal instruments (procedures, mandates, responsibility regimes, and verification protocols) that are relevant—given a high risk coefficient—to negotiations in the field of international security [2].

The research field on which this work is based can be usefully divided into three interrelated aspects. The first consists of normative and methodological approaches to “effective mediation” developed within the UN and emphasizing the consent of the parties, impartiality, inclusiveness, and national responsibility as conditions for the sustainability of the negotiation process [3]. The second is represented by studies devoted to the international legal and institutional aspects of nuclear disarmament, including issues of verification, demonstration of compliance with obligations, and confidence in the irreversibility of the measures taken [2, 4, 7]. The third encompasses the literature on the national implementation of prohibitive regimes and the influence of external pressure on the sustainability of negotiation results [5, 6]. However, these areas have largely developed separately, while the legal design of mediation, verification, and the internal compliance framework require joint analysis. This study aims to overcome this theoretical and applied fragmentation.

Methods and materials

The object of the study comprises the legal mechanisms and instruments of mediation applied at the international and domestic levels in the settlement of armed conflicts and in negotiations related to nuclear disarmament and non-proliferation. The research design is qualitative and interdisciplinary, with a predominance of comparative-law and doctrinal approaches and selected elements of case-study analysis.

Units of analysis were selected through purposive sampling. The normative corpus included:

1. International treaties and related instruments governing disarmament and non-use (including treaty-based prohibitions, implementation obligations, and control mechanisms);
2. Soft-law instruments and guidelines issued by international organizations on mediation;
3. Domestic legal sources on mediation, selected on the basis of the availability of an official text, the representativeness of the relevant legal family, and the presence of institutionally formalized mediation procedures.

In parallel, a corpus of scholarly literature for 2021–2026 was compiled from international databases (such as Scopus and Web of Science) and legal repositories, using the following key search expressions: “effective mediation”, “mandate”, “confidentiality”, “verification”, “compliance”, and “nuclear disarmament”.

Measurement proceeded through the operationalization of indicators of the legal design of mediation: a) the mediator's mandate and the limits of authority; b) standards of neutrality; c) regimes of confidentiality and information disclosure; d) procedural guarantees for participation and the security of the parties; and e) the legal linkage to regimes of verification and the enforcement of obligations (including sanctions compliance). Each document was coded according to a unified protocol, after which a comparative matrix was constructed along the axis “international benchmarks-domestic implementation-disarmament-related negotiation requirements”.

Data were presented in the form of comparative tables, an instrument typology, and analytical case descriptions. Ethical standards were ensured through the exclusive use of publicly available sources.

Methodologically, each research task corresponded to a separate analytical step. Systematization of international benchmarks for “effective mediation” was accomplished through a doctrinal analysis of universal and institutional standards; identification of legally significant elements of negotiation design was achieved through a comparative legal coding of norms, procedures, and mandates; and comparison of mediation approaches with disarmament commitments was achieved through a matrix analysis of the negotiation mechanism-national implementation-verification link. This design allowed not only to describe norms and practices

but also to develop replicable analytical tools—a legal checklist, comparative analysis, and a multi-level model.

During the preparation of this article, the author(s) used ChatGPT (GPT-5.2 Thinking, OpenAI; January 2026 release) for the purposes of assisting with treaty-text concordance searches within a curated corpus, helping organize comparative coding schemes, and providing drafting and language-polishing suggestions under detailed prompts. The authors have reviewed and edited the output and take full responsibility for the content of this publication.

Results

When applying comparative-law and doctrinal analysis to international benchmarks of “effective mediation”, treaty-based and institutional materials on nuclear disarmament, and scholarship on the domestic implementation of prohibition regimes, the study yields findings that support conceptualizing international and domestic mediation practices as complementary components of a single legal architecture for escalation prevention.

The first authorial observation is that the foundational principles of mediation set out in international guidance instruments can be operationalized as verifiable parameters of the legal design of negotiations. As a result of content coding, four parameters were identified: 1) the mediator’s mandate (source of authority, limits of intervention, and procedural accountability); 2) standards of impartiality and instruments for preventing conflicts of interest; 3) the confidentiality and information-management regime (tiers of access, disclosure rules, and the protection of communication channels); and 4) procedural guarantees for inclusive participation and participant security (access to the process, safeguards for participants, and rules on external consultations). The novelty of this result lies in the development of a “legal checklist” for mediation that can be used to design mandates and rules of procedure for negotiation processes [3].

The second observation identifies a persistent “confidentiality-verifiability” tension in negotiations implicating nuclear disarmament. On the one hand, mediation requires a protected space for confidential consultations; on the other hand, prohibition treaties and decisions adopted by States Parties presuppose demonstrable implementation and the availability of control procedures (including, inter alia, institutional decisions and the setting of implementation timelines within meetings of States Parties). Analysis of TPNW-related materials and expert discussions on verification underscores the importance of a cooperative logic: verification is construed not only as an “instrument of distrust”, but also as a means of evidencing good-faith performance. On this basis, the study proposes the concept of “verifiable confidentiality”: negotiations remain closed with respect to the substantive content of compromises, while pre-establishing publicly verifiable “implementation metadata” (a timeline of steps, the competent authority, reporting standards, and procedures for confirming irreversibility). This approach reduces the risk of “bargaining without verification” while simultaneously minimizing the disruptive consequences of leaks [1].

The third observation concerns the legal assessment of external pressure in mediation. Empirical research on “coercive” mediation (where the mediator simultaneously provides military support to one of the parties) demonstrates an ambivalent effect: an increased likelihood of initiating negotiations and concluding an agreement, coupled with reduced durability of the resulting arrangements. For the purposes of the present study, this implies the need for a normative separation of roles: a mediator who retains a mandate to “manage the procedure” should not simultaneously serve as a source of material coercion; otherwise, the presumption of impartiality is undermined and incentives arise for formal signature without implementation. The practical outcome is the formulation of a set of procedural safeguards: disclosure of the roles of third parties and their leverage; the specification, within the mandate, of limits on “incentivization”; independent monitoring of implementation; and a separate channel for agreeing security-assurance and guarantee measures [5].

In addition, the study shows that domestic implementation of prohibition regimes can be embedded within mediation architecture as an “internal compliance track”. On the basis of scholarship on effective implementation of the TPNW, four clusters of measures are identified: a) substantive prohibitions and criminalization; b) jurisdiction, extraterritoriality, and corporate liability; c) institutional coordination and reporting; and d) assistance and remediation measures (including victim support and rehabilitative mediation). These elements enhance enforceability by translating international obligations into operational procedures and sanction-backed prohibitions [6]. A comparative matrix of the above observations is presented, in both substantive and abridged form, in Table 1.

Matrix of legal instruments for mediation and disarmament compliance

Stage	Mediation tools (legal design)	Disarmament/compliance tools	Managed risk
Initiation	mandate, consent of the parties, rules of participation	determination of the subject of obligations, selection of the competent authority	dispute over authority, trust deficit
Negotiation	confidentiality, neutrality, regulations	data exchange protocol, “execution metadata”	leaks, imitation of compliance
Agreement	legal form, dispute resolution mechanisms	dismantling/control roadmap	impracticability, legal uncertainty
Execution	monitoring, adaptive mediation	reporting, confirmation of irreversibility, response measures	failure to implement, circumvention of obligations

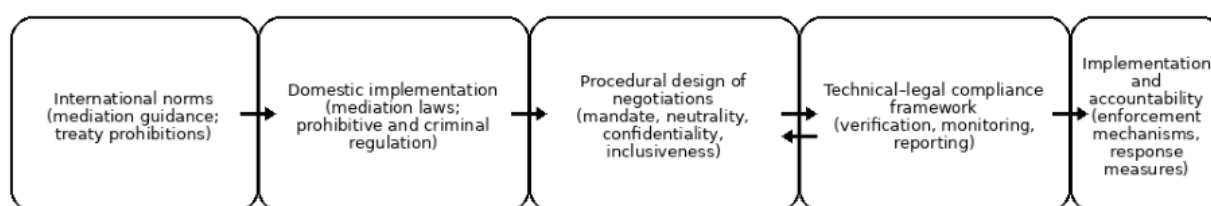


Figure 1. Multi-level model of legal support for mediation

Taken together, the findings demonstrate scholarly novelty by virtue of the proposed typology of the legal parameters of mediation and the concept of “verifiable confidentiality”, as well as practical applicability: the checklist and the matrix can be used to design negotiation mandates, domestic legal norms, and control protocols that enhance the durability of agreements under conditions of heightened nuclear risk.

Discussion

The obtained results allow us to consider mediation in the sphere of international security as a legally designed procedure, in which the sustainability of agreements depends not only on the political will of the parties but also on the quality of the legal design of the negotiations. Unlike predominantly descriptive approaches, this study translates the principles of mediation into a system of verifiable parameters and links them to verification, national implementation, and mechanisms for fulfilling obligations. This is precisely the transition from a general theoretical description of mediation to a constructive model applicable to high-risk negotiations in the sphere of armed conflicts and nuclear disarmament.

Operationalization of international mediation standards. A comparison with the United Nations approach to “effective mediation” reveals predominantly convergence: the legal-design parameters identified in this study (mandate, neutrality, confidentiality/information management, and procedural guarantees of participation and security) functionally correspond to the core “fundamentals” of mediation described in UN guidance (preparedness, consent of the parties, impartiality, inclusivity, national ownership, etc.) [3]. At the same time, unlike the UN’s general methodological standard, the present results specify the legal “operationalization” of these principles by proposing a checklist of legal parameters suitable for constructing negotiation rules and mediators’ mandates specifically in high-risk security contexts, where the costs of procedural error are significantly higher.

Verifiable confidentiality as an element of negotiation design. The key point of divergence from established practice of “negotiation secrecy” concerns the “confidentiality-verifiability” tension. We accept that confidentiality is a precondition for candid exchange and reduces the transaction costs of compromise. However, we do not share the implicit presumption that confidentiality as such enhances the viability of agreements in the disarmament context: here it must be legally constrained by requirements of verifiability and the demonstration of good-faith performance. This conclusion is consistent with UNIDIR’s work on disarmament verification in the context of the TPNW, which emphasizes the cooperative nature of verification and its role as a mechanism for confirming obligations [4]. The further development of this line in UNIDIR’s 2025 report on “demonstrative verification” indicates that public protocols, open-source monitoring tools,

and unilateral transparency measures can serve an “active assurance” function and sustain trust even in the absence of robust treaty-based control mechanisms [7]. Within our concept of “verifiable confidentiality”, these ideas are translated into the domain of negotiation design: we propose to distinguish between a) the confidential substantive content of compromise and b) publicly verifiable “implementation metadata” (a step-by-step timetable, the responsible authority, reporting standards, and procedures for confirming irreversibility). This distinction renders the mediation format compatible with disarmament compliance requirements.

The practical applicability of the proposed framework is evident in at least two types of negotiation situations. First, in mediation on ceasefires and confidence-building measures, a legal checklist allows for the pre-definition of the mediator’s mandate, the mode of closed consultations, and guarantees of participation by the parties. Second, in negotiations on the phased implementation of disarmament commitments, the concept of “verifiable confidentiality” makes it possible to maintain the confidential nature of negotiating concessions while simultaneously publicly establishing deadlines, responsible bodies, and procedures for confirming the irreversibility of measures.

Normative delineation of roles under external pressure. The permissibility of external pressure in mediation warrants separate discussion. The empirical findings of A. Duursma, J. Bruker, and V.F. Gaier on “coercive mediation” confirm an ambivalent effect: a higher likelihood of initiating negotiations and concluding agreements, combined with lower durability of imposed arrangements [5]. We accept these findings and use them as an argument for the normative separation of roles. At the same time, we do not interpret “coerciveness” as an absolute prohibition on employing incentives or disincentives in negotiation processes. Rather, we refine the empirical conclusion through a legal proposal to differentiate actors (the mediator as the manager of procedure-separately; guarantors of incentives-separately) and to formalize safeguards (disclosure of third-party roles, independent monitoring of implementation, and conditions for revising support measures). In this way, the primary source of neutrality erosion is mitigated without abandoning managed external assistance—an especially salient consideration for negotiations implicating nuclear risks.

National implementation as an integrated compliance loop. With respect to domestic implementation, the study’s results align with the position of J. Revill, R. Hessmann Dalaqua, and W. Wan that effective implementation of the TPNW requires a package of measures: substantive prohibitions, institutional coordination, jurisdictional decisions, and reporting mechanisms [6]. Our contribution, however, lies in situating these measures differently within the process logic: domestic implementation is treated not as a “post hoc obligation” following agreement, but as an element of the architecture of negotiation and performance. In other words, an internal compliance track should be embedded in mediation already at the stage of designing the roadmap and control procedures, as reflected in Table 1 and in the multi-level model (Fig. 1).

Theoretical significance, validity and limitations of the study. In summary, the findings can be explained coherently through the concept of the institutional-legal design of negotiations, which integrates ideas of procedural legitimacy (recognition of the process as fair and acceptable) and cooperative compliance (performance as a jointly confirmed obligation). Within this framework, the durability of agreements is determined not only by a balance of interests, but also by the quality of the process’s legal “framework”: clarity of mandate, information management, built-in control mechanisms, and domestic implementation capacities. Accordingly, the proposed checklist, matrix, and model are not merely descriptive but constructive tools: they establish parameters that can be reproduced when developing mediators’ mandates, negotiation protocols, and domestic norms.

The credibility of the findings is grounded in source triangulation: UN normative and methodological documents, [3] peer-reviewed empirical research, [5] and specialized UNIDIR reports on verification and the practical implementation of disarmament, [4, 7] complemented by scholarship on domestic implementation [6]. A methodological strength is the unified protocol for coding legal-design parameters and the replicable comparison logic along the axis “international benchmarks-domestic implementation-control requirements”. Limitations follow from the nature of qualitative research: purposive sampling and the absence of interviews or field data may constrain generalizability across all contexts; moreover, the interpretation of mandates and confidentiality regimes inevitably involves an element of expert judgement. Nonetheless, transparent selection criteria and the possibility of re-coding by other researchers enhance the auditability and robustness of the conclusions.

Conclusions

The study demonstrated that mediation in armed conflicts and nuclear disarmament should be understood as a legally constructed process in which the legitimacy of negotiations, the sustainability of agreements reached, and the verifiability of implementation are mutually dependent. Based on comparative legal, doctrinal, and institutional analysis, it is demonstrated that the political and diplomatic characteristics of mediation alone are insufficient: a sustainable outcome requires pre-established parameters of mandate, neutrality, confidentiality, procedural guarantees, and control mechanisms.

The author's original contribution consists, firstly, in translating international mediation principles into a legally verifiable checklist of negotiation design parameters; secondly, in developing the concept of "verifiable confidentiality", which allows for the reconciliation of the closed nature of the negotiation process with publicly verifiable fulfillment of disarmament commitments; thirdly, in substantiating a multi-layered model combining international mediation standards, national implementation, and verification mechanisms. Fourth, the conclusion is based on the need to integrate an internal compliance framework at the design stage of the negotiation architecture, rather than after the agreement has been concluded. This study thus bridges the gap between the literature on mediation, international security law, and studies of national implementation of prohibition regimes.

The broader significance of these results for international security governance is that they allow us to consider mediation not as an external accompaniment to political compromise, but as part of the normative security infrastructure. According to this logic, the quality of negotiation design influences the trust of the parties, the manageability of sensitive information, the compatibility of political agreements with verification requirements, and, ultimately, the enforceability of disarmament commitments. This approach is particularly important for regimes where the cost of procedural error is expressed not only in the breakdown of negotiations but also in an increased risk of escalation. The proposed checklist, comparative matrix, and multi-level model can be used in developing mandates for special mediators, regulations for negotiating platforms, national mediation acts, and protocols for implementing arms control and nuclear disarmament agreements. Prospects for further development lie in expanding the comparative base of national practices and clarifying the standards for disclosing those "implementation metadata" that can be publicly verifiable without compromising negotiation confidentiality.

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Б. Чингаева, Ә. Болат

Қақтығыстарды шешу және ядролық қарусыздану кезіндегі медиацияның халықаралық және ұлттық тәжірибелері: заңды механизмдер мен құралдарды талдау

Қақтығыстардың ушығуы және ядролық эскалация тәуекелдерінің сақталуы жағдайында медиация дезэскалацияның құқықтық әрі институционалдық тетігі ретінде қарастырылып, таратпау мен қарусыздану режимдерін толықтыра алады. Зерттеудің мақсаты — қарулы қақтығыстарды реттеу мен ядролық қарусыздану жөніндегі келіссөздердегі халықаралық және ұлттық медиация практикаларын айқындау, салыстыру және бағалау, сондай-ақ қолданылатын құқықтық құралдарды (делдал мандаты, рәсімдік стандарттар, верификация және санкциялық комплаенспен өзара іс-қимыл) талдау. Зерттеудің ғылыми жаңалығы медиация параметрлерінің заңды чек-парағын әзірлеуден, «верификацияланатын құпиялылық» тұжырымдамасын енгізуден және медиацияның халықаралық стандарттарын, ұлттық имплементацияны және орындауды верификациялау тетіктерін байланыстыратын көп деңгейлі модель құрудан тұрады. Әдіснама салыстырмалы-құқықтық және доктриналық талдауды, шарттар мен «жұмсак құқық» актілерін зерттеуді, келіссөз процестеріне кейс-стади жүргізуді және делдалдардың мандаттарын институционалдық талдауды қамтиды. Медиацияның тиімділігі алдын ала белгіленген өкілеттіктер мен бейтараптық қағидаттарын, құпиялылықты сақтай отырып, рәсімдік ашықтықты, сондай-ақ халықаралық кепілдік режимдерін және шарттық міндеттемелерді орындауды қоса алғанда, бақылаудың құқықтық тетігін арттыратыны анықталды. Дағдарыстардың алдын алу құралдарын едәуір кеңейтетін халықаралық нормалар мен ұлттық енгізуді қамтитын көп деңгейлі медиация моделі тұжырымдалған. Зерттеу қорытындысы медиация туралы ұлттық заңнаманы, арнайы өкілдер мандаттарын және қарусыздану келіссөздерінің хаттамаларын әзірлеуде қолданылуы мүмкін.

Кілт сөздер: медиация, халықаралық құқық, ұлттық құқықтық механизмдер, қақтығыстарды шешу, ядролық қарусыздану, келіссөздер процестері, көп деңгейлі медиация.

Б. Чингаева, А. Болат

Международные и национальные практики медиации в разрешении конфликтов и ядерного разоружения: анализ правовых механизмов и инструментов

В современных условиях возрастания конфликтности и сохраняющихся рисков ядерной эскалации медиация рассматривается в качестве правового и институционального механизма дезэскалации, как примирительная процедура, дополняющая режимы нераспространения и разоружения. Цель исследования — выявить, сопоставить и оценить международные и национальные практики медиации в урегулировании вооружённых конфликтов и в переговорах по ядерному разоружению, определить их ключевые направления, такие как нормативное закрепление, процессуальные гарантии, взаимодействие с верификацией и санкционным комплаенсом. Научная новизна исследования состоит в разработке юридического чек-листа параметров медиации, введении концепции «верифицируемой конфиденциальности» и построении многоуровневой модели, связывающей международные стандарты посредничества, национальную имплементацию и механизмы верификации исполнения. Практическая значимость заключается в разработке применимых рекомендаций для государств и международных организаций. Методология включает сравнительно-правовой анализ и доктринальный анализ договоров и «мягкого права», кейс-стади переговорных процессов, а также институциональный анализ мандатов посредников. Установлено, что эффективность медиации повышают заранее определённые полномочия и принципы нейтральности, процедурная прозрачность при сохранении конфиденциальности, а также правовой механизм контроля, включая международные режимы гарантий и выполнение договорных обязательств. Сформулирована модель многоуровневой медиации, включающая международные нормы и национальное внедрение, что значительно расширяет инструментарий предотвращения кризисов. Итоги исследования применимы при разработке национальных законов о медиации, мандатов спецпосланников и протоколов переговоров по разоружению.

Ключевые слова: медиация, международное право, национальные правовые механизмы, урегулирование конфликтов, ядерное разоружение, переговорные процессы, многоуровневая медиация.

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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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Human dignity as the basis for human rights realization

The article examines issues related to the legal regulation of human dignity as a legal category intended to serve as a foundation for the realization of human rights. Human dignity is considered both as a category of domestic and international law within the system of human rights realization. The purpose of the research is to analyze the legal category of “human dignity”, identify problems in its regulation in the context of human rights realization, and develop ways to improve national legislation in this area. The study is conducted using general scientific and special legal methods, including analysis and generalization of theoretical provisions and legal norms. Based on the comparative legal method, the main trends in the legal consolidation and development of this category at the present stage are identified. The features of this category, its enshrinement in legal acts, and its reflection in international standards are also analyzed. The study results in proposals aimed at improving the legal norms of Kazakh legislation. The main conclusion is the need to enhance legal measures to harmonize national legislation in the field of respect for and protection of human dignity as one of the key conditions for the realization of human rights in modern Kazakh society.

Keywords: Republic of Kazakhstan, human rights, human dignity, law implementation, legislation, legal norms, international standards.

Introduction

The legal category of “dignity” is at the human rights core. Research into this category is important and relevant today. Researching the legal category of “human dignity” is essential for human rights advocacy. Dignity is the foundation for understanding the need to protect human rights. The category of “dignity” in law is enshrined in two distinct concepts: “personal dignity” and “human dignity”. Constitutional norms use the concepts of “human dignity” and “dignity”. These concepts are interpreted differently depending on the context. We propose that the term “dignity” be understood as the dignity of every individual. In this case, dignity should be considered a category of private law. When conducting human rights monitoring, it is necessary to use the concept of “human dignity”. In our opinion, this is a public law concept. The concept “human dignity” is intended to reflect a universal category that defines the minimum standard of human rights observance. This is important for the human rights protection in public relations.

The significance of researching this problem for Kazakh law enforcement and human rights practice based in scientific “human dignity” and “dignity” categories development. This is necessary for the formation of legal concepts that reflect the private and public sides as studied legal categories.

In human rights advocacy, it is important to define human dignity as a universal human category. This category reflects the minimum level of human rights observance. Deterioration in a person’s situation com-

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pared to the generally recognized level should be a warning sign for the state. Human dignity is an objective category recognized by society. Distinguishing between the categories of “dignity” and “human dignity” is essential for the human rights implementation and law enforcement activities.

The purpose of the study is to examine the categories of “dignity” and “human dignity” from a theoretical perspective and to develop appropriate legal concepts for their enshrinement in legal acts. This creates the legal foundation for the full and effective realization of individual rights. The legal approach is important for ensuring individual rights in both public and private law spheres.

The research objectives are:

- To analyze and synthesize scientific concepts and categories related to personal dignity and human dignity, as well as to examine the process of their enshrinement in legislation and other sources of Kazakhstani law.

- To research legal categories “dignity” and “human dignity” used in international standards.

- To develop scientific provisions aimed at modernizing Kazakhstani law. These provisions aspire to introduce the concept of “human dignity” into legislation.

Conflicts in the methodology and theory of Kazakhstani law stem from the underdevelopment of the legal category of “human dignity”.

These conflicts are caused by different understandings these legal categories and the legal concepts developed on this basis. This is necessary for their consolidation in legislation and proper use in legal practice.

There are gaps in scientific and applied research that relate to the human rights research methodology and the using legal categories such as “dignity” and “human dignity”. In many scholarly sources, the categories under consideration are used as identical, while in others different interpretations are offered, which, from the author’s point of view, is incorrect.

Existing gaps in the interpretation of the “human dignity” category must be filled. Gaps in legislation and research should be considered in the insufficiently clear definition of the term “dignity”. The insufficient amount of research in this area contributes to these gaps. The lack of a clear distinction between dignity in public and private law hinders the effective implementation of human rights protection. This function is performed by both the state and civil society institutions. This aspect demonstrates the need for a diverse dignity understanding. In the legal literature and scientific research in the law field, issues related to human dignity have been addressed in industry studies, as well as in some researches on human rights issues. We agree with O.V. Vlasova, opinion who in her dissertation notes the small studies number, the subject is “human dignity” [1].

The author’s approach is based on the need for theoretical development of “human dignity” scientific category. It is also necessary to incorporate this legal concept into legislation. The legal category under study must be developed in accordance with international standards.

Methods and materials

The research utilized both general and specific scientific methods. A systems approach was employed, utilizing a comprehensive set of scientific techniques and research methods. The research analyzes and summarizes legal norms in legislation, specifically those concerning “human dignity”. A comparative legal method was used to compare Kazakhstani legislation with international standards. A systems approach examines the human rights implementation. This approach is used to examine the protection and promotion of human dignity. The use of legal hermeneutics allows for the development of new approaches to legal terminology. Establishing the concepts of “personal dignity” and “human dignity” is important for human rights monitoring. This is essential for law enforcement and human rights advocacy. Based on observation, description, analysis, and generalization, shortcomings in the legal regulation of the legal category “human dignity” have been identified. This category may be interpreted in different ways in various legal relations. Protection of dignity from humiliation is ensured by Kazakhstani legislation, international instruments, and the entire system of state law enforcement agencies. Systematic monitoring of respect for human dignity is carried out by civil institutions. These institutions include the National Preventive Mechanism. Its activities are aimed at preventing torture, as well as degrading punishment and treatment.

An analysis and summary of the identified problems allows us to identify human dignity as a fundamental category in the implementation of human rights. The problem is the procedure for ensuring respect for human dignity, particularly in correctional facilities. The situation regarding respect for human dignity is described in the Consolidated Report of the Participants of the National Preventive Mechanism of the Republic of Kazakhstan. The analysis is based on information obtained during preventive monitoring. During the

2024 monitoring, members of the National Preventive Mechanism visited a large number of closed institutions. They visited 489 institutions where human rights violations were suspected. Thirty-three special visits were devoted to identifying human rights violations. Monitoring was conducted in 11 correctional facilities, 13 pretrial detention facilities, six temporary detention centers, one special pretrial detention facility, and two special service centers. An analysis on dynamics of identified complaints for humiliation and torture shows a decrease over the past three years: 447 in 2022, 165 in 2023, and 111 in 2024 [2]. The results of the analysis are considered as the baseline data for this research. In 2025, the Commissioner for Human Rights of the Republic of Kazakhstan received more than 9.7 complaints, which increased by 45 % compared to 2024, and more than 818 visits to institutions and organizations were conducted. According to the audit results, 2438 recommendations were made, of which 2029 were implemented [3]. Through observation, description, analysis and generalization of the practice of monitoring human rights in the prevention field of torture and degrading treatment and punishment, the need to specify the “human dignity” legal concept has been identified.

Results

The result was the author’s provisions, which are based on the author’s supervision of the procedure for protecting and ensuring human dignity in institutions and various types organizations, including closed ones. The author’s observations were conducted while participating in human rights monitoring. The author is a member of the National Preventive Mechanism for the Karaganda Region for the period 2023–2026. During monitoring visits and interviews with persons held in institutions and relevant organizations, the problem of different understandings of “human dignity” and “personal dignity” was identified. During the monitoring, it was concluded that the category “human dignity” is the broadest scientific category that can include “personal dignity”. It is also concluded that torture is a human dignity humiliation, since in the torture process, not only physical suffering is inflicted on a person, but also moral suffering. Accordingly, human dignity and personal dignity humiliation can occur both with and without torture.

In the author’s observation, shortcomings were identified in the legal regulation and practice for applying legal norms that ensure human dignity as the fundamental basis for the human rights realization. This was accomplished while exercising my mandate as a member of the National Preventive Mechanism. From 2023 to 2025, the author, as part of a monitoring group, visited various institutions. This is the number of the institution where a person is deprived or limited in liberty. These include: temporary detention centers; specialized reception centers; correctional institutions; mental health centers; institutions providing special social services; orphanages and other institutions. Based on international standards, such organizations and institutions are most likely to experience humiliation and violations of various human rights.

Main results of the research:

1) In Kazakhstan’s legislation, the right to dignity protection is enshrined in the Constitution, the Civil Code, the Code of Civil Procedure, and the Criminal Code. Part 1 of Article 17 of the Kazakhstan Constitution states: “Human dignity is inviolable”. Part 2 contains a provision prohibiting torture, violence, and other cruel or degrading treatment or punishment. The constitutional norm “human dignity” requires further detail and reflection in legislation. Article 18 of the Constitution enshrines the right of every person to the protection and inviolability of their dignity [4]. At the same time, the concept of “dignity” and “human dignity” is not disclosed in the constitutional norms. Article 143 of the Civil Code enshrines everyone’s right to the protection of their dignity, honor, and business reputation [5]. This article does not define the concept of “dignity”. Article 146 of the Criminal Code of the Republic of Kazakhstan establishes guarantees of protection from cruel, inhuman or degrading treatment and punishment. Article 375 provides for the protection of the honor and dignity of the President of the Republic of Kazakhstan. Article 376 establishes protection against attacks on the honor and dignity of a Member of Parliament [6]. The regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 28, 2009 details the procedure for applying legal norms in criminal law [7]. The “dignity” concept, as a legal concept, is fixed in the Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated December 18, 1992 “On the application in judicial practice of legislation on the honor protection, dignity and individuals and legal entities business reputation”. In this Resolution, the concept of “dignity” is defined as a person’s self-assessment of their own qualities, abilities, worldview, and social importance [8]. This concept should be considered as a legal concept enshrined in national law.

In addition to the constitutional provisions, the concept of “human dignity” is used in the Law “On the Rights of the Child”. In Article 10 of this Law, the state undertakes to ensure human dignity. Article 34 pro-

hibits insulting human dignity. Article 49 prohibits the using education methods that degrade human dignity [9]. However, the legal concept of “human dignity” is not defined in either constitutional norms or sectoral legislation.

2) The concept of “dignity” is not defined in the International Convention against Torture, although this international instrument establishes for each member state the obligation to prevent degrading treatment. These obligations for each member state are enshrined in Articles 10, 11, 12 and 13 of this International Convention [10]. Among other international documents, the Universal Declaration of Human Rights should be noted. The preamble to this declaration enshrines the provision that: “recognition of dignity is the freedom foundation, justice and peace in the world”. This document states that: “... dignity is inherent in all members of the human family and is the basis of equal and inalienable rights”. The Declaration enshrines that: “... all human beings are born free and equal in dignity and rights”. At the same time, not only the importance of dignity is enshrined, but also the prohibition of its humiliation, as well as torture and cruel, inhuman treatment or punishment [11]. The Preamble doesn’t provide a definition, but based on its meaning, one can conclude that: “...the dignity inherent in all members of the human family”. This can be understood as a universal phenomenon that reflects the essence of each individual. The International Covenant on Civil and Political Rights states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and universal peace”. This provision should be understood in such a way that, in addition to personal dignity, society also has an understanding of “human dignity” which should be inherent in “...all members of the human family”. This category summarizes the dignity understanding as a certain moral standard inherent in all people. The preamble to this Covenant also recognizes that human rights derive from the inherent dignity of every human being [12]. Accordingly, based on the provisions of the preamble, two concepts can be distinguished: A) “Human dignity” as a generalizing category that establishes a universal minimum standard for each person’s self-assessment of their own qualities, abilities, worldview, and social significance as a universal category; B) “Personal dignity” as a personal self-assessment of one’s own qualities, abilities and worldview.

Article 7 of the International Covenant on Civil and Political Rights reflects the human right to protection from degrading treatment and punishment. Article 10 enshrines the right of everyone deprived of their liberty to respect for their dignity and to be treated humanely [12]. Based on these provisions, it is necessary to distinguish between the legal concepts of “human dignity” and “personal dignity”.

3) Improving legislation to protect “human dignity” is interconnected with the development of criminal law. The primary source of criminal law is the Criminal Code. It establishes criminal liability for cruel, inhuman, or degrading treatment [6]. It should be noted that Article 146 of the Code is divided into two parts. One section separately establishes liability for humiliation of dignity. The other section establishes liability for torture [6]. Part 2 in this article defines torture, but part 1 in this article does not define dignity.

In order to specify the Constitution provisions, it seems necessary to detail the “human dignity” concept in criminal legislation. We propose to set out part 1 of Article 146: “Cruel, inhuman or degrading treatment, that is, the intentional infliction of physical and (or) mental suffering by an official or a person acting in an official capacity, or by another person at their instigation, or with their knowledge or acquiescence in the absence torture signs”. That is, to replace the “dignity” concept with the concept of “human dignity”. This is due to the concept of separating the “dignity” concepts as a private law concept and “human dignity” as a public law category.

It is proposed to add paragraph 3 to the note for this article in the following wording: “Human dignity is the accepted conditions at human existence in society, the social status inherent in every person in Kazakh society”.

4) The Methodological Recommendations on preventive visits, approved by the order of the Commissioner for Human Rights in the Republic of Kazakhstan dated January 31, 2023, define degrading treatment and punishment. Paragraph 18 of these Guidelines defines that “degrading treatment is understood to mean such treatment during detention, delivery, detention and the operational investigative measures conduct, which was not associated with causing physical pain, but entailed his unjustified humiliation in front of others in his own eyes” [13]. This definition can be seen as a personal dignity humiliation. At the same time, degrading treatment may not be considered humiliating at the time of its use by him or others, but it has put the person in conditions that do not correspond to the accepted conditions of human existence in our society [13]. This approach can be considered as a humiliation of human dignity. The Guidelines explain the category of “degrading punishment”. Paragraph 19 stipulates that “Degrading punishment should also be understood as punishment that involves placing the person being punished in conditions that impede the normal

functioning of the human body, or aimed at unjustifiably or significantly lowering the social status for the person being punished” [13]. Accordingly, in this paragraph, provisions concerning “personal dignity” and “human dignity” can also be highlighted. It is proposed to supplement these methodological recommendations with paragraphs 19-1 and 19-2. Paragraph 19-1 is proposed to be formulated as follows: “Dignity is a person’s self-assessment of their own qualities, abilities, worldview, and social significance”. Paragraph 19-2 is proposed to be formulated as follows: “Human dignity is the accepted human existence conditions in society, the social status inherent in every person in Kazakh society”.

The novelty of the obtained results lies in the analysis, generalization, and systematization of legal norms that enshrine the category of “human dignity” as a legal concept. What is new is the rationale for proposals to include the “human dignity” concept in Kazakh legislation. It is proposed to include these legal concepts in legislative and by-laws. This will allow for a new approach to understanding the essence of human rights monitoring. From a practical standpoint, this is essential for a proper understanding of the concept of “human dignity”. To achieve the goals and objectives of human rights monitoring, it is crucial to implement this new approach to understanding. The new result is concrete proposals to supplement the criminal law norms and the derivative legal act of the Commissioner for Human Rights in the Republic of Kazakhstan.

The fundamental conceptual approach of this study is to divide the general category of “dignity” into two parts. The first category, “personal dignity”, is viewed as the dignity of a specific individual. The second category, “human dignity”, is viewed as the dignity of an abstract individual, as a socially recognized minimum humanitarian standard. Personal dignity is considered a category of private law. It is defined as “an individual’s self-assessment of their own qualities, abilities, worldview, and social significance”. “Human dignity” is considered as a category of public law “a minimum standard of human existence defined in society, based on a social status understanding as society abstract member”.

Discussion

When comparing the results it is necessary to pay attention to the fact that a fairly large number of scientific papers are devoted to guarantees and dignity protection at the international, constitutional and sectoral levels. The concepts of “personal dignity” and “human dignity” in the context of their shared use have received little attention in popular academic works. The inadequacy of this research and the lack of development of these categories are noted in the dissertation research of O.V. Vlasova [1]. We agree with this position. The concepts of “personal dignity” and “human dignity” are used in the constitutional norms of the Russian Federation in Article 21 [14]. The Commentary to Article 21 establishes that personal dignity is a property. Dignity, as an inalienable quality of every individual, is inherent in all people. This means that it essentially constitutes the foundation of every individual’s existence. However, it is explained that dignity is considered an inherent property of a person as the highest value. This property forms the basis for the recognition of all their rights and freedoms. It belongs to a person, regardless of how they or the people around them perceive and evaluate their personality. All state bodies provide a person with the full range of necessary conditions for the realization of human rights [15]. Personal dignity is considered a personal assessment of one’s own qualities. Human dignity is viewed as a necessary minimum level of protection and observance of human rights.

In legal studies devoted to personal dignity and human dignity, these scientific categories are studied from the perspective of different approaches. In the dissertation research of T.A. Khashem, human dignity is studied as a collective and individual social phenomenon [16]. In the dissertation research of M.A. Paladev, the definition of honor and dignity is revealed in two aspects: objective and subjective. This author notes that the concept of “dignity” in the subjective sense can be identified with the concept of “honor” in its objective meaning. This scientific research reveals the homogeneity of social relations and the unity of methods for regulating the legal institution of “human honor and dignity”. The dissertation notes the naturalness of the right to personal dignity. It is intended to establish the basic foundation of the legal system as a legal principle. Recognition of this principle is a necessary condition for the existence of all human rights. In this study, the right to dignity and honor is considered as a special subjective right. This right consists of the following powers: a) presumption of honor and equal dignity; b) possession of dignity and honor; c) disposal of honor; d) protection of dignity and honor [17]. It is necessary to agree with the provisions that this author defends. Based on the purpose, these provisions need to be supplemented. The “equal dignity” that this author highlights correlates with the “human dignity” concept that we are considering in this study. In M.L. Gaskarova’s dissertation research, the categories “personal dignity” and “human dignity” are considered as unambiguous.

At the same time, it is noted that the “dignity” and “honor” categories are closely related and have been studied for a long time in an inseparable connection. Their difference is emphasized, which is as follows: “Honor” defines the degree of recognition of a person by society as observing moral and legal norms result; “Dignity” implies equality of opportunities for all people to achieve respect and means a person value [18]. In scientific research on the law theory and constitutional law, the “honor” and “dignity” categories are considered in the context of the observance and human rights protection, whereas in civil and criminal law, the “honor” and “dignity” categories are considered without interrelation with human rights, primarily as an unlawful encroachment object.

In our opinion, it is necessary to separate the “dignity” concept in the private law field, in order to protect it in civil law relations. The “human dignity” category in public law should be singled out separately. Legislation must be modernized by incorporating the concept of “human dignity” into legal acts. This approach should be the basis for scientific research in the field of human rights. Respect for and protection of human dignity must be incorporated into practical law enforcement and human rights activities. This approach emphasizes the fundamental nature of human dignity as the foundation of human rights. This concept appears to establish a minimum standard for respect for human rights. This is a contemporary understanding of the necessary level of respect for human rights in a given historical society. This level must be guaranteed by the state and conditioned by the generally accepted level of respect for and provision of human rights. The discussion took place at the Karaganda National Research University named after Academician E.A. Buketov Law Faculty during the round table “The Constitution as the basis of the national legal system” on September 5, 2025. Issues related to human dignity as the basis of human rights were discussed during the round table “Independence and State sovereignty as the basis of human rights in the Republic of Kazakhstan” on December 12, 2025. These scientific forums addressed issues of human dignity, personal dignity, and human rights. The distinguishing concept of the “human dignity” category in Kazakh legal science and the consolidation of this concept in Kazakh legislation were supported.

Issues related to the observance and protection of human dignity were discussed on various information platforms and media resources. Trainings and seminars were held on the practical implementation of norms aimed at preventing degrading forms of punishment and treatment [19]. The result of these discussions was the draft law “On the National Preventive Mechanism”. This initiative was presented in April 2024 by experts from the Coalition of Non-Governmental Organizations of Kazakhstan [20]. It is important to incorporate the concept of “human dignity” into this draft law.

Problems in the area of human rights implementation, protection, and observance are examined in publications by A.B. Ashirbekova, O. Anayurt [21; 6–14], V.S. Issabekova, J. Zalesny [22; 25–31]. These publications are devoted to the analysis and generalization of the activities of human rights protection mechanisms in different countries and the Republic of Kazakhstan. Current issues of the organization and activities of the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are examined in the article by A.V. Turlayev, N.S. Akhmetova [23; 59–69]. In the course of reviewing and analyzing the research results in these publications, it can be concluded that it is necessary to introduce the “human dignity” concept into Kazakh law and legislation.

The issues explored in this article are scientifically novel and relevant. The results of this study are novel and have theoretical and practical significance. The results obtained during the study are scientifically substantiated. Certain provisions of this research aim to clarify legal concepts and definitions. The introduction of the “human dignity” concept into Kazakh science and legislation will make it possible to separate this concept from the existing “dignity” concept. This is necessary to separate these concepts. The legal category “dignity” is designed to reveal a person’s self-assessment of their own qualities, abilities, worldview, and their social significance [8]. That is, it is an individual self-assessment, has a personal character. In understanding, each person’s dignity is different, due to his life experience, cultural level, and social status. This approach is most suitable for relations regulated by civil law and other private law branches. The proposed “human dignity” legal concept should be used in human rights activities in the field of public law. Human dignity is proposed to be understood as the necessary level of respect for human rights accepted in society, ensuring the human existence conditions, and the social status inherent in every person in Kazakh society.

The main result is the nomination of a scientific concept summarizing the research results and legal provisions that reveal human dignity as a public law category. Human rights activities are considered as activities in the field public law and in the private law field. In the field public law, it is proposed to use the concept of “human dignity” inherent in all people. In the field private law, the legal “dignity” concept should be used, reflecting the qualities inherent in one particular person. This approach is based on the formulation

and structure of norms in international acts and standards. The proposed concept is substantiated by analyzing and summarizing civil and criminal norms, law enforcement, and human rights practices.

The validity of the obtained results is confirmed by examining the required list of Kazakh and international legal norms. Scientific publications in this area and other information were reviewed. The author's observations during monitoring of human rights compliance in the exercise of the powers of a member of the National Preventive Mechanism operating in the Karaganda region underpin the validity of the results.

Conclusions

The conducted research allows us to systematize the results and approaches to examining problems in the area under study. The development of provisions on human dignity is being carried out in the context of protecting individual rights from cruel, inhumane, or degrading treatment and punishment. All obtained results are systematized and briefly presented.

1) The legal codification of "dignity" concept was achieved in the Resolution of the Supreme Court of the Republic of Kazakhstan dated December 18, 1992, "On the Application of Legislation on the Protection of the Honor, Dignity, and Business Reputation of Individuals and Legal Entities in Judicial Practice". This Resolution enshrines dignity as an individual's self-assessment of their own qualities, worldview, abilities, and social significance [8]. Part 1 of Article 17 of the Constitutional Law establishes the concept of the inviolability of human dignity. Part 2 contains a provision prohibiting torture, violence, and other cruel or degrading treatment or punishment. Accordingly, the constitutional concept of "human dignity" requires its specification in the sectoral legislation.

2) Based on the international human rights standards provisions, two concepts can be distinguished: A) "Human dignity" as a generalizing category that establishes a universal minimum standard for each person's self-assessment of their own qualities, abilities, worldview, and social significance as a universal category; B) "Personal dignity" as a personal self-assessment of one's own qualities, abilities and worldview. Based on the meaning of article 7 of the International Covenant on Civil and Political Rights, it is necessary to distinguish two concepts "personal dignity" and "human dignity".

3) It seems important, in order to concretize the constitutional provisions, to develop in more detail the concept of "human dignity" in criminal law. It is proposed to formulate part 1 of article 146 as follows: "Cruel, inhuman or degrading treatment, that is, the intentional infliction of physical and (or) mental suffering by an official or a person acting in an official capacity, or by another person at their instigation, or with their knowledge or acquiescence in the absence of torture signs". We have substantiated the importance of changing the concept of "dignity" to the concept of "human dignity". This follows from the concept, substantiated in this article, of dividing the concepts into "personal dignity" as a category of private law and "human dignity" as a category of public law. We propose making the following additions to the note to this article. Add paragraph 3 to the article. This paragraph is proposed to read as follows: "Human dignity is the conditions of human existence accepted in society, a social status inherent to every person in Kazakhstani society".

4) We propose to supplement the Methodological Recommendations for Preventive Visits, approved by the order of the Human Rights Commissioner of the Republic of Kazakhstan dated January 31, 2023, with paragraphs 19-1 and 19-2.

- Paragraph 19-1 is proposed to read as follows: "Dignity is a person's self-assessment of their own qualities, abilities, worldview, and their social significance".

- Paragraph 19-2 is proposed to read as follows: "Human dignity is the set of conditions of a person's existence in society and the social status inherent in every person in Kazakh society".

These additions are of a practical nature, since when monitoring human rights, participants in the National Preventive Mechanism should separate in each case "dignity" as a particular category inherent in a particular person and "human dignity" as a universal category inherent in all people.

The practical value of the study stems from the need to utilize its findings in human rights and law enforcement practice. These findings are aimed at improving legal norms on the prevention of degrading treatment and punishment, which implies the modernization of human rights practices.

The scientific value of the study stems from its theoretical approach to studying the scientific aspects of the category of legal theory. This theory reveals the category of personal dignity and human worth from a scientific perspective. On this basis, legal concepts are developed and formulated for implementation in Kazakhstani legislation.

The results of the study can be applied in human rights advocacy and in monitoring human rights compliance. They can be used in scientific research on human rights. The results can be implemented in lawmaking and in the interpretation of legal norms during the law enforcement process.

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А.В. Турлаев, Н.С. Ахметова

Адамның қадір-қасиеті адам құқықтарын жүзеге асырудың негізі ретінде

Мақалада адам құқықтарын іске асырудың негізі болып табылатын құқықтық санат ретінде адами қадір-қасиетті құқықтық реттеудің өзекті мәселелері қарастырылады. Адамның қадір-қасиеті адам құқықтарын іске асыру жүйесінде отандық және халықаралық құқықтық санаты ретінде зерделенген. Зерттеудің мақсаты — «адамның қадір-қасиеті» құқықтық санатына талдау жүргізу, адам құқықтарын жүзеге асыру контекстінде құқықтық реттеудегі мәселелерді анықтау, сондай-ақ осы саладағы ұлттық заңнаманы жетілдіру жолдарын ұсыну. Зерттеу жалпы ғылыми және арнайы құқықтық әдістер арқылы жүзеге асырылады, теориялық ережелер мен құқықтық нормаларды талдау және жалпылау қолданылған. Салыстырмалы құқықтық әдіс негізінде қазіргі уақытта осы санаттың құқықтық шоғырлануы мен дамуының негізгі тенденциялары және құқықтық бекіту мен дамытудың негізгі тенденциялары анықталған. Осы ғылыми санаттың ерекшеліктеріне, оның құқықтық актілерде және халықаралық стандарттарда бекітілуіне талдау жүргізілді. Зерттеудің негізгі нәтижесі — қазақстандық құқықтық нормаларын жетілдіру бойынша ұсыныстар беру. Зерттеудің негізгі қорытындысында қазіргі қазақстандық қоғамда адам құқықтарын іске асырудың негізгі шарттарының бірі ретінде адамның қадір-қасиетін сақтау және қорғау саласындағы ұлттық заңнаманы үйлестіруге бағытталған құқықтық шараларды жетілдіру қажеттілігі туралы ережені жетілдіру қажеттілігі тұжырымдалған.

Кілт сөздер: Қазақстан Республикасы, адам құқықтары, адамның қадір-қасиеті, құқықты іске асыру, заңнама, құқықтық нормалар, халықаралық стандарттар.

А.В. Турлаев, Н.С. Ахметова

Человеческое достоинство как основа реализации прав человека

В статье рассматриваются проблемные вопросы правовой регламентации человеческого достоинства как правовой категории, призванной находиться в основе реализации прав человека. Человеческое достоинство рассматривается как правовая категория отечественного и международного права в системе реализации прав человека. Цель исследования — осуществление анализа правовой категории «человеческое достоинство», выявление проблем правовой регламентации в контексте реализации прав человека, а также выработка путей совершенствования национального законодательства в этой сфере. Исследование осуществляется посредством общенаучных и специально-правовых методов, используется анализ и обобщение теоретических положений и правовых норм. На основе сравнительно-правового метода выявляются основные тенденции правового закрепления и развития этой категории в настоящее время. Проведен анализ особенностей этой научной категории, её закрепления в правовых актах и международных стандартах. Основным результатом исследования являются предложения по совершенствованию правовых норм казахстанского права. Основным выводом исследования является положение о необходимости совершенствования правовых мер, направленных на гармонизацию национального законодательства в сфере соблюдения и защиты человеческого достоинства как одного из основных условий реализации прав человека в современном казахстанском обществе.

Ключевые слова: Республика Казахстан, права человека, человеческое достоинство, реализация права, законодательство, правовые нормы, международные стандарты.

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ЕҢБЕК, АЗАМАТТЫҚ ЖӘНЕ АЗАМАТТЫҚ ІС ЖҮРГІЗУ ҚҰҚЫҒЫНЫҢ ӨЗЕКТІ МӘСЕЛЕЛЕРІ АКТУАЛЬНЫЕ ПРОБЛЕМЫ ТРУДОВОГО, ГРАЖДАНСКОГО И ГРАЖДАНСКОГО ПРОЦЕССУАЛЬНОГО ПРАВА CURRENT ISSUES IN LABOUR, CIVIL AND CIVIL PROCEDURAL LAW

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Judicial Protection of the Rights of Participants of Business Partnerships and the Allocation of Liability When Challenging a Contract for the Purchase and Sale of a Share in the Authorized Capital

The article analyzes judicial mechanisms for protecting corporate participants in share alienation disputes and identifies systemic gaps in Kazakhstani legislation. The article notes that the primary focus of parties and registration authorities remains on formal requirements, while liability is often distributed without proper legal assessment. The study aims to identify regulatory deficiencies and the lack of consistent judicial practice, which the protection of bona fide purchasers and create uncertainty in the allocation of liability. The research includes an analysis of legislative norms and court disputes regarding share non-payment, enforcement proceedings, and the concealment of a partnership's financial condition. It is established that the formalistic judicial approach fails to account for the seller's actual situation and their liability to creditors. Particular attention is paid to the problem of liability for obligations arising prior to share alienation. Within a comparative legal analysis, the experiences of Uzbekistan and Belarus are examined. The key finding substantiates the necessity to introduce a mechanism for delimiting liability based on the period of participation to enhance legal certainty. The practical significance lies in developing proposals to enhance legal regulation.

Keywords: business partnerships, participatory interest, share sale and purchase, challenging transactions, bona fide purchaser, risk allocation, balance of creditors' interests.

Introduction

The institution of buying and selling shares within the equity structure of commercial entities performs a significant function in the civil turnover of the Republic of Kazakhstan. It ensures the transferability of corporate rights and allows participants in business partnerships to exercise their authority to independently alienate their ownership interests. Concurrently, the rapid expansion of transactional activity within the commercial sphere in recent years has revealed a number of significant problems related to the normative framework governing these operations as well as the protection of the rights of bona fide purchasers.

One of the significant problems in law enforcement practice is the alienation of shares in business partnerships, in which sellers reduce the performance of their obligations to the formal conclusion of a sale and purchase agreement with a notary, while the external compliance with the procedure established by law

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often conceals the existence of significant financial and legal encumbrances on the alienated share, creating adverse consequences for the acquirer.

An analysis of court practice shows that after the transfer of a share to a new participant, numerous enforcement proceedings, tax debts, and other restrictions are often revealed, which were deliberately not disclosed by the seller at the stage of concluding the contract. At the same time, the existence of a significant number of ongoing enforcement proceedings in relation to the partnership does not in itself prevent state registration of the change of participant, which subsequently becomes the cause of protracted corporate and legal disputes.

The above circumstances indicate that challenging share purchase agreements goes beyond a private dispute between the seller of the share and its buyer. The mass nature of such transactions, the lack of effective mechanisms for verifying the legal and financial status of business partnerships, and the ambiguity of the legal consequences of their conclusion make this a systemic problem. The subjective (based on internal conviction) assessment by courts of the significance of information contained in the databases of executive bodies is often limited to a formal analysis of compliance with the transaction procedure, which negatively affects the stability of civil turnover.

In this regard, it is particularly important for courts to take into account information from state registers and information from tax authorities and enforcement agencies when resolving disputes related to the transfer of rights to a share in a business partnership.

Methods and materials

In preparing this article, a comprehensive approach was used, including general scientific and special research methods appropriate to the aims and objectives of the work. The main method was the formal legal method, which made it possible to study the norms of civil and corporate legislation of the Republic of Kazakhstan regulating the procedure for alienation of shares in the authorized capital of economic partnerships, as well as the grounds for recognizing transactions as invalid.

The analytical method was used to summarize and evaluate the provisions of legal doctrine and judicial practice originating from interdistrict commercial adjudicatory courts of the Republic of Kazakhstan. Particular attention was paid to issues of proving unfair conduct of the participants involved in the transaction and facts of concealing information about the financial condition of the partnership during the transfer of rights to a share.

The empirical basis of the study was formed by the normative legal acts of the Republic of Kazakhstan, materials of judicial practice on corporate disputes, including judicial acts of the first and appellate instances, as well as information contained in state registers and information systems of judicial and tax authorities.

The conceptual and methodological foundation of this research draws upon academic writings and scholarly contributions produced by both national and international authors in the field of civil and corporate law, in particular M.K. Suleimenov, Yu.G. Basin, S.B. Skryabin, A.K. Kaldybayev, Zh.B. Zhumagaliyeva, L. Novoselova, A.O. Takhtenkova.

The use of doctrinal sources in combination with an analysis of judicial practice ensured the comprehensive nature of the study, the validity of the conclusions, and made it possible to formulate practical proposals directed toward enhancing legal instruments for safeguarding the interests of participants in economic partnerships.

The selection of the Republic of Uzbekistan and the Republic of Belarus for comparative analysis is justified by their shared membership in the Roman-Germanic legal family and a common civil law heritage within the CIS. These states represent polar regulatory models: from absolute succession of liability (Uzbekistan) to temporal differentiation (Belarus), which allows for an assessment of the most effective model for the Republic of Kazakhstan. The empirical basis of the study is focused on specialized commercial court rulings from 2020–2025 to ensure the relevance of the analyzed judicial trends.

Results

Before analyzing existing gaps in legislation, it is important to first clarify the object of the study. Judicial protection of a participant's rights in disputes related to the alienation of shares can be understood as a set of legal safeguards designed to restore the balance of corporate interests through the differentiation of liability depending on the time when the relevant obligations arose. Within this framework, corporate succession should be considered a particular type of legal transfer: although the rights to participate in corporate governance pass to the purchaser, the "burden" of undisclosed liabilities caused by the seller's bad

faith should not automatically transfer together with the share, since such an approach contradicts the principle of fairness in civil circulation.

Before analyzing the issues related to challenging share purchase agreements and protecting the rights of the purchaser, it is necessary to determine the legal nature of such an agreement in the civil circulation. This is because the choice of protection and the distribution of risks between the parties depend on the classification of the agreement.

The study of the legal nature of a contract for the sale of a share in the authorized capital of commercial partnerships requires reference to the norms of civil and corporate law in their systemic connection. The main normative instrument regulating the relevant sphere of legal relations is the Law of the Republic of Kazakhstan “On Limited and Additional Liability Partnerships” dated April 22, 1998, No. 220-1 (*hereinafter referred to as the Law on Partnerships*) [1].

According to Article 28 of the Law on Partnerships, a share in the authorized capital does not constitute ownership of specific property of the partnership. It expresses a person’s participation in the activities of a legal entity and includes a set of property and non-property rights. Such rights include, in particular, the entitlement to participate in the distribution of earnings, the right to a share of the property upon liquidation of the partnership, as well as the right to participate in the management of the legal entity and to receive information about its activities.

Taking into account the provisions enshrined in the Law, it seems reasonable to conclude that a share purchase agreement has a complex legal nature. In terms of its content, it is aimed not at the transfer of property, but at the transfer of a set of corporate rights from one participant to another. Although the transaction is formally executed in the form of a sale and purchase contract, the disposal of an interest in the charter capital, from a substantive legal perspective, represents the conveyance of a complex bundle of corporate entitlements, certain components of which are functionally similar to the transfer of a claim, which determines the specific nature of the seller’s obligations and liability to the purchaser.

The complexity of this transition is also noted in modern international legal scholarship, which stresses that legal rules should rely on a balanced evaluation of the interests of all involved parties, rather than being derived only from abstract reasoning. As Yao points out, “*the evaluation of whether shareholders should have the “right of retraction” should not be judged simply on the basis of the attributes of the preemption right, so the substantial protection of interests may be overlooked*” [2].

The procedure for concluding a contract for the sale and purchase of a share in the authorized capital of a business partnership is regulated by law and includes several consecutive stages. At the initial stage, it is crucial to comply with the pre-emptive entitlement established in Article 31 of the Law on Partnerships and Clause 3 of Article 80 of the Civil Code of the Republic of Kazakhstan (*hereinafter referred to as the Civil Code*) [3]. These provisions grant the participants in the partnership a preemptive right to purchase the alienated share in relation to third parties. In this connection, the seller is obliged to notify the executive body of the economic partnership and the other participants in writing of the planned disposition of their participatory interests, with specification of the purchase price and all essential contractual conditions. Only if the participants refuse to exercise their preemptive right or fail to respond within the established period, which is generally one month, may the share be sold to a third party.

Special attention should be paid to compliance with the form of such a transaction established by law. In accordance with paragraph 2 of Article 154 of the Civil Code of the Republic of Kazakhstan and paragraph 2 of Article 39 of the any transaction involving the transfer of a participatory interest requires compulsory notarization. Non-observance of the required notarization leads to the recognition of the transaction as invalid under Article 157-1 of the Civil Code of the Republic of Kazakhstan, as it is considered to have been concluded in violation of the requirements of the law.

As A.K. Kaldybayev and Zh. B. Zhumagaliyeva note, “*the use of the notarial form in transactions for the alienation of shares is an essential element of legal protection, ensuring the legality of corporate changes and preventing the falsification of documents that could lead to the loss of control over a business*” [4].

When certifying a contract, the notary, guided by the provisions of Article 54 of the Law of the Republic of Kazakhstan “On Notaries” dated July 14, 1997, No. 155-I (*hereinafter referred to as the Law on Notaries*) and paragraphs 44, 45, 46, 60, and 66 of Order No. 41 of the Minister of Justice of the Republic of Kazakhstan dated January 31, 2012, “On Approval of the Rules for the Performance of Notarial Actions by Notaries” [5] (*hereinafter referred to as the Rules*) verifies the legal capacity of the parties, the availability of appropriate title documents, as well as compliance with the rights of other participants in the partnership to the preemptive purchase of a share.

L. Novoselova notes that *“the complexity of contractual relations in limited liability partnerships is due to the special legal nature of the share, which is an independent object of civil rights and requires an assessment not only of the actual expression of the parties’ will, but also of the legal status of the partnership itself, including the peculiarities of its corporate history”* [6].

The final stage in formalizing the transfer of rights is the state re-registration of the partnership. According to subparagraph 1) of paragraph 1 of Article 14 of the Law of the Republic of Kazakhstan “On State Registration of Legal Entities and Accounting Registration of Branches and Representative Offices” dated April 17, 1995, No. 2198 [7] (*hereinafter referred to as the Law on State Registration*), changes in the composition of participants in economic partnerships, except for cases where a register of participants is maintained, are subject to mandatory state re-registration. An application for the relevant changes must be submitted to the registering authority within one month from the date of conclusion of the agreement or adoption of the the corresponding corporate resolution.

It should be specifically emphasized that the rights and obligations of a participant are finally transferred to the acquirer from the moment of state re-registration. As stipulated in clause 2 of Article 22 of the Law on Partnerships, the buyer of a share acquires the status of a participant in the partnership after changes are made to the registration data. Until that moment, he cannot fully exercise his corporate entitlements vis-à-vis external counterparties, given that, in accordance with Article 42 of the Civil Code of the Republic of Kazakhstan, such persons are entitled to rely on the information contained in the state register of legal entities.

However, despite detailed regulation of the procedure for alienating shares in the charter capital of corporate organizations, case law continues to demonstrate inconsistent methods in the adjudication of corporate-law disputes. An analysis of court disputes indicates the existence of systemic problems affecting both the stability of civil transactions and the effectiveness of protecting the rights of bona fide purchasers and sellers of shares.

A summary of court practice allows us to identify a number of key problematic aspects that arise in the conclusion and execution of share purchase agreements. In the law enforcement practice of courts, disputes often arise in connection with the alienation of shares in the authorized capital, and it is therefore advisable to analyze the most common grounds for such disputes and the established judicial approaches to their resolution.

1. Challenging transactions due to failure to fulfill obligations to pay for a share.

One common situation is the purchaser’s failure to fulfill their obligation to pay the purchase price of the share. In such cases, interested parties often choose to defend themselves by requesting that the contract be declared invalid, believing that the lack of payment calls into question the proper performance of the terms of the transaction. Meanwhile, judicial practice proceeds from the assumption that failure to fulfill a monetary obligation does not affect the validity of the contract as such and cannot in itself serve as a basis for declaring the transaction invalid. In such cases, the seller has the right to demand payment of the amount stipulated in the contract, but not the right to return the alienated share.

A case in point is the dispute between Two K LLP and M.K. Karabatayev over the recovery of debt under a share purchase agreement in the amount of over 47 million tenge. Despite the existence of a legally binding court decision on debt collection in case No. 5265-25-00-2/771, the actual absence of property from the debtor that could be subject to enforcement made it impossible to actually execute the court order [8]. As a result, the seller lost his corporate rights but did not receive consideration in the form of payment of the purchase price. This situation is due not only to the difficulties of subsequent enforcement of the court order but also to the terms of the agreement concluded between the parties. In accordance with the general provisions on sales contracts, the buyer’s obligation to pay is reciprocal and, unless otherwise provided by the contract, must be performed simultaneously with the transfer of the object of sale. Consequently, when alienating a share in the authorized capital, the risk of non-payment largely depends on the payment model chosen by the parties, and the conclusion of a contract with a deferred payment without the use of security mechanisms represents a contractual risk for the seller, which cannot be fully imposed on the judicial protection system.

2. The existence of unfulfilled court orders and encumbrances in relation to the seller of the share.

Significant difficulties also arise in cases where the alienation of a share is carried out when the seller has significant debt obligations to third parties or state authorities. An analysis of court cases shows that such transactions are often carried out in conditions that are not reflected in the database of enforcement

proceedings at the time of the transaction, which may indicate an attempt to withdraw assets and evade the enforcement of court decisions.

A case in point is case No. 1912-20-00-2/2125 brought by KDN Group LLP against A.V. Melentyeva, in which the plaintiff claimed that the share purchase agreement was invalid. In support of its claims, the plaintiff pointed out that at the time of the transaction, more than seventeen enforcement proceedings had been initiated against the seller, and the transaction itself, in its opinion, was aimed at evading obligations to creditors and the state [9]. The plaintiff pointed out that the contract was formal in nature and was concluded with the aim of concealing property from enforcement, which, in the plaintiff's opinion, contradicted the requirements of Article 158 of the Civil Code of the Republic of Kazakhstan.

Having considered this dispute and examined the circumstances of the case, the court decided to dismiss the claim. The judicial authority proceeded from the fact that at the time of notarization, a check was carried out and it was established that there were no seizures or other encumbrances directly on the alienated share. The court held that the seller's debts and open enforcement proceedings did not in themselves restrict his right to dispose of the share in the absence of a statutory prohibition. The court thus focused on compliance with the formal requirements for the transaction.

The Plaintiff, disagreeing with this approach, filed an appeal, emphasizing the need to assess the good faith of the parties to the transaction. In the Plaintiff's opinion, the alienation of a share as one of the key assets in the presence of debts indicated an intention to cause harm to creditors. The applicant's arguments are supported by legal doctrine. Thus, A.O. Takhtenkova notes that "*judicial practice is moving towards a more active application of the rules on the inadmissibility of abuse of rights in conjunction with the rules on the invalidity of transactions*" [10]. This allows the seller's actions aimed at removing property from enforcement to be classified not simply as a formal exercise of the owner's rights, but as unlawful conduct that violates the limits of the exercise of civil rights. Nevertheless, the reviewing judicial panel at the appeal stage left the decision of the court of first instance unchanged, confirming the predominance of a purely formal finding that no encumbrances existed over any substantive evaluation of the seller's actual financial situation.

This example clearly demonstrates that the formal nature of legal regulation and the limited scope of verification mechanisms for the alienation of shares do not allow for the timely identification of transactions that are detrimental to the interests of creditors and other participants in civil transactions. As a result, a situation arises in which the formally lawful actions of one party create legal uncertainty and risks for bona fide purchasers, who, after the transaction is completed, may face claims from third parties and protracted litigation. The lack of effective preliminary verification tools and uniform approaches to assessing the good faith of the parties effectively shifts the negative consequences of such transactions to participants acting reasonably and in good faith.

In addition to disputes with creditors, in practice, the opposite situation often arises, when the buyer attempts to challenge the contract due to undisclosed circumstances revealed after re-registration.

3. Challenging a transaction to transfer a share in the presence of tax arrears.

An analysis of court practice clearly confirms the relevance of the legal problem addressed. In this regard, a ruling issued by the specialized interdistrict commercial court operating within the Karaganda region in case No. 3514-20-00-2/3549, the claim of the state revenue authority to invalidate the contract of sale of a share in a limited liability partnership was upheld [11]. The court found that at the time of the transaction, the partnership had tax arrears in excess of 148 million tenge, and the change of participant was formal in nature and was aimed at evading tax obligations. The court classified the parties' actions as an abuse of rights, noting that the purchaser of the share had no real intention of carrying out entrepreneurial activity. This example shows that in the absence of clear legislative mechanisms for preliminary control, courts are forced to eliminate the negative consequences of such transactions after they have been completed, which negatively affects the stability of civil legal relations.

Discussion

The reviewed judicial practice shows that the evaluation of corporate transactions is often overly dependent on the external "form" of a transaction rather than on the real interests of the parties involved. As Ye.L. Babadzhanyan observes, *the coincidence of internal intent and its external expression is a fundamental condition for the validity of a transaction. Nevertheless, enforcement practice should gradually shift from a model focused on "protecting the appearance of a transaction" toward one aimed at "protecting interests"*. This issue becomes especially significant in disputes over the alienation of shares, where undisclosed

financial encumbrances may create a “defect of will”, causing the formally expressed consent to diverge from the parties’ genuine legal and economic intentions [12].

The court cases analyzed indicate that, as applied in real legal proceedings, the primary mechanism for safeguarding the interests of a share acquirer commonly consists in seeking recognition of the invalidity of the sale and purchase contract due to circumstances that the transaction was made under the influence of error or fraud, as provided for in Articles 158 and 159 of the Civil Code of the Republic of Kazakhstan. Within this category of private-law disputes, the purchaser bears the burden of proving that the seller deliberately failed to disclose information about encumbrances, debts, or other material circumstances that were relevant to the formation of the party’s intent when concluding the transaction.

The “judicial formalism” evident in current practice largely stems from the priority courts give to formal registration information and entries in state registers rather than to the partnership’s real financial condition. In many cases, judicial review is confined to verifying that no active arrests were recorded in the database at the time the transaction was concluded, while the potential “latency” of tax or enforcement obligations is disregarded. As a result, a situation arises in which an action that appears legally valid in form (for example, a notarized sale) can in fact conceal a substantive violation of trust.

At the same time, the implementation of this method of protection in practice is fraught with significant difficulties related to the assessment of the evidence presented. The evidence presented by the purchaser mainly indicates that he was not and could not have been aware of the partnership’s hidden financial obligations, which are largely assessed by the adjudicating authority relying on the court’s discretionary assessment of the evidence. In accordance with Article 16 of the Civil Procedure Code of the Republic of Kazakhstan (*hereinafter referred to as the CPC RK*), the court evaluates the evidence based on its internal conviction, which is based on a comprehensive, complete, and objective examination of the evidence as a whole [13]. In the absence of legally established presumptions of good faith on the part of the purchaser or uniform standards for verifying the legal and financial status of a share, this approach often leads to contradictory judicial practice, in which different judicial acts are adopted in similar factual circumstances.

A review of court practice leads to the conclusion that a formal procedural review of transactions involving the alienation of shares in the authorized capital does not provide adequate protection for the rights of participants in civil transactions. In some cases, this approach leads to a situation where a bona fide purchaser of a share is vulnerable to previously existing but non-obvious obligations. In order to develop more specific criteria for the allocation of liability, it is advisable to refer to a comparison of foreign regulatory models. In this regard, it seems necessary to consider the issue of succession of rights and obligations when transferring a share based on a comparative legal analysis of the legislation of the states belonging to the Commonwealth of Independent States (*hereinafter referred to as the CIS*).

Current legislation in the Republic of Kazakhstan does not fully address the issue of the purchaser’s liability for the obligations of the previous participant that arose prior to the alienation. The Law on Partnerships is limited to indicating the moment when the status of a participant arises. Thus, paragraph 2 of Article 22 of the Law on Partnerships establishes that the acquirer has the right to exercise their corporate rights and bear obligations only after the relevant changes have been made to the registration data. At the same time, the Partnership Law does not provide a direct answer to the fundamental question of the fate of the seller’s unfulfilled obligations arising during his participation in the partnership.

The lack of clear regulatory provisions forces courts to limit themselves to checking compliance with the form and procedure of the transaction, without touching upon the substantive legal aspect of the distribution of liability. As a result, the acquirer of the share is effectively deprived of effective mechanisms of protection in the event of the discovery of hidden corporate encumbrances, which negatively affects the stability of civil relations.

The opposite approach is implemented by the legislation of the Republic of Uzbekistan. Article 20 of the Law of the Republic of Uzbekistan “On Limited and Additional Liability Enterprises” establishes a mandatory model of succession, according to which all rights and obligations of a company participant that arose prior to the alienation of the share are transferred to the acquirer of the share, with the exception of those that are inextricably linked to the personality of the participant [14]. Thus, the legislation of the Republic of Uzbekistan establishes a presumption of full transfer of liability, including property obligations.

This structure protects the interests of the legal entity and its creditors to the fullest achievable degree, while simultaneously creating heightened exposure for the purchaser, effectively imposing on them the obligation to conduct an in-depth legal and financial review before concluding a transaction to acquire a share within the charter capital of the company.

An alternative regulatory framework is proposed in the legislation of the Republic of Belarus. Article 101 of the Law of the Republic of Belarus “On Business Associations” relies on the principle of temporary differentiation of liability, establishing that the rights and obligations of a participant are transferred to the acquirer of the share, except for those related to the period prior to its alienation, unless otherwise expressly provided by law or the company’s charter [15]. Thus, the Belarusian model allows for the normative division of obligations depending on the period of share ownership.

This approach differs fundamentally from the models implemented in the Republic of Kazakhstan and the Republic of Uzbekistan. It allows a bona fide purchaser to reasonably object to claims based on the actions or inactions of the former participant that took place before the transfer of corporate rights. Such regulation reduces the likelihood of hidden debt and other obligations being transferred and contributes to a more equitable balance of interests between the company and its participants.

The comparison highlights a core divergence in how risks are distributed. Under the Uzbek framework of “absolute succession”, the emphasis is on creditor protection, with the entire risk burden effectively shifting to the acquirer. By contrast, the Belarusian model of “temporal differentiation” reflects a fairness-based approach: obligations arising before the transfer remain the responsibility of the seller. For Kazakhstan, the Belarusian model appears more suitable, as it reduces incentives for the transferor to withhold material information. As Y.L. Babadzhanian observes, contemporary legal doctrine increasingly favors safeguarding substantive rights over reliance on formal registration records, thereby addressing the problem of “judicial formalism” evident in current Kazakhstani practice [12]. A comparative analysis of these legal models reveals a significant gap in the legislation of the Republic of Kazakhstan related to the absence of clear rules for the distribution of liability between former and new participants for obligations arising in the previous period. In order to strengthen the stability of civil turnover and increase the level of protection of participants in corporate legal relations in the Republic of Kazakhstan, it seems appropriate to implement elements of Belarusian regulation. Adapting the rules providing for a temporary division of liability would allow courts to more effectively resolve disputes related to the alienation of shares and ensure a balance of interests for all participants in corporate legal relations.

The legal position of Resolution No. 20 of the Plenum of the Supreme Economic Court of the Republic of Belarus on October 31, 2011, “On Certain Issues of Considering Cases Involving Commercial Organizations and Their Founders (Participants)” (*hereinafter referred to as the Plenum Resolution*) deserves special attention [16]. Paragraph 22 of the Plenum Resolution explains that claims for the invalidation of transactions, including share purchase agreements, are subject to consideration in accordance with the procedure established by paragraph 2 of Chapter 9 of the Civil Code of the Republic of Belarus.

This position allows for a consistent distinction between special means of protecting civil rights, in particular the transfer of rights and obligations in the event of a violation of the preemptive right of purchase and claims for the invalidation of a transaction as a whole, which are applied in the event of defects of consent. The Plenum guides the courts to the fact that in cases where a transaction is concluded in violation of the requirements of the law or under the influence of circumstances distorting the actual expression of will of a party, for example, due to the concealment of information about the actual state of assets, such a transaction shall be declared invalid with the application of the consequences provided for by law. Thus, Belarusian judicial practice proceeds from the assumption that the protection of the rights of a purchaser who has been misled as to the legal or actual condition of a share must be carried out through the institution of invalidity of transactions, which ensures the complete elimination of the legal consequences of a contract concluded on unfair terms.

The above foreign experience allows for a more objective assessment of the state of regulatory control in the Republic of Kazakhstan. Domestic law has developed a certain system of explanations issued by the highest judicial authority of Kazakhstan, designed to promote consistency in the adjudication of corporate-law cases the Normative Resolution of the Supreme Court of the Republic of Kazakhstan “On Certain Issues of the Application of Legislation on Limited and Additional Liability Partnerships” adopted on July 10, 2008 under reference number 2 [17] and the Normative Resolution of the Supreme Court of the Republic of Kazakhstan “On Certain Issues of the Invalidity of Transactions and the Application by Courts of the Consequences of Their Invalidity” dated July 7, 2016, No. 6 [18].

These acts, which play a significant role in law enforcement, are mainly general in nature and guide courts to use universal civil law institutions, such as the presumption of good faith and general grounds for invalidating transactions in the event of defects of consent. At the same time, they do not disclose the

specifics of the purchaser's liability for hidden obligations that arose during the period of participation of the previous owner.

Despite the existence of regulatory clarifications from the Supreme Court of the Republic of Kazakhstan, issues of liability distribution for such obligations remain outside the scope of special regulation.

The problem of the new participant's liability for the partnership's "hidden" debt obligations is largely due to the legal nature of the share transfer transaction itself. The theoretical basis for the problem under consideration is formed by the works of leading civil law scholars, which emphasize the special legal nature of a share in the authorized capital. Of fundamental importance is the statement by Yu.G. Basin and M.K. Suleimenov, according to which *"the acquisition of a share in economic partnerships means that a person enters into corporate relations, within which the new participant assumes not only the rights but also the obligations related to the activities of the partnership that exist at the time of the transaction"* [19; 540]. In view of this, the seller's concealment of material information about the partnership's financial obligations should be considered not as a formal breach of the terms of the contract, but as a material violation of the rights of the purchaser, who, upon completion of the ownership transition, effectively assumes the company's previously incurred obligations. As S.V. Skriabin rightly notes, *"the transfer of shares in the authorized capital of a partnership implies not only a change in the owner of the property, but also succession in relation to corporate rights and obligations, which requires particular clarity in determining the moment and limits of the transfer of responsibility"* [20].

Based on the study, there is a clear need to improve legislation on limited liability partnerships in terms of clarifying the limits of liability of participants and strengthening the protection of the rights of bona fide purchasers of shares.

Given the problems identified, it seems necessary to propose measures that will reduce the risk for bona fide purchasers and ensure predictability of liability.

First, it is advisable to include in the relevant law a provision that explicitly obliges the seller to disclose to the purchaser complete and accurate information about the legal status of the share being sold, as well as the absence of any undisclosed obligations of the partnership that arose during the period of its ownership. It should be legislatively established that obligations and losses arising from the actions or inaction committed by the previous rights holder at an earlier stage of ownership of the share and deliberately not disclosed to the purchaser cannot be imposed on a bona fide purchaser and are subject to compensation at the expense of the seller's property. This will give assurances about circumstances the character of mandatory legal guarantees, rather than just contractual terms.

Secondly, the mechanism for holding participants liable on a subsidiary basis needs to be clarified. It seems reasonable to have a rule whereby the purchaser of a share assumes the risks and responsibilities associated with it, except in cases where the previous owner deliberately misled the purchaser or concealed information about the partnership's obligations in order to evade their performance.

In such situations, if the seller's abuse of rights or deception is proven, liability for obligations arising prior to the alienation of the share shall not be transferred to the bona fide purchaser and shall remain with the former participant. The implementation of these proposals will replace the courts' assessment practice with a clear legal mechanism that ensures the predictability of civil transactions and the effective protection of investors' rights.

Proposed amendment to the Law of the Republic of Kazakhstan dated April 22, 1998, No. 220-I "On Limited Liability and Additional Liability Partnerships":

"Article 29-1. Obligation of the alienating participant to disclose information when alienating a share".

1. A participant in a partnership who disposes of a share (or part thereof) shall, prior to concluding the agreement, disclose to the acquirer complete and accurate information about the legal status of the share being alienated without any intention to deliberately conceal information, including information about the partnership's obligations arising during the period of ownership of the shares, as well as circumstances that may affect the scope of the acquirer's rights and obligations.

2. Failure to fulfill the obligation provided for in paragraph 1 of this article shall entail the liability of the alienating participant in accordance with the legislation of the Republic of Kazakhstan.

A key issue remains the need to maintain a balance between protecting the acquirer and safeguarding the interests of creditors. In our view, the proposed Article 29-1 does not restrict creditors' rights. On the contrary, by recognizing the former participant as the actual debtor with respect to obligations that arose during the period of their participation, the rule prevents the use of purely formal share transfers as a

mechanism for avoiding responsibility. In this way, the temporal allocation of liability allows creditors to direct their claims toward the person whose conduct led to the debt, rather than toward a bona fide purchaser who merely acquired a financially troubled asset.

Conclusions

The study performed allows for the formulation of several fundamental conclusions of great legal significance. First, the analysis established that current judicial practice in the Republic of Kazakhstan regarding the contestation of share sale agreements is characterized by excessive formalism, focused on procedural aspects, which hinders the full protection of bona fide purchasers when undisclosed partnership debts are discovered.

Second, the identified lack of clear legislative rules for the temporal delimitation of liability creates legal uncertainty, where the risks of a seller's bad faith are effectively shifted to a purchaser acting reasonably and in good faith. Furthermore, to address this, the study substantiates the need to implement the principle of mandatory disclosure by the seller and a model of temporal liability differentiation (based on the experience of the Republic of Belarus), where the former participant remains liable for obligations incurred during their actual period of participation.

The practical outcome of the research is the development of proposed amendments to the Law "On Limited and Additional Liability Partnerships" in the form of a new Article 29-1 "Obligation of the alienating participant to disclose information when alienating a share". Consequently, the introduction of this provision will ensure a predictable mechanism for liability distribution and create a fair balance of interests for all participants in corporate legal relations.

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О.Т. Әлімов, Ш.Т. Байкенжина

Жарғылық капиталдағы үлесті сатып алу-сату шартын даулау кезінде шаруашылық серіктестіктерге қатысушылардың құқықтарын сот арқылы қорғау және жауапкершілікті бөлу

Мақалада үлестерді иеліктен шығару туралы даулар контексінде корпоративтік қатынастарға қатысушылардың мүдделерін қорғау жөніндегі сот механизмдерінің тиімділігі талданған, сондай-ақ Қазақстан Республикасының қолданыстағы заңнамасындағы жүйелі олқылықтар айқындалған. Зерттеудің мақсаты — адал сатып алушының құқықтарын қорғауды қиындататын әрі жауапкершілікті бөлуде белгісіздік тудыратын құқықтық реттеу мен сот практикасындағы олқылықтарды анықтау. Зерттеу барысында азаматтық және корпоративтік заңнама нормаларына, сондай-ақ үлестің төленбеуіне, атқарушылық іс жүргізулердің болуына және серіктестіктің қаржылық жағдайы туралы мәліметтерді жасыруға байланысты сот дауларына талдау жүргізілді. Соттардың формальды көзқарасы сатушының нақты жағдайын және оның кредиторлар алдындағы жауапкершілігін ескеруге мүмкіндік бермейтіні анықталды. Үлесті иеліктен шығарғанға дейін туындаған міндеттемелер бойынша жауапкершілік мәселесіне ерекше назар аударылды. Салыстырмалы-құқықтық талдау шеңберінде қатысушының құқықтарының, міндеттерінің және жауапкершілігінің ауысуына қатысты түрлі тәсілдерді көрсететін Өзбекстан Республикасы мен Беларусь Республикасының тәжірибесі қаралды. Зерттеудің негізгі нәтижесі құқықтық сенімділікті арттыруға және азаматтық айналымның адал қатысушыларын қорғауға бағытталған серіктестіктің бұрынғы және жаңа қатысушысының жауапкершілігін уақытша шектеу механизмін енгізу қажеттілігін негіздеу. Жұмыстың практикалық маңыздылығы жарғылық капиталдағы үлестерді иеліктен шығару кезінде құқықтық реттеуді және жауапкершілікті бөлуді жетілдіру бойынша ұсыныстар әзірлеуде жатыр.

Кілт сөздер: шаруашылық серіктестіктер, қатысу үлесі, үлесті сатып алу-сату, мәмілелерді даулау, адал сатып алушы, тәуекелдерді бөлу, кредиторлар мүдделерінің теңгерімі.

О.Т. Алимов, Ш.Т. Байкенжина

Судебная защита прав участников хозяйственных товариществ и распределение ответственности при оспаривании договора купли-продажи доли в уставном капитале

В статье анализируется эффективность судебных механизмов защиты интересов участников корпоративных отношений в контексте споров по отчуждению долей, а также выявляются системные пробелы в действующем законодательстве Республики Казахстан. При этом основное внимание участников сделок и регистрирующих органов сосредоточено на соблюдении формальных требований, тогда как вопросы распределения ответственности сторон нередко остаются без должной правовой оценки. Целью исследования является выявление недостаточности правового регулирования и отсутствия четкой судебной практики, которые затрудняют защиту прав добросовестных приобретателей и создают неопределенность в распределении ответственности. В ходе исследования проведен анализ норм законодательства, а также судебных споров, связанных с неполатой доли,

наличием исполнительных производств и сокрытием сведений о финансовом состоянии товарищества. Установлено, что формальный подход судов не позволяет учитывать реальное положение продавца и его ответственность перед кредиторами. Особое внимание уделено проблеме ответственности по обязательствам, возникшим до отчуждения доли. В рамках сравнительно-правового анализа рассмотрен опыт Республики Узбекистан и Республики Беларусь. Ключевым результатом исследования является обоснование необходимости внедрения механизма разграничения ответственности по периоду участия прежнего и нового участника товарищества, направленного на повышение правовой определенности. Практическая значимость работы заключается в разработке предложений по совершенствованию правового регулирования.

Ключевые слова: хозяйственные товарищества, доля участия, купля-продажа доли, оспаривание сделок, добросовестный приобретатель, распределение рисков, баланс интересов кредиторов.

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The current state of legal regulation of artificial intelligence in the Republic of Kazakhstan

This study addresses the development of a cross-sectoral model for the legal regulation of artificial intelligence (AI) and highlights the transitional nature of the AI legal regime, situated between strategic innovation management and a fully developed system of legal accountability. The purpose of the study is to analyze the current state of AI regulation in the Republic of Kazakhstan, particularly in the context of civil liability for harm caused by AI systems. The methodological framework includes general and specialized scientific methods, such as analysis and synthesis, induction and deduction, as well as formal legal and comparative legal approaches. The paper provides a comprehensive analysis of current legislation in Kazakhstan related to AI regulation, identifies existing legal gaps, and proposes scientifically grounded measures to improve civil liability mechanisms in the context of AI technologies. It has been established that Kazakhstan has transitioned from software-oriented digitalization to the formation of a comprehensive legal regime for artificial intelligence. The findings indicate that Kazakhstan is transitioning from software-oriented digitalization toward the formation of a comprehensive legal regime for AI. The results substantiate the need to improve civil liability for harm caused by AI systems and support the introduction of an additional provision into the Civil Code of the Republic of Kazakhstan.

Keywords: artificial intelligence, concept, Digital Code, law, legal regulation, digital law, digital transformation, protection of human rights, Civil Code of the Republic of Kazakhstan, civil legal liability.

Introduction

The rapid development of AI technologies in recent years has become a key factor in the transformation of modern legal systems. Algorithmic solutions are increasingly being implemented in the economy, public administration, the judicial system, and private law, which objectively requires a rethinking of traditional legal concepts of responsibility, subjectivity, and the protection of human rights.

In his Address to the People of Kazakhstan, Head of State, K-Zh.K. Tokayev stated: “Kazakhstan is an integral part of the global community, a country located in the very center of the Eurasian continent. Despite global instability, we have taken a decisive step into the era of total digitalization and AI. We must modernize the economy through large-scale digitalization and the active implementation of AI technologies. As a first step, we must expedite the adoption of the Digital Code. This document should define key areas of digitalization, including artificial intelligence, platform economy, the use of big data and other aspects” [1]. At the same time, 2026 was declared the Year of Digitalization and Artificial Intelligence, making the development of algorithmic technologies a state priority [2].

Before the adoption of the Law of the Republic of Kazakhstan “On Artificial Intelligence”, scientists Sidorova N.V., Dulatbekov N.O., Kusainova L.K. formulated the following concept: “AI is a system that includes an information and communication infrastructure and a software complex, capable of simulating human cognitive functions for the rational solution of assigned tasks without a predetermined algorithm, as well as interpreting and analyzing a large array of data, using the collected information, self-learning and adapting as it develops, regardless of conditions” [3].

The Republic of Kazakhstan has developed a comprehensive legal framework in the field of AI in a relatively short period of time. The adoption of the Concept for the Development of AI for 2024–2029 [4], the special Law of the Republic of Kazakhstan “On Artificial Intelligence” [5], and the Digital Code of the Republic of Kazakhstan [6] demonstrates the transition from fragmented digitalization to a systemic codification of digital law.

Article 4 of the Law of the Republic of Kazakhstan “On Artificial Intelligence” (the AI Law) determines that state regulation of public relations in the field of AI is based on the principles of: legality, justice and equality, responsibility and accountability, priority of human well-being, data protection and confidentiality, safety and security [5].

The AI Law [5] addresses a wide range of issues, including risk management, transparency and security, as well as the creation of a national platform and data libraries. Among its provisions, the most anticipated and legally significant are those relating to intellectual property, in particular copyright. For the first time, the state has explicitly defined its approach to works created with the participation of AI in a special legislative act. AI is not recognized as an author, and special criteria for the protection of such works have been introduced. Furthermore, special rules have been established governing the training of models on protected content [7; 2].

According to paragraph 1 of Article 23 of the AI Law [5]: “works created using AI systems are protected by copyright only if there is a creative human contribution to their creation”.

However, despite a multitude of new protections, which appear to be modelled on the provisions of the EU AI Law [8], Kazakhstan’s AI regulatory framework is considerably more general and less developed than the latter. As a result, many aspects of AI governance in Kazakhstan, including specific mechanisms for implementing and ensuring key AI safeguards, will be shaped through future regulations, which may reduce transparency and limit opportunities for broad public and civil society participation in the legislative process [9]

In civil law, the use of AI systems raises the issue of compensation for damages caused by algorithmic decisions. Relying on general civil law provisions without introducing specific provisions on algorithmic harm complicates proving causation and determining the culpable party, potentially reducing the level of protection for victims.

The political guidelines declared by the State Administration have found legislative continuation in the Concept for the Development of Artificial Intelligence for 2024–2029, which defines AI as a key factor in economic growth and the modernization of public administration. However, the Concept itself clearly points to significant legal gaps, including the absence of a unified conceptual framework, a regulatory framework for ethical principles, regulation of the legal status of AI subjects and mechanisms for distributing responsibility [4].

Thus, already at the level of strategic documents, the state recognizes the fragmentation of regulation and the need to move from programmatic guidelines to a comprehensive regulatory model.

The authors [3] note that the regulation of AI as an object of legal regulation at the international level also has a recommendatory and declarative nature.

An international legal review by the International Centre for Not-for-Profit Law (ICNL) confirms that the Kazakh model of AI regulation is one of the most structured in the Eurasian region, as it combines a risk-oriented classification of systems, administrative liability, protection of personal data and transparency requirements [9]. At the same time, analysts emphasize that issues of civil liability for algorithmic harm remain insufficiently regulated, since compensation for damages is attributed to the Civil Code, which does not contain specific provisions on AI.

The purpose of this study is to analyze the current state of legal regulation of AI in the Republic of Kazakhstan, in the context of the discussion of civil legal liability for harm caused by AI systems.

To achieve this goal, the following tasks have been set:

- analyze key provisions of the current legislation of the Republic of Kazakhstan in the area of AI regulation;
- identify existing gaps in legal regulation in the area of civil liability for harm caused by AI systems;
- develop a proposal (norm) to improve the Civil Code of the Republic of Kazakhstan, regulating liability for damage caused by autonomous digital systems.

Methods and materials

The methodological basis of the research is based on general scientific and specific scientific methods of cognition, including methods of analysis and synthesis, induction and deduction, as well as formal-legal and comparative-legal methods. Their comprehensive application allowed for a systematic analysis of theoretical developments in the field of legal regulation of AI, as well as the current legislation of the Republic of Kazakhstan in a comparative legal context.

The use of induction and deduction methods allowed us to identify the specific features of the functioning of AI systems as an object of legal regulation and to determine key issues of civil liability for harm caused by autonomous digital systems.

The application of the formal legal method allowed for the analysis of the provisions of the Law of the Republic of Kazakhstan “On Artificial Intelligence”, the Civil Code of the Republic of Kazakhstan and other regulatory legal acts governing the digital sphere, with the aim of identifying legal gaps and contradictions.

Comparative legal analysis tools allowed us to compare the national regulatory model with international approaches to civil legal liability for harm caused by AI systems, and to formulate proposals for improving the legislation of the Republic of Kazakhstan.

The legal basis for the study includes regulatory legal acts of the Republic of Kazakhstan in the field of digitalization and artificial intelligence. The theoretical basis of the study is formed on the basis of scientific works of domestic and foreign authors, including Sidorova N.V., Dulatbekov N.O., Kusainova L.K., Berekmoinov T., Turetsky N.N., Saktaganova I.S., Nurmukhambetova K.K. and Ismoilov Sh.A., as well as Michael Dugeri, Jean-Sébastien Borghetti, Cary Coglianese and Colton R. Crum.

In addition, the study utilized a legal modeling method, which allowed the development of a proposal to amend Article 917 of the Civil Code of the Republic of Kazakhstan in terms of establishing a special regime of civil legal liability for damage caused by AI systems.

Results

An analysis of scientific literature shows that the development of AI technologies significantly complicates the application of traditional civil legal liability mechanisms. In particular, the autonomous nature of the functioning of algorithmic systems makes it difficult to determine the subject that should bear responsibility for the harm caused.

Paragraph 1 of Article 24 of the Law of the Republic of Kazakhstan “On Artificial Intelligence” states: “Compensation for damage caused by AI systems shall be carried out in the manner determined by the Civil Code of the Republic of Kazakhstan”. However, current civil legislation does not contain any special rules governing compensation for damage caused by AI systems. In particular, Article 917 of the Civil Code of the Republic of Kazakhstan [10] establishes only general grounds for liability for causing harm.

In this regard, it is proposed to additionally include a new paragraph 4 of Article 917 of the Civil Code of the Republic of Kazakhstan the following provision: “Damage caused by the operation of AI systems shall be subject to compensation by the owner or operator of such a system, regardless of fault, unless it is proven that the damage arose as a result of force majeure or the intentional actions of the victim”.

Discussion

It is well known that Kazakhstan has adopted the Digital Code—a fundamental legal document establishing a unified and systematic approach to the development of digital technologies, the implementation of artificial intelligence, and the creation of a secure digital environment. The signing of the Code marks the country’s transition from digital solutions to a comprehensive digital transformation based on the principles of responsibility, security and protection of human rights [11].

“The predominant tort liability framework for AI-related claims in the EU, like Canada, is based on existing (“traditional”) laws on damages in contract and in tort under each Member State’s laws” [12].

This means that at present, liability for harm caused by AI systems is mainly based on traditional civil law rules governing contractual and non-contractual liability.

At the same time, M. Dugeri notes that such liability models are primarily based on the principle of fault. However, special legal regimes can also be applied that modify traditional proof requirements or establish liability independent of fault. In particular, Article [12] states: “In general, these liability frameworks are fault-based with a relatively broad scope of application, accompanied by several more specific rules which either modify the premises of fault-based liability ... or establish liability that is independent of fault (usually called strict liability or risk-based liability)”.

Thus, legal doctrine considers various models of civil legal liability for harm caused by artificial intelligence, including both fault-based liability and strict liability regimes.

Meanwhile, the specific functioning of autonomous algorithmic systems significantly complicates the establishment of a cause-and-effect relationship and the determination of the guilty party. In the context of complex AI architectures, harm can result from the interaction of software, training data, and the actions of multiple participants in the technology chain, including developers, owners, and users of the system.

In this regard, the application of the classical model of tort liability, based solely on establishing the guilt of a specific person, is not effective enough and does not provide an adequate level of protection for victims.

The AI Law [5] considers the AI system as an object of informatization, functioning on the basis of AI models. At the same time, the scientific doctrine is actively discussing the issue of the possibility of recognizing autonomous digital systems as a special category of legal objects with a specific legal regime. The lack of a clear definition of the legal status of such systems can create difficulties in determining who is responsible and allocating risks arising during their operation.

It should be noted that after the introduction of the AI Law [5], the Code of the Republic of Kazakhstan "On Administrative Offenses" [13] was supplemented by Article 641-1 of Chapter 31, which provides for liability for violation of legislation in the field of artificial intelligence.

The issue of civil legal liability for damage caused by AI systems deserves special attention. The AI Law provides that compensation for damages is carried out in accordance with the norms of civil legislation. However, the use of traditional civil legal liability institutions may prove insufficiently effective in the context of autonomous systems that make decisions based on machine learning algorithms.

Another important aspect is the regulation of highly autonomous AI systems. The AI Law provides for the classification of systems by risk level and degree of autonomy, which is in line with international approaches to regulating AI.

Jean-Sebastien Borghetti in his work [14] notes the need to search for alternative grounds for civil legal liability for harm caused by AI. According to the author, in some cases, a more effective solution may be the use of strict liability regimes or special industry-specific liability mechanisms that take into account the level of risk associated with the use of specific AI technologies.

Thus, the development of AI technologies requires the adaptation of traditional civil law institutions and the formation of new legal mechanisms that ensure effective compensation for harm caused by autonomous algorithmic systems.

The issue of transparency of algorithms and explainability of decisions made by AI systems requires separate analysis. The law enshrines the user's right to receive information about the automated data processing procedure and its consequences, which is an important guarantee for the protection of citizens' rights. However, in practice, the implementation of this principle may encounter difficulties associated with the commercial secrets of developers and the complexity of modern machine learning algorithms. In this regard, it seems appropriate to develop mechanisms for algorithmic audit and independent examination of AI systems.

N.N. Turetskiy notes [15] that the AI Law is not of a framework nature, but forms an independent regulatory architecture for a new area of regulation affecting the public sector, business and quasi-governmental structures.

Analyzing the content of the AI Law, we believe that it is primarily of a framework nature and is largely focused on establishing general principles and organizational foundations for state regulation. This approach is natural at the initial stage of developing legislation in the field of artificial intelligence, but in the future it requires development through the adoption of special regulations governing certain aspects of the use of AI systems.

An equally important aspect is the development of institutional infrastructure for regulating AI. The law provides for the creation of a national AI platform and grants the authorized body broad powers in the area of developing public policy and coordinating the activities of government agencies. However, the effective functioning of this system requires close interaction between the state, the scientific community, and the private sector, as well as the development of mechanisms for public oversight of the use of AI technologies.

In general, it can be noted that the legislation of the Republic of Kazakhstan in the field of AI is at the formation stage and requires further development. In the future, it is necessary to improve legal regulation taking into account international experience, including the provisions of the EU Law on Artificial Intelligence [8].

The position of the authors [16] regarding the declarative nature of the initial approaches remains relevant; in other words, the formal transition to normative regulation is not accompanied by adequate institutionalization of law enforcement mechanisms. This is manifested primarily in the absence of special civil legal structures, procedural guarantees and independent algorithmic control mechanisms that would ensure the actual application of the proclaimed principles.

This problem is particularly acute in the judicial sphere. I.S. Saktaganova et al. rightly note that the algorithmization of justice can undermine the principles of adversarial proceedings, transparency, and judicial independence if there are no mechanisms for explaining and verifying algorithmic conclusions [17]. Although national legislation enshrines the principle of human responsibility and the right to review automated decisions, the procedural regulation of these provisions remains insufficient. The procedure for accessing algorithmic models, standards for expert evaluation, and the limits of judicial review are not defined, which complicates the practical implementation of digital rights.

The risk-based regulatory model implemented in Kazakhstan largely replicates the European paradigm, which is based on classifying systems according to the level of potential harm. ICNL's international experience confirms the structural similarity of the national regime with EU approaches, including the prohibition of manipulative practices, transparency requirements, and administrative liability. However, accelerated regulatory consolidation without a long period of review of enforcement creates additional risks associated with uncertainty in the interpretation of regulations and the lack of established case law.

Foreign scientific literature also emphasizes that effective regulation of AI must combine flexibility and institutional control. Thus, C. Coglianese and C.R. Crum note that the optimal model for risk management in the field of AI involves flexible regulation, which, if necessary, can be strengthened by stricter requirements, while maintaining human oversight over the functioning of algorithmic systems [18].

The use of traditional liability mechanisms does not always effectively protect the rights of victims. One of the reasons is the difficulty of establishing a cause-and-effect relationship between the actions of a specific subject and the result of the functioning of an algorithmic system. In this regard, it is noted [12]: "Keeping in mind that risks cannot be eliminated in their entirety, liability rules are needed to ensure that individuals can obtain effective compensation in the event of damage caused by AI systems".

Consequently, the institution of civil legal liability is considered an important instrument for ensuring compensation for damage caused by the use of AI systems.

Conclusions

The study concludes that the Republic of Kazakhstan has developed a comprehensive regulatory framework for AI, including a special law "On Artificial Intelligence", the Digital Code, and a number of corresponding amendments to administrative legislation. The transition from software-based digitalization to the legal institutionalization of algorithmic technologies has been achieved.

The national model is built on a risk-oriented paradigm and an anthropocentric principle of responsibility, within which AI is viewed as an object of regulation, rather than as a subject of law. The consolidation of citizens' digital rights, including the right to review automated decisions, and the introduction of administrative sanctions for AI violations demonstrate national legislation's commitment to ensuring a balance between innovative development and the protection of human rights.

At the same time, fully realizing the potential of AI and advanced analytics technologies requires the consolidation of efforts by the state, private sector, and society aimed at creating a balanced model of legal regulation and stimulating innovative development.

This article analyzes the key provisions of the current legislation of the Republic of Kazakhstan regulating AI and identifies existing gaps in legal regulation in the area of civil legal liability for harm caused by AI systems.

The results of the study make it possible to supplement civil legislation with a special norm, regulating liability for harm caused by AI systems.

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Қазақстан Республикасындағы жасанды интеллектті құқықтық реттеудің қазіргі жағдайы

Зерттеудің өзектілігі жасанды интеллектті құқықтық реттеудің салааралық моделін негіздеу, сондай-ақ инновацияларды стратегиялық басқару мен толыққанды құқықтық есеп беру жүйесі арасындағы жасанды интеллект саласындағы қазақстандық режимінің өтпелі сипатын көрсету. Бұл зерттеудің мақсаты — жасанды интеллект жүйелерінен келтірілген зиян үшін азаматтық-құқықтық жауапкершілікті талқылау контекстінде Қазақстан Республикасындағы жасанды интеллектті құқықтық реттеудің қазіргі жай-күйін талдау. Зерттеудің әдістемелік негізі танымның жалпы ғылыми және жеке ғылыми әдістеріне, соның ішінде талдау және синтез, индукция және дедукция әдістеріне, сондай-ақ формальды-құқықтық және салыстырмалы-құқықтық әдістерге негізделген. Жұмыста Қазақстан Республикасының жасанды интеллектті реттеу саласындағы қолданыстағы заңнамасына кешенді талдау, қолданыстағы құқықтық олқылықтарды анықтау, сондай-ақ жасанды интеллект технологияларын пайдалану жағдайында азаматтық-құқықтық жауапкершілік тетіктерін жетілдіру жөніндегі ғылыми негізделген ұсыныстар әзірлеу келтіріледі. Қазақстан бағдарламалық жасақтамаға бағытталған цифрландырудан жасанды интеллектке қатысты кешенді құқықтық режимді қалыптастыруға көшкені анықталды. Жүргізілген зерттеу нәтижелеріне сәйкес — жасанды интеллект жүйелерінен келтірілген зиян үшін азаматтық-құқықтық жауапкершілікті жетілдіру жөніндегі негіздеме және Қазақстан Республикасының Азаматтық кодексіне қосымша норма енгізу жөніндегі ұсыныс жасалған.

Кілт сөздер: жасанды интеллект, тұжырымдама, Цифрлық кодекс, заң, құқықтық реттеу, цифрлық құқық, цифрлық трансформация, адам құқықтарын қорғау, Қазақстан Республикасының Азаматтық кодексі, азаматтық-құқықтық жауапкершілік.

Д.К. Рустембекова, Р.Б. Жағалов

Современное состояние правового регулирования искусственного интеллекта в Республике Казахстан

Актуальность данного исследования заключается в обосновании межотраслевой модели правового регулирования искусственного интеллекта, а также в демонстрации переходного характера казахстанского режима в области искусственного интеллекта — между стратегическим управлением инновациями и полноценной правовой системой подотчетности. Целью данного исследования является анализ современного состояния правового регулирования искусственного интеллекта в Республике Казахстан в контексте обсуждения гражданско-правовой ответственности за вред, причиненный системами искусственного интеллекта. Методологическая основа исследования базируется на общенаучных и частно-научных методах познания, включая методы анализа и синтеза, индукции и дедукции, а также формально-юридический и сравнительно-правовой методы. В работе приводится комплексный анализ действующего законодательства Республики Казахстан в сфере регулирования искусственного интеллекта, выявляются существующие правовые пробелы, а также разрабатываются научно-обоснованные предложения по совершенствованию механизмов гражданско-правовой ответственности в условиях использования технологий искусственного интеллекта. Установлено, что Казахстан перешел от программно-ориентированной цифровизации к формированию всеобъемлющего правового режима в отношении искусственного интеллекта. Результатом проведенного исследования является обоснование путей совершенствования гражданско-правовой ответственности за вред, причиненный системами искусственного интеллекта, и предложение по введению дополнительной нормы в Гражданский кодекс Республики Казахстан.

Ключевые слова: искусственный интеллект, концепция, Цифровой кодекс, закон, правовое регулирование, цифровое право, цифровая трансформация, защита прав человека, Гражданский кодекс Республики Казахстан, гражданско-правовая ответственность.

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Sexual Harassment in the World of Work: International Standards and Challenges of Legal Regulation in the Republic of Kazakhstan

This study investigates the prevention of and response to sexual harassment in workplace legislation in the Republic of Kazakhstan, taking into account emerging international standards. The International Labour Organization (ILO) adopted Convention No. 190, which establishes states' obligations to eliminate this problem. The aim of this study is to provide a comprehensive analysis of international standards on the prevention of sexual harassment (in particular, ILO Convention No. 190) as a distinct area of labour law, and to identify key challenges in implementing relevant legal norms in the legislation of the Republic of Kazakhstan. The authors employ legal and systematic analysis, comparing the provisions of ILO Convention No. 190 with the Labour and Criminal Codes of the Republic of Kazakhstan. The study demonstrates that definitions of sexual harassment, investigation procedures, and protection measures are absent from the current legislation of the Republic of Kazakhstan, creating legal uncertainty and an environment of impunity. Based on the international experience (France and Kyrgyzstan), this study recommends a concept of a new clause in the Labor Code of the Republic of Kazakhstan (LC of RK), which establishes a comprehensive framework for prevention and protection against sexual harassment. This study is dedicated to playing a significant role in the modernization of the LC of RK and becoming a foundation for improving legislation in the domain of protection of employees' rights and dignity.

Keywords: sexual harassment, workplace, labor relations, labor law, international standards, violence and harassment, gender-based discrimination.

Introduction

Gender discrimination is one of the most complex reasons for violence and harassment, including its presence in the workplace. But violence and harassment have a wider connotation, including different variations of unacceptable behavior.

Sexual harassment is one of the most difficult forms of violations to identify and prove. Sexual harassment in the workplace is one of the most latent forms of gender discrimination, violating human dignity. Consequently, gender discrimination can play a role as a prerequisite for the occurrence of violence and harassment, while sexual harassment is one of the special forms that has a clear gender-related nature.

The issue of sexual harassment has gained increased relevance in recent years, both at the international and national levels. Interactions between employees and employers have changed significantly. Women's economic activity and contribution to the labor market increased dramatically. The culture and understanding of genders and personal dignity have emerged. All these create a necessity to revise traditional approaches to the legal regulation in the workplace. Sexual harassment is a serious violation of human labor rights, including the right to safe and decent working conditions. According to the ILO, about one in five workers surveyed, or 22.8 % (743 million people), have experienced harassment at work. This phenomenon is also widespread in Kazakhstan. Women face this problem more often than men. According to a 2023 study by UN Women, 82 % of respondents in Kazakhstan consider this problem to be “significant” [1].

A holistic approach is lacking in the regulation of sexual harassment in the workplace, despite the fact that this issue has been studied by international and domestic researchers. Sexual harassment is studied as a form of gender-based discrimination and violation of human rights and dignity. In C. MacKinnon's research, sexual harassment is classified as a form of gender inequality and a violation of labor rights, which requires legal protection beyond criminal prosecution.

In European practice, the dominant approach is to qualify sexual harassment primarily as labor and anti-discrimination law, where the employer must play an active role in preventing and investigating such cases.

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The French legal system is designed to take preventive measures and responsibilities, differentiating it from other stricter models typical of post-Soviet Union countries.

The authors highlight that research on this topic in Kazakhstani legal science is highly fragmented. Gender equality and women's labor rights protection issues were researched by A.S. Zhanuzakova, A.B. Aitmagambetova. However, the issues of sexual harassment are researched indirectly, mostly from an overall discrimination point of view. In criminal law research, the main emphasis is made on the criminal side of harassment, which limits the ability to deeply explore the specifics of labor relations and ways of protecting employees within the labor legislation.

As a result of the analysis of the existing body of research, the authors concluded that there are significant inconsistencies and fragmentation between criminal and labor legislation approaches to regulate sexual harassment. The implementation of international standards into the national labor legislation of Kazakhstan remains insufficiently developed. These factors highlight a significant need for further scientific research directed to the creation of an independent institution to prevent and combat sexual harassment in the workplace and develop effective legal tools to protect employees.

The goal of this study is to conduct a comprehensive analysis of international standards of sexual harassment prevention (for example, ILO Convention No. 190) as a special institution of labor legislation, and also to identify key challenges of implementation of respective legal norms into the legislation of the Republic of Kazakhstan.

To achieve this goal, the following objectives must be addressed:

1. Uncover the content and innovations of international standards, primarily ILO Convention No. 190.
2. Analyze the current state of legal regulation of sexual harassment in the workplace in the legislation of the Republic of Kazakhstan.
3. Conduct a legal comparative analysis to uncover systematic gaps and inconsistencies between Kazakhstan's national legal norms and international standards.
4. Formulate specific scientific and practical recommendations for improving national legislation and measures for protecting employees' rights.

In international law, this problem has received a comprehensive legal classification. For example, within the framework of the ILO No. 190, which established a universal definition of violence and harassment, including sexual harassment, and imposed the responsibility for prevention, investigation, and prosecution on national states.

The current norms of labor and criminal legislation in Kazakhstan do not include a clear and standalone definition of sexual harassment in the workplace, despite the existence of constitutional rights of equality, dignity, and the right to safe working conditions. The judicial practice in this category of cases is scarce. For the period of 2019–2024, fewer than 10 cases were related to sexual harassment. In 6 out of 10 cases, the defendants' actions were reclassified due to the absence of the term "harassment" in the labor code of the Republic of Kazakhstan, and were treated as administrative offenses (petty hooliganism). 80 % of cases were rejected due to a lack of evidence. Only 2 out of 10 cases were partially satisfied (compensation of moral damages of less than 100 MCI), and the remaining cases were dismissed. In none of the cases were employers held responsible, which contradicts the ILO No 190 convention. In 2025, the case was widely covered by the press, where a 40-year-old man (a well-known singer) harassed a 17-year-old courier (attempting to grab in an intimate area). The court rules him guilty under Part 1, Article 434 of the Administrative code "petty hooliganism" (15 days detention), but not for sexual harassment (as there's no separate article for that). An analysis of judicial practices demonstrates that judicial authorities reclassify rare cases that reach the courtroom.

The absence of legal norms defining sexual harassment as a labor legislation violation prevents it from receiving legal protection, leaving this problem in a latent, unresolved state. This justification is the main proof of the need to implement the standards of ILO No. 190 and introduce respective changes in the labor legislation of the Republic of Kazakhstan.

Methods and materials

The methodological foundation of this study is based on the comparative legal method, applied for comparing legal clauses between ILO Convention No. 190 and national legislation of the Republic of Kazakhstan, also comparing with legislation norms in France and Kyrgyzstan.

In the process of comparative analysis, the following legal norms of the Republic of Kazakhstan were reviewed: The Labor Code, The Criminal Code, in the context of norms related to the protection of employ-

ees' rights and dignity, and drafts of legal norms that were discussed in the 2022–2024 period in the context of the implementation of international standards.

The international experience was analyzed based on these norms: the Labor Code of France, including updates, implemented as a result of ILO No 190 ratification, and the Labor Code of Kyrgyzstan.

The formal legal analysis was used in the review of the content and structure of legislation, which allowed for uncovering gaps, inconsistencies, and specifics of legal regulation of violence and harassment in the workplace.

The theoretical knowledge was built based on the research of the following Kazakhstani scholars:

- A.S. Zhanuzakova — gender equality in labor relations;
- A.B. Aitmagambetova — gender policy;
- Z.K. Khasenov — human rights in labor relations;

Russians and international scholars:

- E.G. Abramova — comparative analysis of legislation on harassment;
- S.Y. Golovina — international standards;
- C. MacKinnon — feminist legal theory;

The assessment of the legislation's effectiveness was conducted by the method of systematic analysis, including judicial practice of the Republic of Kazakhstan for the period of 2019–2024;

The empirical evidence was based on the following: data from sociological surveys from the ILO, including global reports about the prevalence of violence and harassment in the workplace, the results of research by national and international expert organizations, published in the 2020–2023 period, analytical reviews, and statistical data related to labor relations.

The recommendations were formed based on the legal modelling, which allowed the development of potential mechanisms to improve norms defined in ILO No. 190, taking into account the national legal system and international experience.

Results

The current labor legislation of the RK establishes an overall prohibition of discrimination in the workplace. Article 6 of the Labor Code of the RK sets a general prohibition of discrimination in the workplace, including on the basis of gender [2]. However, the analysis demonstrates that in the Labor Code of the RK, there is no legal definition of “sexual harassment”, it has no special procedures for investigation, and no mechanisms for holding parties responsible within the labor legislation.

In Kazakhstan, sexual harassment can only be addressed in the legal framework through applying other legal articles, for example, under Article 123 of the Criminal Code of the Republic of Kazakhstan [3]. The absence of mechanisms for disciplinary responsibility for sexual harassment forces authorities to apply legal norms of the Criminal Code, which are designed for different degrees of public danger and do not cover the whole spectrum of harassment in the workplace.

The identified systematic gaps in national legislation logically lead to the need to turn to international norms and best practices.

Kazakhstan has ratified fundamental conventions establishing principles of non-discrimination (for example, the UN Convention on the Elimination of All Forms of Discrimination against Women—CEDAW), which creates the basis for protection against harassment as one of the types of discrimination based on gender [4].

In 2029, the International Labor Organization (ILO) adopted the legal document directly addressing the researched issue, Convention No.190 “Elimination of violence and harassment in the workplace”. This convention, signed and in the process of ratification by Kazakhstan, is a modern standard of legal regulation. For the first time, it provides a systematic definition on a universal level, defines the responsibilities of states and employers, and offers clear mechanisms of prevention and protection.

Consequently, the comparison analysis between ILO No. 190 and Kazakhstan legislation will allow not only to identify specific gaps, but also to define a scientifically based strategic plan for harmonization of the RK legislation with the most modern international standards.

The ILO No. 190 convention, for the first time, establishes in international legislation the right of every individual to labor free of violence and harassment, including gender-based violence and harassment. This document defines violence and harassment as unacceptable forms of behavior, which can lead to physical, psychological, sexual, and economic damage, and directly includes sexual harassment as gender-based violence and harassment.

In the ILO No. 190 convention, violence and harassment terms include unacceptable forms of behavior and practices which can lead to physical, psychological, sexual, or economic damage [5].

Kazakhstan needs to harmonize national labor legislation with the ILO No. 190 according to international best practice. Despite having individual norms in the labor code, the legal system in Kazakhstan doesn't have a comprehensive approach for the prevention of sexual harassment in the workplace. The unified legal definition is absent, and investigation procedures are not defined, but the burden of proof lies on victims, which, in the environment of fear of losing the job and public condemnation, leads to latent behavior.

In this context, ratification and implementation of ILO No.190 can fill the gap between:

- Universal prohibition of discrimination is established in Article 6 of the Labor Code of the RK,
- And the importance of special legal regulation of sexual harassment as a standalone legal institute in the workplace.

In the legal project of changes and additions in the labor code of the RK, for the first time, the legal term "sexual harassment in the workplace" is introduced, which is defined as unwanted behavior of a sexual nature that violates the dignity of employees and creates a hostile environment in the workplace. This project also defines the responsibilities of employers to react to these cases and implement mechanisms of submitting complaints and victim protection. It's important to notice that this project is in the process of discussions and doesn't have any legal power, but its analysis is considered scientifically sound, because it reflects the direction of national legal policy development.

For the closing identified gaps and implementation of the ILO No. 190 standards, the authors suggest introducing articles in the Labor Code of the RK, dedicated specifically to the problem of sexual harassment and the introduction of a legal definition. The authors developed and proposed the project of specific articles for inclusion into the Labor Code of the RK, including the definition of sexual harassment and detailed responsibilities of employers: "Sexual harassment in the workplace is illegal actions, statements, or any other behavior of sexual nature, expressed in physical, verbal, or non-verbal forms, which:

1. Offend an employee;
2. Create a hostile working environment.

It's not allowed to engage in sexual harassment by the employer, its representatives, in the process of conducting labor activities.

The employer is responsible:

1. Implement actions to prevent sexual harassment;
2. Guarantee the safety and confidentiality of the application and review process;
3. Prevent retaliation against the employees in relation to making complaints about sexual harassment;
4. Employees who became victims of sexual harassment have the right to protect their labor rights, including filing complaints to the employers, respective authorities, and the court;
5. Individuals involved in committing sexual harassment shall be held responsible according to the legislation of the Republic of Kazakhstan.

In the process of reviewing complaints in the court, it's necessary to define the burden of proof:

1. The plaintiff is responsible for demonstrating evidence that they were subjected to actions constituting elements of sexual harassment.
2. The defendant is responsible for proving the absence of any signs of harassment.
3. An internal investigation should be conducted according to the employers' act.
4. The investigation should be started immediately and completed in 15 days.
5. The violators must be given the opportunity to provide an explanation on the accusation matters.
6. At the end of the investigation, the report must be created, including the conclusions of the occurrence and absence of harassment and recommendations for required actions.

The relationship between disciplinary, administrative, or criminal responsibilities:

1. The plaintiff is responsible for informing law enforcement authorities in case they were a subject of sexual harassment actions, suspecting criminal or administrative violations;
2. The application of disciplinary actions does not free violators from any other types of responsibilities according to the legislation of the Republic of Kazakhstan".

The authors of this paper established that the Labor Code of Kazakhstan doesn't contain definitions of sexual harassment. In practice, the cases of sexual harassment in the workplace are investigated through the prism of criminal and administrative legislation, specifically through Article 123 of the Criminal Code of Kazakhstan. The authors identified the gaps in the legislation, which manifest in the absence of a legal insti-

tute of sexual harassment in the labor code, in the absence of prosecution measures, and the lack of protection for victims. These results give the opportunity to make a conclusion that the main ideas of ILO Convention No. 190 are not regulated in Kazakhstani legislation.

The main outcomes of this study are the development of the draft of a new legal norm, intended for inclusion in the LC of RK. For the first time, the definition of sexual harassment in the workplace is introduced, including direct prohibition of such actions, introduction of employers' responsibilities of prevention, reviewing complaints, and protection of victims. The analysis of the Labor Code of Kazakhstan (2025) demonstrated that the main direction of the government policy is aligned with the conclusions of this study. This proves its scientific and practical validity and importance.

Discussion

The gap in the Labor Code is confirmed by A.S. Zhanuksava's conclusions that the current legal norm (Article 6 LC RK) carries only a declarative character and doesn't define specific forms of discrimination, which undoubtedly includes sexual harassment [6]. This way, formal equality, established in the Labor Code, doesn't provide physical protection from harassment, and requires establishing the latter as a standalone offense.

The analysis demonstrated that referring to the norms of the Criminal Code to prevent harassment in the workplace is not effective. This is in line with S.Y. Golovina and coauthors' conclusions about that "it happened historically that the legal system in Kazakhstan doesn't have sufficient knowledge of sexual harassment, especially in the context of protecting employees from sexual harassment and other forms of similar violence" [7]. Scientists K.Kh. Rakhimberlin and M.R. Geta analyzed Article 123 of the CC of the RK, which concluded about its limited effectiveness in treating cases of sexual harassment. The current norm considers harassment in a narrow definition—as coercion into acts of a sexual nature accompanied by specific threats [8]. Consequently, the reference to the criminal code demonstrated its ineffectiveness, because it doesn't solve the problem of violated labor rights.

The existing practice confirms the theory offered by K.K. MacKinnon that "sexual harassment in the workplace is not just unethical behavior, but a demonstration of power relations and mechanisms of sustaining gender inequality. They function as instruments of disciplinary actions and marginalization, specifically for women, reminding them about their vulnerable position in the workplace [9]"

In the legislation of Kazakhstan, sexual harassment is not defined as a standalone legal institute, and legal norms are fragmented across different legislations, similar to the problem defined by E.G. Abramova, fragmentation in the regulation of the matter of harassment: norms fragmented between labor, criminal, and administrative legislation, definitions are blurry, and mechanisms of submitting complaints are ineffective and stigmatize victims. This creates a "legal vacuum" where complaints remain unsubmitted, and cases are not investigated [10].

The Kazakhstani researcher G.S. Sapargaliev, exploring the constitutional foundations of equality and discrimination, highlights that the prohibition of discrimination based on gender in the workplace must include not only formal differences in employees' rights and responsibilities, but also actual forms of human dignity violations occurring in the workplace. In this context, sexual harassment can be viewed as one of the highest latent forms of equality rights violations in labor relations [11].

A.K. Kusainov's conclusions seem justified, who states that the current labor legislation in Kazakhstan is directed primarily to economic and organizational aspects of labor, while the issues of psychological safety and protection from unacceptable behavior in the workplace remain insufficiently regulated [12].

According to A.B. Aitmagambetova, who researched the issues of gender inequality, the absence of a legal definition of sexual harassment in the labor legislation contributes to the high rate of unsolved cases and complicates the access of victims to effective legal protection measures [13].

In Khasenov's research, related to issues of human rights and labor legislation, it is emphasized that the protection of employees' honor and dignity must be studied as a critical part of labor relations, not as an exclusive subject of civil or criminal legal protection. In this case, sexual harassment in the workplace requires legal measures of prevention and reaction, including the responsibilities of employers to guarantee a safe work environment [14]. This way, in Kazakhstani legal science, there is a demand for systematic regulations, but legislators still settle for limited, fragmented decisions, which is why this study is so important.

The authors note that in Kazakhstani legal science, the issue of protecting employees' dignity and unacceptable behavior in the workplace is being analyzed mainly through the angle of non-discrimination and

equality principles (G.S. Sapargaliev; A.K. Kusainov; Zh.K. Khassenov). However, it doesn't include the formation of an independent institution of sexual harassment in labor law.

Consequently, the analysis of Kazakhstani researchers allows us to conclude that the main principles of ILO Convention No.190—recognition of sexual harassment as a form of violence, violating the employees' dignity and principles of equality—in essence, are generally consistent from a scientific point of view, but haven't been implemented in the legislation.

According to the international experience, France officially ratified ILO Convention No. 190 and became one of the first EU countries implementing international standards into the national labor legislation.

The French Labor Code (Article L1153-1) defines the legal definition of sexual harassment: No employee should be subjected to acts of sexual harassment, consisting of repeated statements or behaviors with a sexual or sexist connotation, which either violate his/her dignity due to their derogatory or humiliating nature. Sexual harassment is also considered when an employee is subjected to such statements or behaviors by several people, even if each acted once [15].

This legal definition acknowledges sexual harassment as a standalone legal offense in the workplace, requiring protection of victims and punishment for such behavior. This norm is implemented in the labor legislation and is also consistent with international standards.

One of the first CIS countries that ratified ILO Convention 190 was Kyrgyzstan in February of 2024. Kyrgyzstan has officially assumed the international obligations to eradicate violence and harassment, including sexual harassment in the workplace. Currently, the labor legislation doesn't include a detailed legal definition of sexual harassment. Meanwhile, the government is preparing a set of measures to bring national legislation in line with the Convention, including introducing preventive measures, a complaint system, and educational training.

There are two main ways of implementing ILO Convention 190 based on the analysis of the experiences of France and Kyrgyzstan:

- France demonstrated the model of serious legislation implementation of sexual harassment norms into their labor legislation with clear definitions and protective measures;
- Kyrgyzstan demonstrates the model of initial implementation where international standards are adapted to national legislation.

The comparative analysis of the legislations of France, Kazakhstan, and Kyrgyzstan demonstrates significant differences between systematic approaches in the sexual harassment legislations. The French model differs from others by acknowledging sexual harassment as a standalone legal institution, integrated into the labor legislation, which is consistent with ILO international standards and recommendations. In contrast, in the Kazakhstani legislation, sexual harassment is not defined as a standalone legal violation of labor rights, which complicates the qualification of relevant actions and reduces the effectiveness of their application. The Kyrgyzstan legislation takes the middle ground position, demonstrating movement towards legal acknowledgement of the problem, but the limitations remain in the implementation and protection measures.

The authors conclude that the results of this study align with respective conclusions offered by international and national studies, which research the problem of sexual harassment in the workplace. For example, the authors agree with the point of view of scholars like C. MacKinnon, E.G. Abramova, and Kazakhstani scholars (G.S. Sapargaliev, A.K. Kusainov, Zh.K. Khassenov), who state that the effective prevention of sexual harassment is possible only with the existence of a comprehensive legal regulation. The authors agree with E.G. Abramova's conclusion about the existence of a legal vacuum in the post-Soviet Union countries, where legal norms are fragmented across different domains and are ineffective. The results of this study on the legislation of the Republic of Kazakhstan confirm this concept.

While Golovina and co-authors conduct a general review of legislation in Russia and Kazakhstan, our study provided detailed research, comparing the approaches of France and Kyrgyzstan. This allows us to define the most effective way to implement necessary changes, such as implementing changes directly in the Labor Code, which is close to the French model. The main result of this study is to suggest the transition from fragmented to systematic regulation. This transition consists of not just adding words like "harassment" into the No. 6 article of the Labor Code, but also the creation of the new legal institution, including:

- legal definition (physical, verbal, non-verbal forms);
- direct prohibition of actions from the employer and colleagues;
- responsibilities of the employer in prevention, review process of complaints, and protection against retaliation;
- employees' rights for judicial and administrative protection.

Our suggested project of the Article of the Labor Code is the representation of this transition. Compared to the previous project in 2025, the novelty lies in the greater specification of employers' responsibilities, which directly borrowed from the ILO Convention No. 190 and French experience. The suggested model not only demonstrated the existing gaps but also provided a complete conceptual solution, which can be used in legislative work.

The similarities with other studies included the acceptance of sexual harassment as a form of discrimination and violation, the need for a systematic approach, and the importance of employers' role in providing a safe working environment. The difference between other studies includes the recommendations of a specific model of legislation norms, adapted to the LC of RK.

The results of this study allow us to conclude that the legislation system of the Republic of Kazakhstan is in the nascent stage of sexual harassment regulation. Uncovered gaps have systematic roots and require a change in the legislation on the level of the Labor Code.

The proposed concept of the standalone article has a practical-oriented approach intended to align the national legislation with the international ILO standards, confirmed by the comparison analysis of international experience.

The study results were produced by conducting legal comparative analysis methods, analysis of international and national legislation, and also by comparing the body of knowledge of existing studies.

However, this study is limited by an analysis of existing legislation, but it doesn't include the actual application of these judicial practices, which emphasizes the importance of further research directed to studying judicial practice in the domain of sexual harassment in the workplace.

Conclusions

In the process of this study, the following results were developed:

1. According to the ILO No. 190 Convention, it was established that it gives a concrete definition of "violence" and "harassment", and it defines the responsibility of states for the prevention of violence and application of accountability measures.

2. The study of the legislation of the Republic of Kazakhstan confirmed that in the Labor and Criminal Codes, there is an absence of legal definitions of sexual harassment in the workplace. The analysis identified that existing norms have a fragmented nature and don't provide measures of rights protection for victims.

3. The comparison analysis of the legislation of France and Kyrgyzstan demonstrated that the French model is different in recognizing sexual harassment as a standalone legal institute, integrated into the system of legal legislation, which is consistent with international best practices. But the legislation of the Kyrgyzstan Republic is taking the middle position, showing the movement towards legal recognition of the problem, but keeps the limitations in the mechanisms of realizations and protection.

4. Based on the research findings, the authors have developed a draft legal provision aimed at eliminating the identified legal gap and enhancing the level of legal certainty in labour relations. The study substantiates the need to establish the institution of sexual harassment in the Labour Code of the Republic of Kazakhstan.

5. The research outcomes indicate that the issue under consideration remains unregulated by law, which has an adverse effect on the protection of workers' rights. The development of national legislation requires taking into account foreign experience and the recommendations of the International Labour Organization.

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Еңбек саласындағы жыныстық қудалау: халықаралық стандарттар және Қазақстан Республикасындағы құқықтық реттеудің сын-кәтерлері

Мақала жаңа халықаралық стандарттарды ескере отырып, Қазақстан Республикасында жұмыс орнындағы жыныстық қанауға қарсы іс-қимылды құқықтық реттеуді зерттеуге арналған. 2019 жылы Халықаралық еңбек ұйымы мемлекеттердің осы мәселені жою жөніндегі жаһандық міндеттемелерін белгілеген № 190 конвенцияны қабылдады. Зерттеудің мақсаты — жыныстық қанауға қарсы іс-қимылдың халықаралық стандарттарына (№ 190 ХЕҰ Конвенциясы мысалында) еңбек құқығының арнайы институты ретінде кешенді талдау жүргізу, сондай-ақ тиісті еңбек нормаларын Қазақстан Республикасының құқықтық жүйесіне енгізудің негізгі сын-кәтерлерін анықтау. Мақала авторлары салыстырмалы-құқықтық, формальды-заңдық және жүйелік әдістерді қолдана отырып, № 190 ХЕҰ Конвенциясының ережелерін Қазақстан Республикасының Еңбек және Қылмыстық кодекстерінің нормаларымен салыстырған. Қазақстандық құқықта жыныстық қанаудың анықтамасы, оларды тергеу тәртібі және жәбірленушілерді қорғау шаралары жоқ екендігі көрсетілген, бұл құқықтық белгісіздік пен жазасыздық жағдайын туғызады. Шетелдік тәжірибені (Франция, Қырғызстан) зерделеу және құқықтық үлгіні әзірлеу негізінде мақалада жыныстық қанауды қорғау мен жолын кесудің жан-жақты тәсілін бекітетін Қазақстан Республикасының Еңбек кодексіне жаңа баптың жобасының тұжырымдамасы ұсынылған. Мақала Қазақстанның еңбек құқығын жаңғыртуда маңызды рөл атқаруға және қызметкерлердің ар-намысы мен құқықтарын қорғау саласындағы заңнаманы жетілдіруге негіз болуға арналған.

Кілт сөздер: жыныстық қанау, еңбек саласы, еңбек қатынастары, еңбек құқығы, халықаралық стандарттар, зорлық-зомбылық және қанау, жыныс белгісі бойынша кемсіту.

К.К. Садыкова, А.Т. Жакып-Жан

Сексуальные домогательства в сфере труда: международные стандарты и вызовы правового регулирования в Республике Казахстан

Данная статья посвящена исследованию правового регулирования противодействия сексуальным домогательствам на рабочем месте в Республике Казахстан с учетом новых международных стандартов. В 2019 году Международная организация труда приняла Конвенцию № 190, установившую глобальные обязательства государств по искоренению данной проблемы. Целью данного исследования является комплексный анализ международных стандартов противодействия сексуальным домогательствам (на примере Конвенции МОТ № 190) как специального института трудового права, а также выявление ключевых вызовов для внедрения соответствующих трудовых норм в правовую систему Республики Казахстан. Авторы статьи используют сравнительно-правовой, формально-юридический и системный методы, проводя сравнение положений Конвенции МОТ № 190 с нормами Трудового и Уголовного кодексов Республики Казахстан. Показано, что в казахстанском праве отсутствует определение домогательств, порядок их расследования и меры защиты потерпевших, что создает правовую неопределенность и обстановку безнаказанности. На основании изучения зарубежного опыта (Франция, Кыргызстан) и разработки правовой модели в статье предложена концепция проекта новой статьи для Трудового кодекса РК, закрепляющей всесторонний способ защиты и пресечения домогательств. Данная статья призвана сыграть важную роль в модернизации трудового права Казахстана и стать основой для совершенствования законодательства в области защиты достоинства и прав работников.

Ключевые слова: сексуальные домогательства, сфера труда, трудовые отношения, трудовое право, международные стандарты, насилие и домогательства, дискриминация по признаку пола.

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ҚЫЛМЫСТЫҚ ҚҰҚЫҚ, КРИМИНОЛОГИЯ, ҚЫЛМЫСТЫҚ ПРОЦЕСТІК ҚҰҚЫҒЫ МЕН КРИМИНАЛИСТИКАНЫҢ ӨЗЕКТІ МӘСЕЛелЕРІ АКТУАЛЬНЫЕ ПРОБЛЕМЫ УГОЛОВНОГО ПРАВА, КРИМИНОЛОГИИ, УГОЛОВНОГО ПРОЦЕССУАЛЬНОГО ПРАВА И КРИМИНАЛИСТИКИ CURRENT ISSUES IN CRIMINAL LAW, CRIMINOLOGY, CRIMINAL PROCEDURE LAW, AND FORENSIC SCIENCE

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Special grounds for exemption from criminal liability for crimes in the sphere of economic activity

The aim of the study is to examine and provide a legal analysis of the specific features of the application of special grounds for exemption from criminal liability for crimes committed in the field of economic activity. To achieve this objective, various research methods were employed, including analysis and synthesis, modeling and forecasting, comparative legal and formal-logical methods, as well as a historical approach and other general and specialized methods. The empirical framework of the study is based on the provisions of the criminal legislation of the Republic of Kazakhstan, regulatory resolutions of the Supreme Court and the Constitutional Court of the Republic of Kazakhstan, as well as other regulatory legal acts. The study identifies a number of issues related to legislative gaps, enforcement difficulties, and the ambiguity of legal norms. It proposes revisions in several key areas, including: reparation of damages; the concept of a "first-time offense"; conditions for exemption from criminal liability for specific types of crimes; additional criteria taking into account the personality of the offender and the circumstances of the case; a procedural algorithm for law enforcement agencies and courts; and the conflict between general and special provisions of the Criminal Code of the Republic of Kazakhstan.

Keywords: criminal liability, exemption from liability, special grounds for exemption, economic crimes, criminal offenses, damages, income, taxation.

Introduction

The issue of applying special types of exemption from criminal liability for terrorism in the economic sphere is currently relevant in the Republic of Kazakhstan, as such mechanisms for ensuring law enforcement reduce the burden on the legal system and ensure the restoration of violated rights of the state or victims.

In his Addresses to the People of Kazakhstan and accompanying reforms, the President of the Republic of Kazakhstan emphasizes the humanization of responsibility for violence against criminals, prioritizing compensation for the consequences of a lack of freedom. In his Address to the People of Kazakhstan, "Kazakhstan in the New Reality: Time for Action", dated September 1, 2020, the President of the Republic of Kazakhstan, K.-Zh. K. Tokayev, asserts that no area of socio-economic development can be effectively implemented without ensuring the rule of law and guarantees of citizen security. In this regard, the main role is

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played by the activities of the Economic Investigation Service of the Financial Fund of the Republic of Kazakhstan, aimed at identifying offenses related to the issuance of fictitious invoices, tax evasion, illegal withdrawal of capital, theft of budget funds, as well as the illegal trafficking of oil and petroleum products [1].

The Criminal Code of the Republic of Kazakhstan (CC RK) contains provisions establishing liability for the aforementioned acts, specifically Articles 189 and 197 of the CC RK, as well as a number of other offenses included in Chapter 8 of the CC RK, which is dedicated to criminal offenses in the sphere of economic activity. At the same time, it should be noted that the current criminal legislation lacks a separate article explicitly establishing liability for illegal capital flight. However, such actions may be qualified under other provisions of the criminal law depending on the specific circumstances of the committed act. For instance, the withdrawal of funds through cryptocurrencies or underground crypto-exchanges may be examined within the framework of articles concerning the legalization (money laundering) of proceeds of crime (Art. 218 CC RK) or other related offenses. These criminal components and a number of other economic offenses are regulated by current legislation, and their application depends on the specific circumstances of the case, the amount of damage, and the presence of aggravating or mitigating circumstances [2].

It should be noted that in recent years, the legislation of the Republic of Kazakhstan has undergone a series of changes affecting the sphere of economic crimes. Specifically, certain elements of such crimes have been decriminalized, and for some of them, the threshold for criminal liability has been raised. Examples include provisions related to economic smuggling and evasion of customs payments.

These changes directly impact the relevance of the institution of exemption from criminal liability. The Criminal Code of the Republic of Kazakhstan provides special notes to several articles, allowing a person to be exempted from criminal liability upon fulfilling certain conditions. Such provisions refer to special types of exemption and possess a number of characteristic features in their application. These include the conditional nature of the exemption, its link to the person's post-criminal behavior, and restrictions determined by the category of the crime committed.

As a rule, special types of exemption are discretionary in nature, meaning that the legal practitioner (investigator, prosecutor, or court) has the right, but not the obligation, to exempt a person from liability even in the presence of formal grounds. For the application of many special types of exemption, the guilty party is required to demonstrate active repentance: to surrender voluntarily, assist in solving the crime, compensate for damages, or otherwise redress the harm caused. Furthermore, some special types of exemption may not apply to acts committed by a criminal group, on an especially large scale, or under aggravating circumstances. Thus, in practice, the application of special types of exemption from criminal liability for crimes in the sphere of economic activity in the Republic of Kazakhstan is fraught with a number of issues related to legislative gaps, enforcement challenges, and the ambiguity of legal norms. Examples include the broad differentiation of grounds for exemption, corruption risks, problems with applying the institution of reconciliation, lack of clarity in legal phrasing, and restrictions based on crime categories.

Furthermore, the relevance of this topic is underscored by the fact that research into the application of special grounds for exemption from criminal liability for economic crimes has not been conducted at the doctoral level within Kazakhstani legal science.

In this regard, the aim and objectives of the study are directly dictated by the substance of criminal law provisions as reflected in the legal policy of the Republic of Kazakhstan and the annual Messages of the President to the people of Kazakhstan. The primary goal of the research is to study and analyze the application of special types of exemption from criminal liability for crimes in the sphere of economic activity. This goal sets forth specific objectives aimed at resolving issues related to the application of these special exemptions, optimizing the conditions for their use, and developing concrete proposals for improving legislation and judicial practice.

In both research and the practical application of the types under consideration, various conflicts arise from theoretical disagreements, legislative imperfections, inconsistencies in law enforcement, and methodological challenges. For instance, in criminal law theory, there are disagreements regarding the legal nature of exemption from criminal liability. Debates persist over whether it is merely the state's waiver of its right to enforce liability or a distinct legal institution with its own goals and principles. Likewise, there is no consensus on the elements of active repentance—one of the grounds for exemption. Scholars differ on how many criteria in an individual's actions are sufficient for their conduct to be recognized as active repentance. Some argue that the presence of all conditions listed in the legal provision is necessary, while others contend that a combination of conditions that are both necessary and possible in a given case is sufficient [3].

In the study of problems concerning exemption from criminal liability in the economic sphere, methodological conflicts may arise regarding the choice of analytical approaches and methods. For instance, the question of which method is best suited to evaluate the effectiveness of exemption norms, comparative legal, formal-logical, systemic, or statistical—remains a subject of debate. Furthermore, when examining the interaction between criminal law and other branches (such as civil or tax law), the problem of defining the boundaries of their application arises. For example, to what extent is it permissible to use civil law mechanisms to settle the consequences of economic crimes within the framework of criminal proceedings? [4]

In domestic research and theoretical approaches to this topic, several gaps can be identified. These are related to the lack of comprehensive works that integrate theory and practice—including interdisciplinary links with other branches of law and insights from foreign experience, especially regarding economic crimes. Other gaps include the lack of developed criteria for assessing active repentance, the absence of uniformity in interpreting special notes to the articles of the Criminal Code (e.g., “full restitution” or “voluntariness”), and deficiencies in studying corruption risks, among others. Additionally, in reviewing the literature, the author concluded that the effectiveness of existing exemption mechanisms remains poorly addressed. There is a scarcity of studies that use empirical data to evaluate the extent to which the application of special types of exemption contributes to achieving the goals of criminal justice (e.g., the restoration of social justice, the rehabilitation of the offender, and crime prevention).

Methods and materials

The methodological framework of this study is based on the dialectical method of cognition and a system-structural approach, which enabled the examination of exemption from criminal liability as a complex legal institute. The formal-legal (doctrinal) method was employed to analyze the provisions of the Criminal Code and the Criminal Procedure Code of the Republic of Kazakhstan. Furthermore, legal hermeneutics and logical-semantic analysis were applied to interpret the normative resolutions of the Constitutional Court and the Supreme Court, specifically regarding the differentiation between “income generation” and “damages”. The empirical basis comprises a content analysis of the law enforcement practice of tax authorities and criminal prosecution bodies (2020–2026). Additionally, the legal forecasting method was used to develop evidence-based recommendations for legislative reform, while elements of comparative law evaluated the integration of international best practices.

Results

Law enforcement practice in countering crime and ensuring the realization of citizens’ rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan requires well-developed national legislation that meets international standards. This includes requirements such as logical consistency, clarity of phrasing, internal coherence, and the absence of legal conflicts. In our view, the implementation of these requirements becomes particularly relevant when addressing the issue of exemption from criminal liability in the sphere of economic activity, as uniformity in law enforcement and judicial practice serves as the foundation for stable economic development and the improvement of legislation.

In this regard, one should agree with the opinions of scholars who identify the need for a clearer definition of the conditions for exemption from criminal liability for economic crimes. For instance, let us turn to the practice of tax authorities, which possess the right to unilaterally declare transactions as fictitious. Such qualification could lead to additional tax assessments and the application of penalties, while judicial practice on these matters has not always been consistent [5].

The problem lay in the fact that tax authorities, identifying signs of fictitious transactions through supply chain analysis, cross-checks, or other sources, often did not seek judicial confirmation of the relevant circumstances. During tax audits, such transactions could be treated as having been conducted without the actual delivery of goods or provision of services. Consequently, the taxpayer’s expenses were excluded from corporate income tax (CIT) deductions and value-added tax (VAT) offsets. This, in turn, resulted in significant tax deficiencies and fines. Furthermore, the taxpayer was effectively deprived of the opportunity to prove the validity of the concluded transactions in court [6].

Additional difficulties also arise in the application of notes to articles regarding the possibility of exemption from criminal liability upon voluntary restitution of the damage caused. In practice, the criteria for “voluntariness” and the completeness of such restitution can be interpreted in various ways. This creates certain legal risks for entrepreneurs and complicates the forecasting of potential legal consequences of their actions.

The scientific novelty of this work lies in the analysis of the specifics of applying the types of exemption under consideration, taking into account the interrelationship between criminal law and other branches of law, as well as utilizing foreign experience in regulating similar relations, primarily in the sphere of economic crimes. This approach aligns with the stated aim and objectives of the research.

In this regard, in our view, it is necessary to clarify a number of legislative provisions:

First, it is necessary to establish specific actions that can be regarded as sufficient restitution for the damage caused, which should include not only the return of illegally obtained funds but also compensation for incurred losses, accrued interest (penalties), and fines within the timeframes established by law.

Second, the concept of a “first-time offense” needs clarification. In theory and practice, ambiguity arises when determining whether an offense should be considered committed for the first time if the person has previously been held administratively liable for similar acts.

Third, it is significant to classify the conditions for exemption from criminal liability based on sectoral affiliation, for example, for criminal offenses in the tax sphere.

Discussion

Full payment of tax debt is understood as the settlement of the entire amount of the arrears—that is, taxes and other mandatory payments not paid within the established timeframe, including current and advance payments, as well as the interest (penalties) accrued on this amount. It should be taken into account that tax debt includes not only the principal amount of the arrears but also unpaid interest and penalties [7].

In certain cases, upon full settlement of tax arrears, the legislation allows for the write-off of accrued interest (penalties) and fines. For instance, the Rules for the Write-off of Interest and Fines, approved by the Order of the Minister of Finance of the Republic of Kazakhstan No. 13 dated February 13, 2026, provide micro and small business entities with the possibility of having several financial sanctions waived.

Specifically, interest reflected in the taxpayer’s personal account as of January 1, 2026, as well as interest accrued on the amount of arrears from January 1, 2026, until the date of its actual payment, may be written off. Furthermore, fines for tax offenses recorded in the personal account as of the specified date are subject to write-off for those types of taxes and payments where the arrears have been settled. The legislation also provides for the possibility of writing off interest and fines in the event of early fulfillment (before April 1, 2026) of a tax obligation for which the payment deadline, as of January 1, 2026, had been modified in accordance with tax legislation or legislation on rehabilitation and bankruptcy. Additionally, fines for turnovers conducted before January 1, 2026, during a period of non-registration for Value-Added Tax (VAT), may also be written off [8].

It should be emphasized that partial repayment of debt or the intention to compensate for the damage caused in the future is not considered by legislation as a sufficient ground for exemption from criminal liability. Such a requirement often creates difficulties for individuals who do not have the capacity to pay the entire amount of the debt in a single lump sum, especially when significant financial violations are involved [9].

An exception is an act committed by a criminal group (Part 3 of Article 245 of the CC RK—where exemption from liability does not apply). This narrows the possibilities for applying special exemption mechanisms in cases involving organized forms of crime.

In practice, difficulties frequently arise in determining the moment of completion for these specific offenses. This is due to the fact that the deadlines for filing a tax return and the deadlines for paying tax obligations may differ. In accordance with law enforcement practice, the moment of completion of a criminal offense provided for in Articles 244 and 245 of the CC RK is defined as the day following the last tax payment deadline established by tax legislation. This situation requires a precise determination of time boundaries and frequently becomes a subject of dispute during judicial proceedings.

Back in 2010, we already pointed out that legal literature discussed the contradiction between the provisions of the General Part of the CC RK (for example, Article 65) and the notes to the articles of the Special Part providing for special exemption. The question arises whether the conditions established in the General Part (for example, committing a crime for the first time, voluntary surrender, assistance in solving the crime) must be applied when using special notes. Some researchers believe that special exemption is independent and does not require compliance with the conditions of the General Part, while others contend that these conditions must be supplemented by the provisions of the notes [10]. In principle, a final conclusion on these issues has not yet been reached.

In practice, difficulties also arise due to the need to documentarily confirm the fact of full restitution of the damage caused. Especially in the process of complex financial schemes or when the necessary documents are missing, it is naturally difficult to obtain such evidence.

Furthermore, it is necessary to strictly observe procedural requirements, which, for example, firstly, are related to the norms of tax legislation in force at the time the criminal offense was committed, rather than at the time the amendments were adopted. And secondly, they are related to the deadlines for filing a tax return and paying taxes and other mandatory payments to the budget, as well as the period during which the person evaded the fulfillment of tax obligations.

In the absence of the specified information, the court at the preliminary hearing stage or during the main trial may recognize such circumstances as substantial violations of criminal procedural legislation that prevent the consideration of the case on its merits. In this case, the criminal case is subject to return to the prosecutor in accordance with Article 323 of the CPC RK [9].

In addition to the requirements for the indictment, there are other procedural risks that can influence the outcome of the case:

- Inadmissibility of evidence. If evidence is obtained in violation of the requirements of the CPC RK (for example, through the use of violence, threats, or without respecting the rights of the suspect), it may be declared inadmissible. This deprives the parties of the opportunity to use such evidence in court;
- Violations in the collection and storage of evidence. Non-compliance with the rules for drafting protocols, improper storage of physical evidence, or the absence of photo and video recording can lead to the loss of the evidentiary base. For example, if the chain of custody is broken, the court may doubt the authenticity of the evidence;
- Errors in the qualification of the act. Specifically, if the indictment does not specify the particular article, part, and paragraph of the Criminal Code under which the person is being charged, this may serve as grounds for returning the criminal case to the prosecutor;
- Insufficiency of the evidentiary base. If the submitted materials do not confirm the circumstances subject to proof in a criminal case in accordance with Article 113 of the CPC RK, such evidence is recognized as insufficient for rendering a reasoned decision. In such situations, the court is obliged to be guided by the principle of the presumption of innocence and render an acquittal.
- In this case, to minimize risks, we consider it necessary:
 - to carefully record all financial transactions and preserve primary documents;
 - when compensating for damages, to formalize transactions officially (for example, through deeds of assignment or harm compensation agreements);
 - during the investigation of tax offenses, to involve experts for the analysis of financial and economic activities and the determination of the amount of damage;
 - to comply with procedural norms during the collection and documentation of evidence to avoid it being declared inadmissible;
 - to monitor the completeness and accuracy of the indictment, paying attention to compliance with legislative norms, deadlines, and other key details [11].

The Constitutional Court of the Republic of Kazakhstan, in its Regulatory Resolution No. 14-NP dated May 18, 2023, examined an issue related to the application of Article 197 of the CC RK. The Constitutional Court pointed out that the absence of a clear definition of the list of such documents could lead to their broad interpretation by legal practitioners and, as a result, create a risk of violating the constitutional rights and freedoms of citizens [12].

Certain problems were also identified in the application of Article 214 of the CC RK. In particular, a lack of consistency was noted between the measures of liability and the norms of legislation across various branches of law. Furthermore, the disposition of the article contained several alternative forms of unlawful behavior, which complicated its practical application. As a result, this norm was divided into independent articles: Article 214-1 of the CC RK (illegal banking and microfinance activity) and Article 214-2 of the CC RK (illegal debt collection activity).

It was also established that certain provisions of the legislation could place different categories of persons in an unequal position. For example, the note to Article 214 of the CC RK provided for the possibility of exemption from criminal liability upon voluntary restitution of damage; however, it applied only to cases involving large-scale damage. At the same time, similar provisions did not apply to situations involving the

generation of large-scale income or the sale of excisable goods, which raised questions regarding compliance with the principle of equality.

The recommendations of the Constitutional Court in such cases often include the necessity of refining legislation: clarifying concepts, establishing clear criteria, harmonizing norms with each other and with other branches of law, as well as improving law enforcement practice. For example, in Regulatory Resolution No. 72-NP dated June 25, 2025, the Court recommended that the Government consider the issue of further improving criminal legislation, and that the Supreme Court summarize judicial practice for a clear distinction between the activities of commercial organizations and criminal groups [13].

According to the notes to Articles 214–214-2 of the CC RK, a person who has committed the corresponding act for the first time may be exempted from criminal liability on the condition of voluntary restitution of large-scale damage caused to a citizen, an organization, or the state. However, in practice, this norm is applied quite rarely. This is due to the fact that criminal prosecution authorities often qualify a person's actions based on the generation of income rather than the infliction of damage, which significantly complicates the use of this ground for exemption from liability.

This situation is explained by the fact that the dispositions of the specified articles provide for several alternative forms of criminal behavior. These include the infliction of large-scale damage to a citizen, an organization, or the state, the generation of large-scale income, as well as the production, storage, transportation, or sale of excisable goods in significant quantities (Article 214 of the CC RK).

The Constitutional Court of the Republic of Kazakhstan clarified that the note to Article 214 of the CC RK is applied only in cases where the committed act has resulted in large-scale damage and this damage was voluntarily restored before the court rendered its verdict. At the same time, the specified note does not extend to situations involving the generation of large-scale income or the sale of excisable goods, even if the crime was committed for the first time. The legislator considers such acts to be socially dangerous regardless of the presence of material consequences in the form of damage [14].

Thus, if the investigation establishes the generation of income rather than the infliction of damage, the grounds for applying the note are absent. This is precisely the reason why, in practice, exemption from liability under the note occurs rarely.

So, in 2023, the Constitutional Court of the Republic of Kazakhstan considered the appeal of a citizen convicted of illegal cryptocurrency exchange transactions. The applicant challenged the constitutionality of the note to Article 214 of the Criminal Code of the Republic of Kazakhstan, believing that its provisions do not apply to individuals whose actions are related to the generation of large-scale income but did not result in damage. According to the applicant, this leads to an unequal position for such individuals compared to those who caused damage and subsequently compensated for it.

Following the review, the Constitutional Court found the contested note to be consistent with the Constitution of the Republic of Kazakhstan. However, it was noted that the scope and nature of liability should be determined taking into account the degree of public danger of a particular offense. Furthermore, the Court recommended that the Government consider amending and supplementing the Criminal Code of the Republic of Kazakhstan and other regulatory legal acts in order to eliminate the identified deficiencies, in particular those related to the structure of the provision of Article 214 of the Criminal Code of the Republic of Kazakhstan [15].

Therefore, although the note to Article 214 of the Criminal Code of the Republic of Kazakhstan provides for the possibility of exemption from liability; its application in practice is limited by the specifics of the qualification of acts and the requirements of the law.

Conclusions

The study of the theoretical foundations and law enforcement practice regarding exemption from criminal liability for economic crimes in the Republic of Kazakhstan allows for the formulation of the following provisions:

- Priority of Restorative Justice: in line with the policy of humanizing criminal legislation anchored in the Addresses of the President of the Republic of Kazakhstan, the institute of special exemption from liability should serve as a primary tool for balancing the protection of public interests with the stimulation of positive post-criminal behavior among business entities.

- Elimination of Legislative Conflicts: a contradiction has been identified between the General Part of the Criminal Code (Article 65) and the special notes of the Special Part regarding the mandatory nature of certain conditions (e.g., voluntary surrender, assistance in solving the crime). It is necessary to legislatively

establish the autonomy of special types of exemption, thereby minimizing the discretionary powers of law enforcement authorities.

- Refinement of the Conceptual Framework: normative clarification is required for the concepts of a “first-time offense” and “voluntary restitution of damages”. The latter must imperatively include not only the principal debt (arrears) but also accrued penalties and fines, supported by documentary evidence within strictly defined legal timeframes.

- Reforming the Disposition of Article 214 of the Criminal Code: the study justifies the need to revise the conditions for exemption in cases involving “large-scale income generation”. The current restriction, which allows the application of the special note only in cases of “causing damage”, creates legal inequality and hinders the effective use of restorative mechanisms in cases of illegal entrepreneurship and asset operations (including cryptocurrencies).

- Minimization of Procedural Risks: a systematic analysis of practice demonstrates that a lack of uniformity in determining the time of completion for tax crimes and the procedure for recording restitution leads to the return of cases to the prosecutor (Article 323 of the Criminal Procedure Code). The proposed solution involves developing clear interagency regulations and the systematization of judicial practice by the Supreme Court.

The proposed classification of exemption conditions based on industry specifics (tax, banking, and customs sectors) will harmonize criminal law with regulatory legislation, ensuring the stability of economic activity and the predictability of legal consequences for the business community.

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Экономикалық қызмет саласындағы қылмыстар үшін қылмыстық жауаптылықтан босатудың арнайы түрлері

Зерттеудің мақсаты — экономикалық қызмет саласында жасалатын қылмыстар бойынша қылмыстық жауаптылықтан босатудың арнайы түрлерін қарастыру және олардың қолданылу ерекшеліктеріне құқықтық талдау жүргізу. Осы мақсатқа жету үшін ғылыми танымның талдау мен синтез, модельдеу мен болжау, салыстырмалы-құқықтық және формальды-логикалық әдістері, сондай-ақ нақты-тарихи тәсіл мен басқа да жалпы ғылыми және арнайы әдістер қолданылды. Зерттеудің эмпирикалық базасы ретінде Қазақстан Республикасының қылмыстық заңнамасы, Қазақстан Республикасы Жоғарғы Соты мен Конституциялық Сотының нормативтік қаулылары, сондай-ақ өзге де нормативтік-құқықтық актілер пайдаланылды. Зерттеу нәтижесінде заңнамалық олқылықтар, құқық қолдану тәжірибесіндегі қиындықтар және құқықтық нормалардың бірімәнді еместігіне байланысты бірқатар мәселелер анықталды. Осыған байланысты авторлар келесі негізгі қорытындыларға келді: келтірілген залалды өтеу мәселелеріне қатысты, «алғаш рет жасалған қылмыс» ұғымын нақтылауға, жекелеген қылмыс құрамдары бойынша жауаптылықтан босату шарттарын жетілдіруге, кінәлінің жеке басын және істің мән-жайларын ескеретін қосымша критерийлер енгізуге, құқық қорғау органдары мен соттар үшін іс-әрекет алгоритмін әзірлеуге, сондай-ақ Қазақстан Республикасы Қылмыстық кодексіндегі жалпы және арнайы нормалар арасындағы қайшылықтарды жоюға бағытталған ұсыныстар әзірлеу қажет.

Кілт сөздер: қылмыстық жауаптылық, жауаптылықтан босату, босатудың арнайы негіздемелері, экономикалық қылмыстар, қылмыстық құқық бұзушылықтар, залал, табыс, салық салу.

А.К. Ахметова, Г.М. Рысмағамбетова

Специальные виды освобождения от уголовной ответственности за преступления в сфере экономической деятельности

Цель исследования заключается в рассмотрении и правовом анализе особенностей применения специальных видов освобождения от уголовной ответственности за преступления, совершаемые в сфере экономической деятельности. Для достижения поставленной цели были использованы методы научного познания, такие как анализ и синтез, моделирование и прогнозирование, сравнительно-правовой и формально-логический методы, а также конкретно-исторический подход и другие общенаучные и специальные методы. В качестве эмпирической базы исследования использованы нормы уголовного законодательства Республики Казахстан, нормативные постановления Верховного Суда и Конституционного Суда Республики Казахстан, а также иные нормативно-правовые акты. В результате показан ряд проблем, связанных с законодательными пробелами, сложностями правоприменения и неоднозначностью правовых норм. Исследование предлагает пересмотр нескольких ключевых норм, связанных с возмещением ущерба, понятием «впервые совершенное преступление», условиями освобождения от уголовной ответственности для отдельных составов преступлений, дополнительными критериями, учитывающими личность виновного и обстоятельства дела, с алгоритмом действий для правоохранительных органов и судов, с противоречием между общей и специальной нормами Уголовного кодекса Республики Казахстан.

Ключевые слова: уголовная ответственность, освобождение от ответственности, специальные основания освобождения, экономические преступления, уголовные правонарушения, ущерб, доход, налогообложение.

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Validity Criteria of Pretrial Detention: An Analysis of Judicial Errors

The purpose of this study is to provide a comprehensive analysis of the legal and practical criteria for the validity of pretrial detention and to identify typical judicial errors in the application of this measure. The methods include a systematic analysis of criminal procedure legislation, a comparative method, and a statistical analysis of judicial practice. Particular attention is paid to the regulatory resolutions of the Supreme Court of Kazakhstan and to the legal positions of the ECHR in assessing the validity of suspicion and the risks of obstructing justice. The findings demonstrate a persistent trend toward the excessive use of the most stringent coercive measure. The author reveals that the key issues include a formalized approach, manifested in the rubber-stamping of prosecution arguments, and the arbitrariness of assessments, where the severity of the charge becomes the sole and decisive factor for arrest. The article provides a classification of typical errors, ranging from the absence of specific factual data in case materials to the disregard of alternatives such as house arrest or bail. The conclusions emphasize the need for a transition from formalized to substantive judicial control when considering motions. The validity of detention must be supported by actual, not presumed, evidence of an intent to abscond or to destroy evidence. The recommendations may improve the procedural mechanism by minimizing cases of unjustified restrictions on personal liberty and overcoming inquisitorial bias in judicial practice.

Keywords: Pre-trial detention, measures of restraint, judicial errors, criminal procedure, validity of arrest, judicial formalism, excessive coercion.

Introduction

Urgency of this subject is caused by a practice of selecting and using the measures of procedural compulsion. Thus, however an arrest warrant was transferred to a sole competence of courts by Constitution, the law enforcement still keeps narratives of tendentious approach of pretrial detention being the dominant measure. Such a practice demonstrates that law enforcers have not reached a proper understanding and applying the presumption of innocence. This situation creates a misbalance between legal reasons and human rights and overloads the law enforcement agencies.

For this reason, the study attempts to identify the factors facilitating such a law enforcement practice. Following objectives have been accomplished to achieve the goal: key issues preventing an efficient application of alternative pre-trial restraints have been identified and structured; facts of redundancy, formalism and subjectivism in judicial line of argument have been analyzed; structural reasons for pretrial detention prevailing in the restraint system have been identified; criteria of relevance of legal judgments on applying such a restraint have been defined.

Collisions between theory, methodology and practice are represented with many consistent conflicts existing in the issues under study. First, there is a theoretical and practical collision between proclaimed exclusiveness of pretrial detention and actual presumption of expediency. The theory of criminal litigation is based on a principle of minimum sufficiency of human rights restriction, while the practice demonstrates a trend toward regulation of preventive rationale. Second, there is a methodological conflict between formal procedural compliance and a substantive risk assessment as prescribed by the law. Judicial line of argument often contains vague statements (“may go in hiding”, “may impede the investigation”) without evidentiary information. Third, there is an institutional conflict between the normative model of adversarial proceedings and the factual dominance of the prosecution at the stage of imposing measures of restraint. This results in a procedural imbalance and weakens the judicial oversight of the prosecution’s claims. Finally, there is a contradiction between human rights narrative of legal judgments and their actual rationale, which creates an illusion of compliance with standard, yet without its substantial application.

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Gaps in other studies are poor parameterization of validity criteria for pretrial detention despite a significant amount of research papers. Contemporary studies predominantly focus on either statutory analysis of an institution, or assessment of compliance with international standards, while the comprehensive analysis of judicial errors as a system-wide phenomenon has been developed piecewise. Insufficient research: impact of institutional drivers; dependence of judicial reasoning on prosecutorial mindset; procedural mechanics of shifting from an exceptional to a default measure. Besides, current academic schools do not have a common approach to defining sufficiency criteria for evidence proving the presence of judicial risks. This creates uncertainty in law enforcement and expands the field for judgment calls.

The author assumes that an issue of dominance of pretrial detention stems from both deficiencies in law enforcement and a set of institutional and methodological factors. Among other factors, insufficient resources for alternative measures of restraint (bail, house arrest), lack of developed mechanisms of procedural controls, as well as rigidity of prosecutive mindset establish a consistent model of choosing the most stringent measure.

Thus, the study is aimed at shifting the analysis focus from declaratory part to criteria of validity and sufficiency of evidence. The author's approach includes an assessment of judgments using the principles of necessity, adequacy and tailoring, which helps identify systemic errors and suggest the ways to address them.

Methods and materials

Methodological framework of this study is represented with a set of general scientific and special legal methods of cognition that ensure a comprehensive analysis of pretrial detention institution using the validity criteria.

Dialectical method is utilized as a base method; it helped to review the pretrial detention in the balance between public interests and individual liberty; this method also helped to identify contradiction between the legal framework of an "exceptional measure" and persistent practices of its routine application.

A systematic approach was utilized to analyze a position of pretrial detention within a general structure of measures of procedural compulsion, and to identify correlations between canons of law, judicial line of argument and institutional law enforcement factors.

Among special legal methods, following were used: legalistic analysis to study the essence of norms regulating the grounds and procedure for selecting a measure of restraint; interpretation of legal norms (literal, overall, purposive) to identify regulatory connotation of "exceptional nature"; legal comparative method to compare nationwide approaches with international standards for assessing a necessity of custodial restraint; and legal modelling method to define the author's criteria for pretrial detention validity.

In addition, a critical discourse analysis of judicial line of argument was used to identify typical logical constructs, boilerplate language and indicators of pro forma approach in judicial acts.

100 judicial acts on choosing and extending pretrial detention as a measure of restraint rendered by examining courts, as well as appeals from such judgments over last five years were the empirical background of the study.

Case materials were selected by following criteria: availability of rationale that contains an assessment of judicial risks; possibility of comparing prosecution with defense; availability of an analysis of alternative measures of restraint or absence thereof.

Analysis of judicial acts has highlighted repeated lines of argument, as well as typical errors in justification of pretrial detention.

In addition, statistical data over last three years were used to describe frequency of various measures of restraint, as well as data demonstrating the workload of judicial authorities and a practice of challenging decisions on pretrial detention.

Results

The analysis of judicial practice helped to phrase a key author's observation:

Pretrial detention in judicial practice is often used on the basis of presumption of expediency rather than a model of proven necessity.

In other words, at a number of times a court is guided by an abstract probability of its occurrence correlated mainly with severity of charges rather than by an assessment of certain judicial risks.

Following have been determined during the study:

- in majority of judgments, flight risk is justified by severity of charges without an analysis of individual's characteristics;

- court's reasoning relies on formulaic structures without concrete evidentiary substantiation;
- alternative measures of restraint are either assessed in a declarative manner or not analyzed at all;
- court's line of argument often matches with prosecution's case by logic and structure.

Thus, system-wide signs have been identified, such as formalization of judicial assessment; replacement of risk analysis with severity of charges; lack of evidentiary adequacy standard.

The results directly match with the objective raised, i.e. to identify the factors contributing to a steady dominance of pretrial detention.

Novelty of the results is following: for the first time, a systematic typology of judicial errors of choosing a measure of restraint has been suggested; operationalized validity criteria for pretrial detention were defined; existence of a presumption of expediency model as a hidden phenomenon of judicial practice was justified; an institutional correlation between the lack of resources for alternative measures and the dominance of pretrial detention was recognized.

Novelty has applicable rather than declarative nature, since the suggested model might be used in judicial practice when drafting procedural findings, improving the judges' qualifications, and research papers.

The stated objective, i.e. determining the factors of prevailing pretrial detention and definition of validity criteria has been achieved.

The objective has been met as follows:

- key issues of applying the measure have been put together;
- signs of formalism and judgment call have been detected;
- an author's concept of validity assessment has been developed;
- a tool for judicial errors minimization has been suggested.

The study resulted in a developed proprietary model for assessing the validity of pretrial detention based on five interrelated criteria: evidentiary specification of risk: the risk must be supported by factual data rather than probabilistic assumptions; verifiability of argumentation: each assertion of the court must be verifiable through the case materials; proportionality: the court must strike a balance between the restriction of liberty and the protected public interest; individualization: the assessment must take into account the personality of the accused, social connections, and behavior; impossibility of applying a milder punishment: the court must provide evidence to justify why alternatives do not achieve procedural goals.

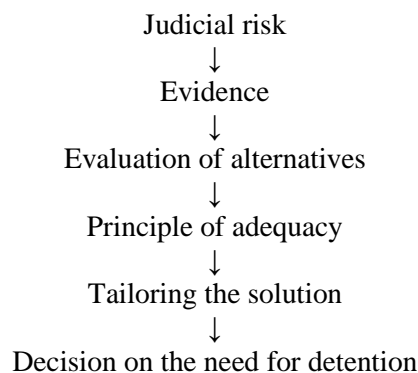


Figure 1. Logical model of validity assessment for pretrial detention

Discussion

An analysis of case law allows us to identify three interrelated problems in the application of measures of procedural compulsion in the Republic of Kazakhstan: *redundancy* (excessive frequent use of the most stringent measures), *formalism* (superficial approach in selecting a measure, insufficient motivation of decisions) and elements of *judgment call* (incomplete compliance with the criteria of necessity, or unjustified differences in approaches). Let's dive deeper into each of these problems.

Redundancy is the application of procedural coercive measures more frequently or in more severe ways than is objectively necessary to ensure the goals of the criminal process. Speaking of Kazakhstani criminal proceedings, the issue is mainly about the excessive use of pretrial detention as a preventive measure. According to statistical data analysis, detention has become an almost routine measure of restraint for a large share of suspects, even when the law permits milder alternatives.

Thus, according to 2023 statistics, examining courts granted 10,345 motions for pretrial detention as a measure of restraint, while the number of motions granted for house arrest was 343, and motions for bail were 77. In 2024, there were 10,611 cases of pretrial detention, 584 cases of house arrest, and 32 cases of bail. Notably, in terms of the severity of crimes, the use of pretrial detention under the extremely grievous category accounts for only 19 % of the total number of granted motions.

The criminal procedure legislation of the Republic of Kazakhstan poses detention as an exceptional preventive measure. For example, the commission of a crime of medium gravity with stated maximum penalty of up to five years of imprisonment allows a preventive measure to be a pretrial detention only in exceptional cases and if there are specific circumstances that prevent an individual from being summoned to the investigative bodies and the court, or that create real risks of a suspect obstructing the establishment of the objective truth in the case.

Thus, it is presumed that if a person is suspected of committing a crime of little or medium gravity, a prosecuting agency and the court must choose another measure of restraint: a travel restriction and recognizance to behave, a personal surety, bail, etc., if there are no extraordinary circumstances (repeat offense, tendency to abscond, obstruction of the investigation, etc.).

However, as evidenced in practice, the “exceptional nature” of such a measure often remains on paper and has no real representation in practice. An analysis of the decisions of investigative judges on authorizing pretrial detention as a measure of restraint indicates that sanctions are issued in cases of crimes of medium gravity based on the severity of the crime committed, which actually contradicts the objective requirements of criminal procedure law. For this reason, criticism raised by the attorney community regarding the templated reasoning to authorize pretrial detention is entirely reasonable.

However, this practice contradicts international standards. The European Court of Human Rights has repeatedly stated that the severity of the potential punishment alone is not sufficient grounds for detention. In this case, specific facts of risk are required: flight, pressure on witnesses, etc. Although Kazakhstan is not a party to the ECHR Convention, nevertheless it has to adhere to this principle due to its worldwide recognition as a standard for the reasonableness of the arrest.

According to many scholars, the excessive use of arrest is largely due to the limited range of alternatives actually used. Thus, in his research D.R. Iseyev notes that the more measures of restraint are provided by law, the more opportunities the investigative bodies and the court have to choose a measure proportionate to a specific situation, without resorting to detention in all cases [1]. Kazakhstan’s criminal procedure law contains a fairly broad list of alternative measures of restraint: house arrest, bail, supervision by military command, etc. However, legislative norms alone are not enough: it is important for these alternatives to actually function in practice. Unfortunately, experience has demonstrated that new measures remain unclaimed if left without adequate resources and organizational support. In their studies of house arrest issues, L.I. Lavdarenko, L.P. Plesneva and V.A. Votkin quite fairly draw attention to the fact that the lack of technical means of control has long been an obstacle to efficient utilization of such a measure of restraint [2]. In the same way, an institution of bail requires courts to be able to individually calculate its amount and verify the financial status of the suspect—this is a new and complicated challenge for the justice system. As a result, both house arrest and bail are used extremely rarely, while a “uniform approach” of detention still prevails. Thus, redundancy is to a certain extent caused by the insufficient utilization of non-custodial measures, even when they are expressly provided for by law.

Another criterion of redundancy is the duration of coercive measures. In most cases, suspects are held in custody for the maximum permitted period despite the criminal procedure law requires those investigations to be carried out within a reasonable time and to extend this preventive measure only if necessary. In practice, however, investigations often drag on, which results in suspects being held in custody for months, and sometimes even years, before the case goes to trial. Even though, such decisions are not always justified especially when a criminal case is dismissed or the defendant is acquitted. It is worth noting that even termination of a criminal case due to reasons other than exoneration, for example due to reconciliation is also a sign of redundancy and imbalance in the infringement of individual rights.

Thus, despite the declared principle of personal inviolability, the practical experience of Kazakhstan demonstrates an excessive reliance on the pretrial detention as a measure of restraint. This trend represents very large share of suspects arrested and the rare use of alternative measures, as well as the often maximum duration of the said measure of restraint. This situation contradicts to the spirit of the International Covenant on Civil and Political Rights, which requires that “the detention of persons awaiting trial shall not be the general rule” [3]. Excessive use of the most stringent measure of restraint both violates the rights of suspects

and overburdens the criminal justice system (courts, prosecutor's office, pre-trial detention facilities). We see solution to this problem in increasing the validity of the motions of pretrial investigation bodies and a bolder appeal to alternatives by prosecutors and courts.

Formalism in this context is a practice whereby participants in criminal proceedings approach the coercive measures inattentively and individually and limit themselves to minimal formal requirements. Formalism can manifest itself both at the stage of document drafting (investigator's motion, prosecutors' consent) and when issuing court decisions.

Often, a motion for choosing a measure of restraint is drawn up by templates using general phrases without specifics on the case. For example, almost all motions for choosing a measure of restraint such as pretrial detention include standard phrases, such as "may abscond", "may continue criminal activity", "may obstruct the investigation". Such risks are declared even in cases where a suspect cooperates with the investigation, has strong social ties, and has no previous convictions. An analysis of judicial practice demonstrates that investigators rarely cite specific facts: for example, attempts to abscond, threats to a witness, the preparation of a false passport, and other circumstances that would realistically substantiate the existence of risks.

In this regard, the Supreme Court of the Republic of Kazakhstan makes it clear that the materials attached to the petition for sanctioning a preventive measure in the form of detention shall contain information indicating suspicion of committing a crime by this particular person and the existence of grounds for applying this measure of restraint to them confirmed by specific facts [4]. Therefore, submission of abstract information about the severity of crimes is not sufficient ground for applying a measure of restraint in the form of detention. However, the practice demonstrates that investigators limit themselves to listing the articles and sanctions, and the prosecutor supporting the motion does not require additional evidence. This is a manifestation of formalism: when participants automatically reproduce the prescribed wording of the Criminal Procedure Code without filling them with real content.

The most criticized aspect in this regard is the brevity and boilerplate nature of the investigating judges' ruling authorizing pretrial detention. In the first years after the institution of the investigating judge was introduced, many such decisions consisted of several provisions: a judge referred to the gravity of the crime and the prosecutor's indication of the grounds followed with authorization of pretrial detention. The rights of a suspect to remain free, such as availability of a permanent place of residence, employment, health status, and dependent children were often not discussed. For this reason, the Supreme Court of the Republic of Kazakhstan has repeatedly emphasized that the conclusion that the suspect (accused) might obstruct the proceedings or abscond from the investigation and trial, or might continue criminal activity must be supported by sufficient evidence and duly motivated both in the petition of a person responsible for the pretrial investigation and in the ruling of the investigating judge on authorizing pretrial detention [4]. In other words, the judge's ruling must indicate the verification of each ground for the motion and the reasons for which this particular measure of restraint was chosen.

Therefore, the judge may not simply state that the suspect "may abscond", since they is obliged to assess whether the suspect really has the preconditions for this. For example, no permanent place of residence, previous attempts to abscond criminal prosecution authorities, etc. The wordings such as "due to the gravity of the crime, they may attempt to abscond" without providing specific reasons shall be considered as not meeting the requirement for validity.

Unfortunately, the main drawback of decisions by investigative judges to authorize pretrial detention is still insufficient motivation. The attorney community keeps criticizing the decisions of investigative judges for their boilerplate language, which is represented by copying the arguments of the criminal prosecution body contained in the motion and making conclusions without analyzing alternative solutions. Indeed, an analysis of the rulings of investigative judges authorizing pretrial detention reveals that the lack of a reasoned answer to the question: "Why can't bail or house arrest be applied?" has become somewhat of a pattern. Beyond doubt, such formal approaches condensed into the boilerplate thesis "the goals will not be reached by any other measure" have provoked and will be provoking criticism both in the pages of legal literature and from practitioners.

At the same time, such formal approaches of investigative judges when authorizing the measures of restraint undermine the very meaning of judicial review at the pre-trial stages of criminal proceedings and turn the judge into a "certifying officer" for criminal prosecution authorities [5]. The tendency of investigative judges to prematurely support the initiatives of criminal prosecution bodies by authorizing their decisions and actions ultimately makes the institution of judicial review illusory.

Thus, one of the decisions of an investigative judge of Astana specialized interdistrict examining court that we examined states that “the court considers the arguments of the body conducting the pretrial investigation and the prosecutor that the female suspect is involved in the criminal offense she is charged with to be justified at the stage of choosing a measure of restraint”. Based on the fact that the alleged offence carries a sentence of more than five years’ imprisonment, the investigating judge suggested in his decision that the suspect might abscond from the investigation and the court due to the severity of the potential punishment. This hypothetical assumption, contrary to the requirements of the criminal procedure law and the position of the Supreme Court of the Republic of Kazakhstan, formed the basis for the thesis: “the court does not set bail for her when authorizing pretrial detention as a measure of restraint”, and the court does not see the possibility of “choosing house arrest or travel restriction and recognizance to behave, or other more lenient preventive measures”.

In addition, the investigating judge noted in his decision that: “the defense’s arguments that the suspect has no previous convictions, has a permanent residence, and children, are not a mandatory and unconditional grounds for refusing to grant the motion; there is a father of the children who is also obligated to upbringing them”. We believe that such a formal approach to deciding a person’s fate clearly based on the position of the criminal prosecution agency is fundamentally wrong.

At the same time, it is worth noting that investigative judges have become more careful in justifying their decisions influenced by requirements of the Supreme Court of the Republic of Kazakhstan and the growing professionalism of lawyers seeking to vacate unreasoned authorizations. Courts of appeal have also begun to take a more principled approach to reasoning and to annul those rulings of investigative judges that fail to display the arguments of the defense or verify the validity of the suspicion. This practice encourages investigative judges to describe in their decisions the specific factual data that supports the suspicion and the risks of obstructing the investigation. However, eliminating formalism is still a long way off—both raising legal awareness of judges and, possibly, amendments to criminal procedure law are required, such as the mandatory drafting of a detailed ruling on authorizing a pretrial detention similar to a sentence. This is required to strengthen the judge’s accountability for the quality of the decision made.

It should be understood that the decision to authorize pretrial detention without proper justification entails both suffering of a particular individual and a negative attitude of society towards the justice system. It results in grounds for accusing the court of arbitrary application of the norms of criminal procedure law. Along with that, formalism is associated with redundancy due to the lack of real grounds for applying stricter preventive measures. Assessing each case individually allows us to avoid the routine application of pretrial detention and replace it with milder measures. Therefore, elimination of formalism is a necessary condition for a reasonable reduction of more stringent measures of restraint to be applied.

Subjectivism in this context is the utilization of procedural coercion measures in violation of the principles of legality and justice while restrictions on the rights and liberties of a person and citizen are permitted without sufficient grounds or disproportionate to the circumstances. Arbitrariness is precisely what the guarantees of judicial authorization and prosecutorial oversight combat. However, individual manifestations of arbitrariness can be highlighted in the current practice of Kazakhstan.

First, this refers to the problem of *diversity of practice* depending on the region or specific judges. In this case, we do not mean uniformity in judicial practice, which basically contradicts to the principle of justice and other legal principles, but the lack of a uniform understanding of the norms of criminal procedure law. Thus, the case study shows that some regions demonstrate the percentage of refusals to authorize pretrial detention being significantly lower than average, while other regions have a higher percentage. This indicates a different interpretation of the legal criteria for the application of this measure of restraint. For example, one investigative judge sees an argument “gravity of the crime” to be sufficient to authorize pretrial detention, while it is not true for another judge that requires factual data to confirm specific risks. The lack of broad access to the decisions of investigative judges obscures a full and accurate picture, but the attorney community has repeatedly criticized the element of “judicial discretion”, which, unfortunately, has increasingly come to border on subjectivity.

Second, we may raise the cases of *unjustified non-application of milder measures*, which can be considered a manifestation of arbitrariness from the standpoint of violating the principle of expediency. The requirements of international standards are aimed at choosing a measure that minimally restricts the rights and freedoms of a person and citizen and is sufficient to achieve the goals of criminal proceedings. Accordingly, unreasonable ignoring this obligation by a court or criminal prosecution body by applying more stringent preventive measures in practice than required by the prevailing circumstances represents nothing other than

arbitrariness. Thus, research demonstrates the presence of facts of occasional bail. The defense often motions for replacing pretrial detention with bail specifying a specific amount and guaranteeing their appearance, but investigative judges refuse without clear reasoning. Such decisions by investigative judges are naturally recognized by the appellate court as unreasoned and are overturned. The severity of the article of the Criminal Code itself does not preclude the possibility of bail, especially if a suspect receives favorable reports, has the relevant property and has committed the crime for the first time. In this case, the court's arbitrary preference for pretrial detention is unacceptable.

Third, *routine extension of pretrial detention*. Preliminary investigations are often delayed, and the period of pretrial detention is extended automatically despite the absence of investigative actions by the investigating authorities. The situation itself contradicts the principle of a reasonable period of pre-trial investigation. Therefore, the lack of activity in investigative actions may serve as grounds for the release from custody, since prolonged detention without compelling reasons and grounds, including by delaying proceedings, is one of the forms of torture. In practice, incidents often arise where a criminal prosecution agency attempts to extend a person's pretrial detention simply "for the sake of order", but the appellate court overturns such an extension, citing its unreasoned nature and a violation of the individual's right to a reasonable time and a speedy trial. Consequently, such a practice can be considered arbitrary deprivation of liberty, especially in cases where the investigation results in either a downgrade to a more lenient charge or the dismissal of the case altogether. Under such conditions, a person is effectively serving a "punishment" in advance, which contradicts the principle of the presumption of innocence.

The abovementioned issues established as a result of the court decisions analysis are also raised by other legal scholars [6, 7, 8].

International standards define *reasonableness and proportionality* of their application as criteria for the legality of procedural coercive measures. Principles and norms of the International Covenant on Civil and Political Rights require pretrial detention to be reasonable and necessary in each specific case, otherwise it must be recognized as arbitrary even if formal legality is followed. For this reason, the decision of investigative judges to authorize pretrial detention as a measure of restraint as a routine one, without a detailed analysis of specific factors that form the basis for the application of this measure of restraint is considered a significant violation of criminal procedure law. In 2014 and 2019, during the Universal Periodic Review, a number of countries recommended Kazakhstan to implement alternative measures of restraint other than pretrial detention and to ensure judicial review in full compliance with Part 3, Article 9 of the International Covenant on Civil and Political Rights [9, 10]. This means that unreasonable application of pretrial detention as a measure of restraint has been recognized at the international level and should be eliminated as soon as possible.

Fourth, arbitrary use of pretrial detention may include cases where this measure of restraint is chosen *for a purpose other than its intended purpose*—for example, when arrest or pretrial detention is used to pressure a suspect into confessing, including for less serious crimes than the original subsumption of the action. The application of a measure of restraint that does not serve the objectives of criminal proceedings but is used to exert pressure on a suspect or accused, constitutes not only a gross violation of the rule of law but also a form of torture.

Unfortunately, due to corporate ethics and resistance, such facts remain latent and difficult to prove. However, objective signs of such tactical techniques are revealed quite easily, which becomes the basis for public distrust of criminal prosecution agencies.

An analysis of criminal cases allows us to identify several behavioral patterns of criminal prosecution authorities in this respect. Thus, a suspect may remain at large as long as they fully cooperate with the investigation; however as soon as they begin to understand the real legal consequences in accordance with the subsumption of the action and begins to deny certain facts, an investigator immediately begins to initiate a motion to apply pretrial detention. The situation remains the most complicated in cases of economic crimes, where the application of pretrial detention as a measure of restraint is effectively prohibited. By their very nature, economic crimes always occur in interactions with various parties to legal relations. Therefore, a solution for the criminal prosecution agency is to attempt to classify these acts to be done by an organized crime group, which subsequently allows for the application of pretrial detention. The application of this measure of restraint is tactically determined by the fact that economic crimes are often committed through contractual relations, namely are of a civil legal nature. Accordingly, a suspect staying at liberty is fully capable of properly meeting the demands of creditors and fulfilling their civil obligations, which may serve as grounds for terminating the criminal case due to the absence of *corpus delicti*. For this reason, criminal pros-

ecution authorities may exhibit an unhealthy interest, which results in an accusatory bias, therefore may apply pretrial detention as a means of pressure. Another option may be the reverse procedure, namely plea bargaining, which results in the criminal prosecution agency changing their measure of restraint to the one not associated with deprivation [11, 12].

This practice is dangerous because it transforms the institution of procedural compulsion into a means of pressure and torture, which is unacceptable given the purpose and objectives of the national criminal process. This is the quintessence of arbitrariness—shifting away from legally established goals to illegal ones. This phenomenon must be eliminated in the fields of judicial control, prosecutorial supervision and the internal professional ethics of investigative bodies.

In general, the application of procedural compulsion measures in Kazakhstan is based on the law, however individual instances of arbitrariness still may take place. The criteria for the arbitrary application of procedural compulsion measures include incomplete consideration of individual circumstances, differences in practice due to the arbitrary application of norms, ignoring the application of alternative measures, and excessively long-term pretrial detention for purposes other than intended. All this undermines trust in the justice system and requires further reforms in this area of criminal procedure.

Conclusions

The synthesis of the research results provides a comprehensive review of the flaws in the application of pretrial detention as a measure of restraint in the Republic of Kazakhstan.

As part of the judicial practice analysis and comparison with international standards and doctrine, the following have been established:

1. The excessive use of pretrial detention is expressed in the high frequency of authorizing this measure for the medium-gravity crimes, rare use of alternatives, and the routine extension of pretrial detention.
2. Formalism manifests itself in the template reasoning of motions and court decisions, the lack of evidentiary specification of risks, and the substitution of individual circumstances analysis with references to the severity of the charges.
3. Subjectivism (elements of arbitrariness) is expressed in regional heterogeneity of practice, divergent interpretations of risk criteria, ignoring alternative measures and, in some cases, the use of pretrial detention outside its intended procedural purpose.
4. A discrepancy has been established between the normative model of the “exceptional nature” of a preventive measure and the actual presumption of its appropriateness.
5. An institutional relationship was identified between the lack of resources for alternative measures and the dominance of pretrial detention.

Thus, the results confirm the systemic nature of the identified problems, rather than occasional occurrence.

In summary, the main results of the study are as follows:

- pretrial detention ceases to be a measure of last resort and becomes an administratively expedient instrument;
- judicial line of argument often complies with the formal legal requirements, but does not meet the standard of evidentiary sufficiency;
- alternative measures of restraint are applied less frequently due to institutional and organizational factors rather than their normative inconsistency;
- the main methodological problem is the substitution of the presumption of freedom with the presumption of procedural expediency.

Thus, we can state that the objective set in the article, namely, to identify the factors of prevailing pretrial detention and to determine the validity criteria, has been achieved.

The scientific value of the paper is as follows:

1. A systemic classification of law enforcement flaws (redundancy—formalism—subjectivism) as interrelated levels of violation has been suggested.
2. A conceptual model for assessing the justification for detention has been developed on the basis of the following criteria: evidentiary specification of risk; proportionality; tailoring; and the impossibility of applying a milder measure.
3. The concept of institutional inertia of the prosecutorial mindset has been formulated as an explanatory framework for the identified phenomena.

4. The necessity of transition from a formal to a substantive standard of judicial review has been substantiated.

Thus, the study contributes to the improvement of the theory of procedural coercion measures and provides a more profound theoretical insight into the practical application of the presumption of innocence.

The practical significance of the results is demonstrated by their potential use in following ways: the preparation of reasoned judicial orders on authorizing measures of restraint; the formulation of prosecutorial stance on supporting or dismissing motions; the activities of the defense when appealing pretrial detention decisions; the development of methodological guidelines for criminal prosecution bodies; and the improvement of training courses on criminal procedure and judicial review.

The proposed validity criteria may serve as a tool for internal self-control of law enforcement officers to minimize the risk of arbitrary decisions.

Possible areas for application of the results are the following: rulemaking—to clarify the requirements for the reasoning of decisions on detention, as well as to develop procedures for the mandatory assessment of alternatives; judicial practice—as a guide for the unification of approaches to the assessment of procedural risks and smoothing regional diversity; human rights activities—to track compliance with international standards regarding pretrial detention; research activities—framework for empirical analysis of the influence of judicial reasoning on the trend of preventive measures applied; the education—to develop competencies focused on the application of the principles of adequacy and tailoring.

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А.А. Касимов

Күзетпен ұстаудың негізділік критерийлері: сот қателіктеріне талдау жасау

Зерттеудің мақсаты — күзетпен ұстау түріндегі бұлтартпау шарасын қолданудың негізділігін айқындайтын құқықтық және практикалық критерийлерді кешенді талдау, сондай-ақ осы шараны таңдау кезеңінде туындайтын типтік сот қателіктерін анықтау. Жұмыста қылмыстық-процестік заңнаманы жүйелі талдау әдістері, салыстырмалы-құқықтық әдіс, сонымен қатар сот практикасына статистикалық және дескриптивті талдау жасау әдістері қолданылды. Күдіктің негізділігін және сот төрелігіне кедергі келтіру қауіптерін бағалау тұрғысында Қазақстан Республикасы Жоғарғы Сотының нормативтік қаулыларын және Адам құқықтары жөніндегі Еуропалық соттың (АКЕС) құқықтық ұстанымдарын зерттеуге ерекше назар аударылды. Зерттеу нәтижелері процестік мәжбүрлеудің ең қатаң шарасын шамадан тыс қолдану үрдісінің сақталып отырғанын көрсетеді. Автор соттағы формализм (тергеу тарапының уәждерін автоматты түрде көшіру) мен бағалаудың еріктілігі (айыптын ауырлығы қамауға алудың жалғыз және шешуші факторына айналуы) негізгі мәселелер екенін анықтады. Мақалада типтік қателіктер егжей-тегжейлі жіктелген: іс материалдарында нақты деректердің болмауынан бастап, баламалы шараларды (үйқамақ немесе кепіл) қолдану мүмкіндігін ескермеуге дейін. Қысқаша тұжырымдар өтініш хаттарды қарау кезінде формальды бақылаудан мазмұнды бақылауға көшу қажеттілігін негіздейді. Күзетпен ұстаудың негізділігі тұлғаның жасырыну немесе дәлелдемелерді жою ниетінің болжамды емес, нақты дәлелдерімен расталуы тиіс. Жеке бостандықты негізсіз шектеу жағдайларын азайтуға және сот қызметіндегі айыптау бағытын еңсеруге бағытталған процестік механизмді жетілдіру бойынша ұсыныстар берілген.

Кілт сөздер: күзетпен ұстау, бұлтартпау шаралары, сот қателіктері, қылмыстық процесс, қамауға алудың негізділігі, сот формализмі, процестік мәжбүрлеу.

А.А. Касимов

Критерии обоснованности заключения под стражу: анализ судебных ошибок

Целью данного исследования является комплексный анализ правовых и практических критериев, определяющих обоснованность применения заключения под стражу, а также выявление типичных судебных ошибок, возникающих на этапе избрания данной меры пресечения. В работе использованы методы системного анализа уголовно-процессуального законодательства, сравнительно-правовой метод, а также статистический и дескриптивный анализ судебной практики. Особое внимание уделено изучению нормативных постановлений Верховного Суда Республики Казахстан и правовых позиций ЕСПЧ в контексте оценки обоснованности подозрения и рисков воспрепятствования правосудию. Результаты исследования демонстрируют сохраняющуюся тенденцию к избыточности применения наиболее строгой меры принуждения. Автором выявлено, что ключевыми проблемами остаются судебный формализм, выражающийся в автоматическом копировании выводов следствия, и произвольность оценок, когда тяжесть обвинения становится единственным и решающим фактором для ареста. В статье детально классифицированы типичные ошибки: от отсутствия конкретных фактических данных в материалах дела до игнорирования возможности применения альтернативных мер (домашнего ареста или залога). Краткие выводы подчеркивают необходимость перехода от формального к содержательному контролю при рассмотрении ходатайств. Обоснованность заключения под стражу должна подтверждаться реальными, а не предполагаемыми доказательствами намерений лица скрыться или уничтожить улики. Предложены рекомендации по совершенствованию процессуального механизма, направленные на минимизацию случаев неоправданного ограничения личной свободы и преодоление обвинительного уклона в деятельности судов.

Ключевые слова: заключение под стражу, меры пресечения, судебные ошибки, уголовный процесс, обоснованность ареста, судебный формализм, избыточное принуждение.

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Secondary Victimization in the Official Duties of Police Officers

The relevance of the study is determined by the insufficient regulatory and organizational protection of police officers exposed to secondary victimization in the course of their professional activities. The purpose of the study is to identify the features of secondary victimization and to assess the effectiveness of existing prevention mechanisms within the system of internal affairs bodies of the Republic of Kazakhstan. The object of the study is the public relations arising from internal investigations involving police officers. The study employs methods of systematic analysis of scientific literature, examination of regulatory legal acts, and an empirical study in the form of a survey of police officers. The results indicate the fragmented nature of preventive practices and a high demand among police officers for formalized protection guarantees. The conclusions substantiate the need to improve legal regulation and introduce specific mechanisms to protect police officers. Implementing specialized protection procedures will increase officers' trust in internal investigations.

Keywords: secondary victimization, police officers, safety, protection act, official investigation, protection, service activity, Disciplinary liability, Prevention, Regulatory framework.

Introduction

Relevance of the research topic. The relevance of this study is that victimological research for a long time has focused mainly on the problems of primary victimization and the analysis of the direct impact of criminal assault on the victim, including her subjective experience. The scientific literature has focused on crime rates and the consequences of crimes for victims, with much of the empirical and theoretical work focusing on victimization in the context of sexual crimes and interpersonal violence.

At the same time, the problem of professional victimization of police officers remains insufficiently developed to date. The understanding of the phenomenon of secondary victimization of police officers, which arises not as a result of the criminal assault itself, but as a result of institutional, organizational, and procedural practices accompanying official activities, including official investigations, disciplinary procedures, and interaction with other government agencies, is particularly fragmented.

The relevance of the study is also determined by society's and the state's increasing attention to law enforcement agencies' accountability, greater control over police officers' official behavior, and the expansion of disciplinary and procedural mechanisms for evaluating their professional activities.

The transformation of public administration mechanisms, changing socio-economic conditions and the active development of digital technologies have complicated and made multilevel the nature of security threats. Modern society is characterized by the simultaneous expansion of opportunities for law-abiding citizens who use the achievements of scientific and technological progress to improve the quality of life, as well as for those who commit illegal acts and adapt new technologies and economic processes for criminal purposes [1].

In such circumstances, the law enforcement system faces a need to modernize procedures and increase transparency of its activities, thereby increasing the burden on employees and their institutional vulnerability. Of particular importance is the issue of internal legal protection of personnel, including mechanisms to prevent undue pressure, stigmatization, and secondary victimization.

Thus, the study of institutional guarantees for the official security of police officers aligns with the strategic objective of further developing a rule-of-law state, focused on balancing the interests of the individual, society, and the state. Police officers are increasingly finding themselves in a situation of increased institutional vulnerability, in which legal and organizational responses aimed at ensuring legality may inadvertently lead to the formation of the phenomenon of secondary victimization. Police officers increasingly find them-

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selves in a situation of increased institutional vulnerability, in which legal and organizational responses aimed at ensuring legality may inadvertently lead to the formation of the phenomenon of secondary victimization.

The lack of a systematic approach to identifying institutional factors in secondary victimization and to developing mechanisms to protect the rights and legitimate interests of police officers necessitates a comprehensive scientific analysis of this issue.

The theoretical basis of the study was the provisions of the general victimological theory (G. von Gentig, B. Mendelssohn), the concept of secondary victimization, developed by M. Simonds, as well as modern research on institutional and organizational victimization. Methodologically, the work is based on a victimological approach in criminology, according to which harm can be caused not only by criminal encroachment, but also by the peculiarities of the functioning of social and legal institutions. Additionally, the provisions of the theory of organizational Support (Organizational Support Theory) and the model of professional requirements and resources (JD-R Model) are used, which make it possible to consider the office environment as a factor of both protection and reinforcement of victimogenic risks.

The purpose of the study. The purpose of this study is to analyze the phenomenon of secondary victimization of police officers, taking into account the institutional, organizational, and procedural factors influencing its formation, as well as to develop ways to improve the legal and organizational mechanisms for the prevention of secondary victimization in the law enforcement system of the Republic of Kazakhstan.

Research objectives. To achieve this goal, the study assumes the solution of the following tasks:

1. To consider the main scientific approaches to the concept of victimization and secondary victimization in the framework of victimological research.
2. To analyze the features of professional victimization of police officers and determine the place of secondary victimization in its structure.
3. Identify the risks and impact of secondary victimization on the professional activities of police officers
4. Formulate proposals to improve the legal and organizational mechanisms for the prevention of secondary victimization of police officers.

Methods and materials

During the study, foreign practices for countering secondary victimization of law enforcement officers were examined. The importance of the organizational environment is confirmed by research based on the Job Demands–Resources (JD-R) Model, which shows that the combination of high job demands and limited resources increases stress levels and contributes to the development of professional burnout. In conditions of constant conflict, a lack of psychological support, the formal nature of internal investigations, or low managerial involvement can exacerbate the consequences of primary aggression, thereby reproducing victimization processes at the institutional level. Accordingly, the organizational environment can act as either a protective factor or a factor that intensifies secondary victimization [2].

The study was carried out using a comprehensive victimological approach that allows us to consider the secondary victimization of police officers in the context of disciplinary and official proceedings. The methodological basis of the work combines the provisions of criminology and victimology with elements of criminal and administrative law, given the institutional nature of secondary victimization and its direct connection to procedural decisions and government agency management practices. As part of the legal analysis, general scientific methods of analysis and synthesis were used, enabling investigation of the content and structure of the norms governing the disciplinary responsibility of police officers, the procedure for conducting official investigations, and the system of procedural guarantees for the protection of their rights. Special attention was paid to the analysis of the language of legal norms and departmental regulations, as well as to the degree to which they focus on preventing repeated professional and psychological harm to police officers during official procedures. The empirical basis of the study was the results of a sociological survey of employees of the internal affairs bodies of the Republic of Kazakhstan, aimed at identifying the victimogenic potential of existing disciplinary and official procedures. 541 police officers from various departments participated in the study. The survey enabled analysis of employees' perceptions of the objectivity and fairness of official investigations, the degree to which their procedural position is taken into account, and the presence or absence of effective protection mechanisms against additional professional and psychological pressure. The results obtained were used to assess the extent to which current disciplinary procedures can act as a factor in the secondary victimization of police officers. Additionally, the study's empirical basis consisted of generalized,

depersonalized materials on law enforcement practice, data from official investigations, and the author's personal work experience in the personnel inspection unit. The use of practical examples enabled the identification of systemic problems in protecting the rights and legitimate interests of police officers, as well as substantiating proposals to improve legal regulation and prevent secondary victimization.

The empirical part used methods of quantitative and qualitative analysis of survey results, including generalization, grouping and interpretation of data. In the analysis of foreign practice, a structural and functional analysis of disciplinary procedures as an institutional mechanism was used.

Results

The following internal investigation case illustrates this issue. During the work, a verbal conflict arose among colleagues, resulting in mutual insults. One of the participants in the conflict stated in his report that he had been slapped on the face. However, there was no objective evidence supporting this claim: no video surveillance was available in the room, no visible injuries were documented, and no medical examination was conducted. Despite the lack of evidence, an internal investigation was initiated based on the report. As a result of the review of the case materials, both employees were held liable for violating the statutory norms governing official relations. However, afterwards, their colleagues in the professional environment developed negative attitudes towards them.

Thus, the institutional reaction was expressed in the formal and symmetrical application of disciplinary sanctions without differentiating the roles of the parties to the conflict, without establishing the actual circumstances of the alleged physical impact, and without taking into account the consequences of subsequent stigmatization, which led to the secondary victimization of participants in the official conflict. From a victimological perspective, such a situation shows signs of secondary victimization, which does not arise from the initial conflict interaction but rather from the peculiarities of its institutional resolution.

Firstly, the internal investigation was primarily formal in nature and focused on restoring a disciplinary balance rather than protecting the applicant or establishing his vulnerability. The lack of evidence of physical impact did not warrant a waiver of symmetrical disciplinary responsibility, thereby negating the importance of the employee's request for protection.

Secondly, the applicant did not receive institutional support after the investigation was completed. On the contrary, the staff has developed a wary attitude towards the employee who initiated the report. He began to be perceived as a source of conflict, leading to deterioration in interpersonal and professional communication. This effect corresponds to the phenomenon of "organizational stigmatization of complainants" described in the scientific literature [3; 41].

In the academic literature, stigmatization is defined as a symbol with negative connotations that reduces a person to a polluted state, which leads to underestimation and labeling it as a symbol of rejection. In other words, stigmatization is a deviation from generally accepted phenomena and is a sociocultural process in which marginalized groups are recognized as undesirable. In addition to psychological and physical stigmatization, it also leads to such social consequences as separation, isolation, reduced interaction, deprivation of equal opportunities for people, and weakening of social support [4; 2042-2043].

Stigmatization of the victim of an offense is one of the key factors of secondary victimization, since it forms negative social labels and biased attitudes on the part of society and institutional actors. When the victim is confronted with accusations, distrust, or belittling of the harm caused, psychological trauma and a sense of social isolation increase; such a reaction of the environment is often manifested in the activities of law enforcement agencies, medical and social services, which transforms the initial harm into a repeated traumatic experience. As a result, stigmatization not only complicates the recovery process of the victim but also reduces their willingness to seek protection and legal assistance. Therefore, overcoming stigmatizing attitudes is a necessary condition for preventing secondary victimization and improving the effectiveness of the system for protecting the rights of victims of human rights violations.

Thirdly, the negative consequences of the treatment proved more sensitive to the applicant than the participation in the initial conflict itself. In other words, the situation that prompted an employee to resort to a legally prescribed protection mechanism could have been limited or local in nature, but the subsequent reaction of the surrounding professional environment—distrust, informal condemnation, alienation, or doubt of loyalty—led to more lasting and profound consequences.

In such circumstances, a formally guaranteed right to appeal is not accompanied by actual support. On the contrary, an employee may face deterioration in official relations, a decrease in trust from management or colleagues, and a restriction on informal communication, which objectively affect their professional well-

being and prospects. Thus, the very fact of treatment triggers a mechanism of secondary victimization: instead of restoring violated rights and a sense of security, social and professional vulnerability increases.

This dynamic creates an attitude among employees that leads them to refuse to use legitimate means of protection in the future, undermining the principles of fairness within the team and hindering the formation of a healthy organizational culture.

The main regulatory legal act of the Republic of Kazakhstan defining the legal status of law enforcement officers, as well as the procedure and grounds for bringing them to disciplinary responsibility, is the Law of the Republic of Kazakhstan "On Law Enforcement Service" № 380-IV dated January 6, 2011 (hereinafter referred to as the Law). This law establishes key legal definitions, including those of official investigation, disciplinary responsibility, disciplinary misconduct, and disciplinary punishment [5].

According to the Law, an internal investigation is a regulated activity aimed at establishing the facts of disciplinary violations, identifying the circumstances of their commission, and the causes and conditions that contributed to them. As part of an internal investigation, evidentiary materials are collected and analyzed, participants are interviewed, and official documentation and other relevant sources of information are studied, enabling a comprehensive assessment of the nature and degree of disciplinary misconduct. An internal investigation is conducted at the direction of the head of a law enforcement agency or another authorized official. At the same time, the law provides exceptions to the general rule: in cases of minor disciplinary misconduct and when an employee admits the violation in writing, an official investigation may not be conducted. The legislator differentiates disciplinary offenses by severity, distinguishing between minor, significant, and gross violations, thereby enabling the application of proportionate disciplinary measures. The system of disciplinary penalties established by law includes a remark, reprimand, severe reprimand, and warning for incomplete official compliance, demotion to a special rank or service class, dismissal from law enforcement agencies, and dismissal with deprivation of departmental awards. This gradation of liability measures reflects the principle of differentiating disciplinary responses according to the nature and consequences of the misconduct.

Along with the Law, the law enforcement practice of conducting official investigations is regulated by bylaws. In particular, the authorized persons are guided by the Methodological Recommendations on the procedure for conducting internal investigations and imposing disciplinary penalties in the internal affairs bodies of the Republic of Kazakhstan, approved by Order № 318 of the Ministry of Internal Affairs of the Republic of Kazakhstan dated April 21, 2025. These Methodological Recommendations aim to increase disciplinary responsibility among employees of internal affairs bodies, prevent offenses, including corruption, ensure legality during official investigations, and improve the effectiveness of educational and psychological work with personnel.

The legislation consolidates the rights and protections of employees in internal investigations, providing formal guarantees of legality and discipline. However, it does not always pay sufficient attention to the issues of secondary victimization and the stigmatization that may arise during procedures. As a result, employees may experience additional psychological and professional pressure, even when fully complying with the regulations.

With this in mind, it is important to consider developing institutional support measures that do not change the existing legal framework but do minimize the risk of repeated damage, increase transparency of procedures, and strengthen confidence in the internal control system.

To identify employees' needs regarding ensuring their official and legal security during official investigations, a sociological study was conducted, in which respondents, including employees of internal affairs bodies, were presented with the idea of introducing an "Act of Protection" as an additional procedural tool. 541 police officers from various departments took part in the survey.

For example, in Germany, as the JD-R Model states, different types of work-related social resources, such as support from supervisors or co-workers, group cohesiveness, and organizational support, have been shown to increase employees' organizational commitment.

An explanation for the relationship between supervisor support and affective commitment is provided by Organizational Support Theory (OST). According to OST, employees develop a general belief about the extent to which the organization cares about their well-being and values their contributions; this belief is referred to as perceived organizational support (POS). POS is strengthened by favorable work experiences, such as organizational rewards and positive job conditions, and it mediates the positive relationship between supervisor support and affective commitment. This occurs because employees feel an obligation to care about the organization in return for the fulfillment of their socio-emotional needs [2; 2-3].

Thus, perceived organizational support is an important factor in preventing secondary victimization and in fostering a sense of security and recognition of professional contributions among employees. It promotes the development of trusting relationships between staff and management, reducing emotional stress in stressful situations and increasing job satisfaction. The lack of such support, on the contrary, can increase feelings of alienation, lead to professional burnout, and decrease motivation. With a high level of POS, employees adapt more easily to conflict situations and criticism, perceiving the organization as a partner rather than a source of pressure. This, in turn, has a positive effect on performance quality and resistance to stressors.

In the context of victimological analysis, this is of fundamental importance. In the absence of support and fair response procedures, the risk of secondary victimization increases, as employees may perceive the organization as a source of additional pressure rather than protection. On the contrary, a high level of organizational support can perform a protective function, reducing the likelihood of repeated psychological damage and strengthening the professional stability of police officers.

The proposed "Protection Act" is considered a comprehensive document formed by a police officer, in which their position on the merits of the check can be systematically stated. The structure of the act is supposed to include objections and comments on the materials of the internal investigation, an indication of possible violations of the procedure, requests for additional verification actions, references to unacceptable or questionable evidence, as well as justification of the position by citing regulatory legal acts and evidence of protection. Thus, the act is intended to institutionalize the employee's right to fully implement the principle of competition and equality of the parties within the framework of an internal procedure.

The results of the study indicate that there is a request in the system to strengthen procedural guarantees. Even though the majority of respondents generally positively assess the current procedure for conducting internal investigations, a significant number indicate the presence of systemic risks: insufficient consideration of the employee's position, limited time to prepare explanations, and a lack of clearly defined guarantees of protection in the event of disputes. About half of the respondents, directly or indirectly, confirmed that their opinions are not always taken into account during investigations, which creates a sense of vulnerability and reduces confidence in the procedure.

In this context, the initiative to introduce the "Act of Protection" received almost unanimous support: 90 % of respondents supported the proposal. At the same time, employees associate the implementation of the act primarily with the possibility of a clear, structured presentation of their position, protection against unfounded accusations, and increased transparency in the decisions of disciplinary commissions. Significantly, about 80 % of respondents believe that regulatory consolidation of such a tool would help strengthen confidence in the procedures of official investigations.

Thus, the results of the study demonstrate a steady institutional demand for expanding procedural guarantees of objectivity, fairness, and the legal protection of employees. The introduction of the "Protection Act", subject to its regulatory consolidation and the provision of legal support, can become a significant mechanism for improving official security, strengthening confidence in the internal control system, and reducing conflict in internal affairs bodies, which ultimately will contribute to a more effective performance of their duties by employees.

Discussion

To understand the phenomenon of secondary victimization, it seems necessary to refer to the original concept of victim. The famous criminologist D.V. Rivman noted that "for victimology as a general theory of victimization, the subject of which is victims in any non-criminal situations (environmental disasters, natural disasters, equipment failures, etc.), the term "victim" is quite sufficient, since it designates the victim without detailing the mechanism of harm" [6; 33]. S. Mandl and J. Planitzer, based on the analysis of international conventions, note that in the 1980s a narrow understanding of the definition of "victim" prevailed, associating only with physical violence. However, later it was expanded to include psychological and economic damage [7; 58].

In turn, from a victimological point of view, it is proposed that the concept of "victim" includes not only the person who was harmed, but also the victim of an attempted crime, close relatives of deceased victims, and "guilty" victims [8; 67]. Some authors refer to victims not only as individuals but also as legal entities, the state, society, the international legal order, and the legal and moral system of society, using the term "victim" in an expanded sense [9; 124]. In line with this approach, we consider it necessary to clarify that, within the framework of criminology, a victim is usually understood as a person who has been a victim of a crime.

In contrast, in victimology, this concept has a broader meaning and does not necessarily imply harm resulting from a criminal act. The very fact of causing harm, including moral or psychological harm, is sufficient [10; 31].

Summarizing the presented scientific approaches, it should be noted that the concept of a victim in criminological science is not limited to criminal situations and can encompass cases of physical, moral, or psychological harm in broader social contexts. Based on this, it seems possible to consider police officers whose professional activities are objectively associated with increased risks and stressful effects as potential victims. At the same time, victimization can be caused not only by unlawful encroachments but also by internal organizational factors, including pressure, stigmatization, or a negative attitude toward an employee who exercises his legitimate rights, for example, by applying for protection of his own interests.

Such a statement of the issue is not aimed at discrediting the institution of law enforcement, but, rather, is focused on a scientific understanding of existing risks to minimize them. Identifying and discussing the factors of secondary victimization in the professional environment will help create a more stable, fair, and supportive organizational culture. Ultimately, this will help strengthen official discipline, improve the performance of official duties, and strengthen confidence in the law enforcement system as a whole.

It is in this expanded victimological understanding of the victim that it seems appropriate to consider the phenomenon of secondary victimization of police officers. The concept of secondary victimization was first conceptualized more than forty years ago by M. Symonds, who introduced the concept of the so-called "second trauma". Such trauma occurs when victims of crime, seeking recognition and support from government and law enforcement agencies, encounter not the expected empathy, but a formally correct yet emotionally distant response from professionals [11; 132].

Secondary victimization refers to indirect harm to the victim related to the victim's attitude toward the social community as a whole, persons in the immediate social environment, social control authorities, intermediaries, and staff working with victims [12; 262-263]. Moreover, with secondary victimization, victims of crimes, especially those who are sexually abused, receive more serious and lasting injuries [13].

Such institutional detachment can exacerbate the initial damage and create a persistent sense of alienation and distrust of the justice system among victims.

In this context, the spread of the phenomenon of secondary victimization to professional groups with an increased level of victimization, including police officers, is of particular scientific interest. Despite having powerful powers, police officers in some cases find themselves victims not only of criminal attacks, but also of disciplinary procedures, as well as subsequent organizational and procedural influences that can enhance the harm they have caused.

In relation to the professional activities of police officers, secondary victimization manifests itself in the form of repeated psychological and professional damage caused by internal investigations, disciplinary procedures, public pressure, and a lack of sufficient institutional guarantees of support.

In this sense, secondary victimization should be considered not only as an individual psychological phenomenon, but also as a structural problem in legal regulation and the organizational culture of law enforcement agencies, which necessitates a comprehensive and comparative analysis of national models of protection for police officers.

In our understanding, for police officers, secondary victimization manifests itself through formal procedures, official checks, bureaucratic alienation, and lack of psychological support, which increases stress and emotional burnout, as well as negatively affects the effectiveness of their further work, reducing professional motivation and resistance to stressful situations. Therefore, it is important not only to consolidate legal guarantees of protection but also to create an organizational environment that provides psychological support, leadership involvement, and the development of professional competencies.

In the context of the study of secondary victimization in law enforcement agencies, situations in which formally legitimate disciplinary procedures lead to additional harm to the applicant are of particular interest.

Thus, the analysis of secondary victimization requires an assessment not only of the legality of disciplinary procedures, but also of their actual impact on the employee's situation. This involves studying institutional safeguards, organizational culture, mechanisms to prevent the stigmatization of applicants, and procedural tools to minimize the risk of repeated harm when an employee exercises their legal rights.

Conclusions

The conducted analysis allows us to state that the secondary victimization of police officers is an independent and systemic victimological phenomenon that is formed not as a result of criminal encroachment,

but as a result of institutional, organizational, and procedural features of official activity. In some cases, an employee's vulnerability stems not so much from the conflict itself or the disciplinary situation, but rather from the subsequent reaction of the professional environment and the specifics of internal production.

It has been established that the current system of official investigations in the Republic of Kazakhstan primarily focuses on ensuring discipline and legality, but does not fully take into account the employee's position as a potentially vulnerable subject. Formalization of procedures, limited procedural guarantees, insufficient regulation of the right to protection, as well as manifestations of stigmatization in the professional environment (perception of treatment as "disloyalty", formation of negative labels, reduction of informal support) can increase the social and professional vulnerability of a person exercising their legitimate rights. As a result, recourse to legally prescribed protection mechanisms may be accompanied not by the restoration of a sense of security, but by the emergence of additional reputational and psychological risks.

Thus, the secondary victimization of police officers should be considered as a structural problem of legal regulation and the organizational culture of law enforcement agencies. It has an impact on professional safety, employees' psychological stability, the level of internal trust, and the willingness to use legitimate legal protection mechanisms. Ignoring this problem can contribute to the latency of office conflicts, reduce openness, and create distrust of internal control procedures.

The proposed "Protection Act" is not a formal duplication of the employee's explanations, but is a procedurally structured tool for implementing the principle of competition and equality of the parties within the framework of an internal audit. Its implementation will minimize the victimogenic factors associated with the formalism of procedures, insufficient fixation of the employee's position and the risk of subsequent stigmatization.

The regulatory consolidation of this mechanism will create additional guarantees of procedural transparency, strengthen employee confidence in disciplinary procedures, and reduce the likelihood of institutional secondary victimization.

To minimize secondary victimization, it seems advisable to institutionalize a victimological approach in disciplinary proceedings, combining organizational and procedural measures. Such measures may include the introduction of an "Employee Protection Act" as a formalized procedural tool that ensures the right to systematically present one's own position, provide evidence, and indicate procedural violations within the framework of an internal investigation. The normative consolidation of this mechanism, combined with the formation of a culture of inadmissibility of stigmatization of applicants, can strengthen guarantees of the objectivity and fairness of disciplinary procedures, increase the level of institutional trust, and, ultimately, have a positive impact on the effectiveness of official activities and the fulfillment by employees of their duties to the state and society.

In addition, the study of foreign practice, in particular the experience of Germany, demonstrates the need for an integrated approach to the prevention of secondary victimization of police officers. Effective staff protection requires not only the regulatory consolidation of legal guarantees, but also the creation of a supportive organizational environment, the development of a psychological support system, increased managerial responsibility, and improved professional training for employees.

It is the combination of institutional, managerial, and personal-professional resources that enables minimizing the negative consequences of primary aggression, increasing employees' stress tolerance, and ensuring the stability of their professional activities. Ultimately, such an integrated approach helps strengthen law enforcement agencies' human resources and increase public confidence in their activities.

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Полиция қызметкерлерінің қызметтік қызметіндегі екінші реттік виктимизация

Зерттеудің өзектілігі қызметтік қызмет барысында қайталама виктимизацияға ұшырайтын полиция қызметкерлерінің нормативтік және ұйымдастырушылық тұрғыдан жеткіліксіз қорғалуымен айқындалады. Зерттеудің мақсаты — Қазақстан Республикасы ішкі істер органдары жүйесінде қайталама виктимизацияның көрініс беру ерекшеліктерін анықтау және оның алдын алу тетіктерінің тиімділігін бағалау. Зерттеу объектісі полиция қызметкерлеріне қатысты қызметтік тексерулер жүргізу барысында туындайтын қоғамдық қағынастар. Зерттеу барысында ғылыми әдебиеттерді жүйелі талдау, нормативтік құқықтық актілерді зерделеу әдістері, сондай-ақ полиция қызметкерлеріне сауалнама жүргізу түріндегі эмпирикалық зерттеу қолданылды. Зерттеу нәтижелері алдын алу шараларының фрагментарлық сипатта екенін және полиция қызметкерлерінің формалдандырылған қорғау кепілдіктеріне жоғары қажеттілігін көрсетеді. Қорытындыда полиция қызметкерлерін қорғаудың құқықтық реттелуін жетілдіру және арнайы қорғау тетіктерін енгізу қажеттілігі негізделген.

Кілт сөздер: екінші виктимизация, полиция қызметкерлері, қауіпсіздік, қорғау акты, қызметтік тергеу, қорғау, қызметтік әрекет, дисциплинарлық жауапкершілік, алдын алу, нормативтік реттеу.

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Вторичная виктимизация в служебной деятельности сотрудников полиции

Актуальность исследования обусловлена недостаточной нормативной и организационной защищённостью сотрудников полиции, подвергающихся вторичной виктимизации в ходе служебной деятельности. Целью исследования является выявление особенностей проявления вторичной виктимизации и оценка эффективности существующих механизмов её профилактики в системе органов внутренних дел Республики Казахстан. Объектом исследования являются общественные отношения, возникающие в процессе служебных расследований в отношении сотрудников полиции. В работе использованы методы систематического анализа научной литературы, изучения нормативных правовых актов, а также эмпирическое исследование в форме анкетирования сотрудников полиции. Результаты исследования свидетельствуют о фрагментарности профилактических мер и высокой потребности сотрудников в формализованных гарантиях защиты. В выводах обосновывается необходимость совершенствования правового регулирования и внедрения специальных механизмов защиты сотрудников полиции.

Ключевые слова: вторичная виктимизация, сотрудники полиции, безопасность, акт защиты, служебное расследование, защита, служебная деятельность, дисциплинарная ответственность.

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Criminalistic potential of machine learning methods in recognizing psychophysiological reactions of participants in investigative interrogations

This study provides a comprehensive assessment of the forensic potential of machine learning methods for recognizing and interpreting the psychophysiological reactions of participants in investigative interrogations in the context of the digitalization of criminal proceedings. The research is based on the analysis and synthesis of foreign empirical studies, as well as on comparative and formal-logical methods, and includes a systematic review of contemporary computer vision and deep learning algorithms used to analyze facial micro-expressions and nonverbal behavior. Empirical evidence from studies conducted by Chinese, American, and Dutch researchers demonstrates that intelligent algorithms are capable of reliably detecting facial micro-dynamics, indicators of anxiety, and emotional instability, in some cases exceeding the consistency of human observation. At the same time, the findings indicate that algorithmic outputs cannot function as autonomous sources of evidence. The study substantiates the need for normative and methodological adaptation of these technologies to domestic forensic practice in the Republic of Kazakhstan, taking into account evidentiary standards, procedural safeguards, and human rights protection. It is concluded that the phased and explainable integration of machine-based psychophysiological analysis into existing forensic psychological and criminological examinations is both feasible and methodologically justified.

Keywords: algorithm, interrogation, forensic science, machine learning, facial expressions, neural network, pattern, anxiety, forensics, emotions.

Introduction

Modern computer forensics [1] is undergoing a phase of rapid digitalization, a process that has long since moved beyond the mere automation of routine operations. Generative artificial intelligence (*hereinafter referred to as AI*) is gradually becoming a practical working tool that not only facilitates the organization and storage of analytical information but also enables deeper examination of an individual's psychophysiological state and the characteristics of emotional expression. The relevance of the present study is **driven by** the fact that generative AI and machine learning methods are increasingly being integrated into the analysis of digital traces; however, their application to the assessment of psychophysiological reactions of participants in investigative interrogations remains theoretically and methodologically underdeveloped. At the same time, as the volume of video and audio data obtained during investigative activities grows rapidly, traditional expert approaches demonstrate limited capacity to identify subtle and short-lived behavioral and emotional indicators.

AI systems are capable of processing data sets that were previously analyzed manually while simultaneously detecting fine-grained details that may remain unnoticed even by experienced forensic experts. These include complex and dynamic behavioral patterns (from the English pattern, meaning "form, model, template, or habitual mode of thinking and behavior") [2], as well as subtle psychophysiological indicators manifested in human behavior. Such elements serve as an important complement to traditional forensic methods, allowing for more accurate situational assessment, the formulation of investigative hypotheses, and their subsequent empirical verification [3].

This technological advancement fundamentally reshapes approaches to the evaluation of evidence in criminal investigations. Forensics becomes more flexible, multilayered, and efficient, while forensic experts gain the opportunity to combine their professional experience with the analytical capabilities offered by machine-based analysis. At the same time, this stage gives rise to a methodological and practical challenge: despite the high accuracy of machine learning algorithms, there is no unified understanding of how the results of automated analysis should be interpreted, validated, and used as evidentiary information within criminal

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proceedings. As a result, a new methodological framework is emerging in which humans and AI interact not as operator and tool, but as complementary participants in the forensic process.

One of the most advanced and promising areas of digital forensics is the analysis of behavioral patterns and psychophysiological reactions [4]. This approach goes beyond the mere recording of observable human actions and seeks to uncover the underlying logic of behavior, emotional fluctuations, and characteristic responses in stressful or conflict situations. Nevertheless, both forensic theory and practice continue to face a significant gap associated with the lack of validated tools and methodological criteria for the use of such technologies in forensic expert activity.

Recent studies demonstrate that machine learning methods—particularly those based on the dynamic recognition of micro-expressions—enable the detection and interpretation of subtle facial movements that typically escape conscious human perception. These algorithms operate on high-frequency video data, capture minimal muscular impulses, and correlate them with emotional patterns derived from large-scale datasets [5].

At the international level, a pivotal role has been played by the Dynamic Facial Micro-Expressions platform (*hereinafter referred to as DFME*) [6], which was specifically developed to train neural networks on detailed recordings of micro-movements of facial muscles. DFME has become a benchmark resource for the analysis of behavioral patterns and human psychophysiological reactions, as it integrates meticulously annotated video sequences, covers a wide range of emotional responses, and provides forensic experts with a reliable framework for testing new models of human psychophysiological behavior. Owing to such resources, the quality of automated micro-expression analysis has improved significantly, and these methods have evolved into tools capable of operating in situations where human perception alone proves insufficient.

Within the criminal procedural context, this technology offers the prospect of objectively assessing the emotional responses of participants in pre-trial investigations, including indicators of stress, anxiety, or deceptive statements. In this regard, particular importance is attributed to an interdisciplinary domain that integrates forensic science, forensic psychology, and artificial intelligence.

The use of neural network-based algorithms for interpreting DFME data requires not only technical but also legal adaptation, specifically the formulation of admissibility criteria for digital evidence, the development of methodologies for expert verification, and the ethical regulation of automated emotion analysis.

Despite the rapid advancement of computer vision technologies, existing systems for facial expression and emotional response analysis in investigative and judicial practice have not yet received normative or methodological institutionalization. In domestic forensic science, there is currently no validated toolkit for identifying the psychophysiological reactions of interrogated individuals using AI technologies. Moreover, the question of the reliability boundaries of machine-based interpretations remains unresolved.

Studies conducted by foreign scholars in the field of visual psychophysics [7] indicate that machine vision algorithms often outperform humans in interpreting facial patterns; however, they require explainability and reproducibility of their decision-making processes.

These issues are particularly salient for forensic examinations, where any automated conclusion must be transparent and verifiable. At the same time, as noted by researchers from the Faculty of Social and Behavioural Sciences at Utrecht University [8], even experienced observers frequently fail to reliably assess levels of anxiety or nervousness based on facial dynamics, whereas computer vision algorithms successfully address this task. This observation highlights the cognitive limits of human perception while simultaneously pointing to the potential of AI to reconstruct an individual's psychophysiological state from video recordings of interrogations.

Consequently, a clear scientific and practical gap exists between the technical capabilities of contemporary machine learning models and their applicability within domestic forensic practice. There is currently no systematic understanding of how the results produced by such algorithms should be interpreted, verified, and employed as evidentiary information or how their probative value should be assessed.

The authors adopt a critical stance toward the uncontrolled implementation of artificial intelligence algorithms in investigative practice and proceed from the premise that machine-based analysis of psychophysiological reactions cannot be regarded as an independent source of evidence. At the same time, provided that such technologies are subject to methodological formalization, normative regulation, and expert verification, they are capable of significantly enhancing the objectivity and reproducibility of forensic psychological and criminological examinations by complementing—rather than replacing—the professional judgment of the expert.

The purpose of the present study is to reveal the forensic potential of machine learning methods in recognizing the psychophysiological reactions of participants in investigative interrogations, as well as to substantiate the possibility of their integration into the system of evidentiary evaluation and forensic expertise in the Republic of Kazakhstan.

To achieve this objective, the study seeks to address the following tasks:

1. To analyze existing approaches to the automated recognition of facial micro-expressions, including DFME as a new benchmark for the dynamic analysis of facial behavior.
2. To examine the concept of “*visual psychophysics*” as a framework for ensuring the explainability of machine learning algorithms in the context of law enforcement and judicial practice.
3. To identify the capabilities and limitations of computer vision technologies in assessing states of anxiety and stress during investigative interrogations.
4. To formulate proposals for incorporating machine learning methods into the domestic methodology of “*forensic psychological and criminological examination*” [9], while ensuring their legal validity and ethical admissibility.

Thus, the present research is aimed at advancing the theoretical foundations of “*digital forensics*”, in particular by developing a scientifically grounded approach to harnessing the potential of machine learning for the recognition of psychophysiological behavioral indicators during investigative activities, including interrogations.

Methods and materials

The methodological framework of the study is based on systemic, comparative-analytical, and interdisciplinary approaches. The research employs methods of forensic analysis, visual psychophysics, machine learning, and computer vision. Comparative analysis was conducted using empirical data from three research domains: dynamic facial micro-expressions (People’s Republic of China), algorithmic robustness to distortions (United States), and automated anxiety recognition (the Netherlands).

Both quantitative and qualitative methods were applied to compare the accuracy of machine learning models with human observational assessments. The empirical dataset included facial action coding system (FACS) data, dynamic parameters of facial muscle activity, and algorithmic response curves to visual distortions. The results obtained were interpreted within the context of law enforcement and judicial practice, which made it possible to formulate proposals for the normative integration of AI methods into forensic expert activity.

Results

The Results section presents an analytical review of several groups of empirical data. First, experimental materials on the dynamics of facial micro-expressions based on the new benchmark DFME dataset developed by specialists in computer science and technology at the University of Science and Technology of China (hereinafter referred to as the PRC) [10] are examined. Second, the methodology for assessing the robustness of algorithms to psychophysical facial distortions proposed by researchers from the University of Notre Dame [7] is analyzed. Third, studies conducted by scholars from the Faculty of Social and Behavioural Sciences at Utrecht University are reviewed, focusing on the machine-based recognition of psychophysiological indicators of anxiety using audio and video recordings of interrogations [8].

Based on the entirety of the reviewed analytical materials, a comparative statistical assessment was carried out to contrast human observational judgments with the outputs of machine learning algorithms. This comparison was aimed at developing a scientific approach to harnessing the potential of machine learning for recognizing psychophysiological indicators of human behavior during investigative activities, including interrogations. The integrated analysis of these data blocks made it possible to form a holistic understanding of both the capabilities and the limitations of applying machine learning algorithms in forensic practice.

In the first empirical data block, the authors analyzed experimental studies conducted by experts from the University of Science and Technology of China on the dynamics of facial micro-expressions using the newly developed DFME benchmark dataset [10]. These experiments made it possible to observe subtle dynamic changes in facial musculature that ordinarily remain beyond the limits of human perception. The dataset comprises video segments ranging from approximately one-twelfth of a second to about half a second in duration. Within these brief intervals, involuntary emotional reactions are captured, which are traditionally described in micro-expression research as manifestations of latent affective tension.

The dataset includes annotations of active muscle units according to the Facial Action Coding System (FACS) [11] for each frame, as well as spatiotemporal features that have been employed in the automated analysis of micro-expressions since the mid-twentieth century. These data enable objective assessment of minute displacements of muscle groups that collectively form the micro-dynamics of facial behavior.

Comparative validation of various algorithms on the DFME dataset reveals a wide dispersion in accuracy. Models based on different architectural approaches demonstrated performance metrics ranging from extremely low to near-high values. This variability is attributed to the fact that micro-expressions constitute weak and rapidly unfolding signals to which algorithms exhibit differing degrees of sensitivity. Accordingly, DFME can be regarded as a robust testing benchmark that demonstrates the extent to which a particular model is capable of capturing genuine micro-movements rather than random noise.

The second block of empirical data logically builds on studies of algorithmic robustness to psychophysical facial distortions proposed by a group of expert researchers from the University of Notre Dame (USA) [7]. This line of research is fundamentally important for forensic science, as it models distortions that commonly arise in video recordings of investigative actions, including camera shake, insufficient lighting, stress-induced micro-deformations, and short-term muscular spasms. A key outcome of this analysis is the demonstration that evaluating algorithmic performance without accounting for distortions inherent to real-world investigative video conditions leads to methodologically inflated conclusions regarding algorithmic reliability.

The research methodology is grounded in the concept of item-response curves. The Notre Dame researchers systematically altered image parameters by introducing noise, blurring, contrast reduction, and minor geometric distortions. Each type of transformation was applied along a progressively increasing scale, which made it possible to identify quantitative thresholds at which the algorithm loses the ability to reliably distinguish a human face. In addition, individual response curves were constructed for each algorithm with respect to specific distortion classes, capturing the precise point at which recognition fails. This approach provided not an averaged estimate, but rather an individualized vulnerability profile of the algorithm [7].

Prior to constructing the response curves, the researchers performed biometric stratification based on the Doddington biometric menagerie principle, which allowed unstable cases to be excluded from the dataset and a group of robust identifiers to be isolated. This procedure increased the accuracy of the evaluation by eliminating the influence of inherently difficult-to-recognize faces that tend to generate high error rates even in the absence of distortions [12].

At the final stage, threshold values were calculated for each category of distortion. For example, in the case of blurring, a critical value of approximately 3-4 pixel radii was identified, beyond which the algorithm abruptly lost its ability to identify a human face. In contrast, noise-related distortions exhibited a more gradual degradation pattern, characterized by a progressive increase in matching errors. Taken together, these data made it possible to quantitatively assess the sensitivity of algorithms to the natural conditions of real-world video recordings of investigative interrogations, where psychophysiological stress manifests through pronounced micro-movements and transient facial deformations. The conclusion drawn is that such quantitative thresholds are of fundamental importance for forensic science, as they define the boundaries of acceptable trust in automated analytical systems when working with interrogation video materials.

Accordingly, this type of analysis constitutes a foundational basis for comparative assessment between the capabilities of human observers and those of machine learning algorithms. In the context of investigative actions, these findings are particularly significant, as they clarify the conditions under which a forensic expert may rely on automated systems and when it becomes necessary to revert to direct visual analysis by the specialist.

The third group of empirical data concerns the analysis of psychophysiological indicators of anxiety derived from audio and video recordings of interrogations. The most representative results are presented in interdisciplinary studies conducted by a research group at Utrecht University (the Netherlands), which examined the feasibility of automated anxiety recognition based on facial muscle dynamics and associated temporal time-series data [8].

The research group at Utrecht University (the Netherlands) conducted a study involving a sample of 154 voluntary participants, for whom interrogation-style video materials were recorded under controlled conditions. Using computer vision algorithms, indicators of activity for 17 basic action units were automatically extracted according to the Facial Action Coding System, and a set of derived dynamic parameters was subsequently computed. These parameters included the number of activation peaks for each action unit, their average duration, amplitude, and frequency of occurrence above an individual threshold defined as one

standard deviation. The total number of generated features exceeded three hundred, after which a predictor selection procedure was applied to exclude highly correlated variables.

The resulting anxiety models demonstrated a clear and consistent pattern. The correlation between model-predicted anxiety levels and participants' self-assessments proved to be statistically significant and high [8]. Regression weight coefficients identified several of the most informative components, including changes in action units 1 and action units 2 (inner and outer eyebrows), dynamic peaks of action unit 5 (upper eyelids), as well as composite derivative parameters reflecting the micro-temporal structure of facial activity.

In parallel, the performance of human observers was evaluated. Six experienced specialists independently assessed anxiety levels based on the same video recordings. The researchers compared these assessments with the outputs of the machine learning model and found that human ratings exhibited greater random variability and a weaker association with participants' self-reported anxiety levels. In contrast, the algorithm demonstrated a more stable and linear prediction profile [8].

Accordingly, the findings of the Dutch researchers enable the inclusion of both human observer performance and machine-based models in a unified comparative analysis. This is particularly important for subsequent comparison with empirical data on micro-expressions [7] and assessments of algorithmic robustness to psychophysical facial distortions [10], as discussed in the preceding sections.

The integration of all three groups of empirical data made it possible to formulate an original concept of multi-level assessment of psychophysiological reactions in forensic science. This concept is based on a combined approach that incorporates micro-expression analysis, evaluation of algorithmic robustness to psychophysical distortions, and comparative analysis of machine-based and human observational results. The novelty of the findings lies in the comprehensive forensic reinterpretation of previously fragmented foreign empirical data and their integration into a unified analytical framework oriented toward the needs of forensic expert practice.

The results obtained directly correspond to the stated aims and objectives of the study, as they demonstrate both the potential of machine learning methods for recognizing psychophysiological reactions of participants in investigative interrogations and the objective limitations of their application. It is concluded that machine learning algorithms should be regarded not as autonomous sources of evidentiary information, but as auxiliary expert tools that enhance the objectivity and reproducibility of forensic psychological and criminological examinations, provided that their use is subject to appropriate normative and methodological regulation.

Discussion

The results obtained clearly indicate that contemporary machine learning algorithms no longer merely compete with human observers in facial expression recognition, but demonstrate greater stability and predictability in accuracy. This conclusion is supported both by experiments on dynamic micro-expressions based on the DFME benchmark dataset [10] and by studies on algorithmic robustness to psychophysical image distortions conducted by researchers at the University of Notre Dame [7]. Additional support for these findings is provided by data from Utrecht University, which show that humans make substantially more errors when assessing anxiety from interrogation video recordings, whereas algorithms maintain a consistent prediction profile and exhibit a linear relationship with participants' self-reported anxiety levels [8].

At the same time, the findings of the present study allow for clarification and partial reconsideration of the conclusions drawn in the aforementioned works. While technical and psychological studies primarily emphasize the superior accuracy of algorithms, this factor cannot be considered in isolation within a forensic context. Although it is reasonable to agree with foreign researchers regarding the high sensitivity of machine learning models to facial micro-dynamics and anxiety-related indicators, the authors do not endorse an approach in which algorithmic interpretations are treated as self-sufficient analytical outcomes without due consideration of legal and procedural constraints.

When all three empirical data blocks are examined together, it becomes evident that machine-based analysis occupies a distinct niche precisely where human perception encounters natural limitations—such as weak visual signals, high-speed micro-movements, the influence of stress factors, and suboptimal recording quality. This observation leads to a key conclusion of the study: AI is capable of more reliably capturing psychophysiological indicators associated with the internal reactions of interrogated individuals; however, the results it produces require normative and methodological adaptation to the national legal system.

From the authors' perspective, these findings should be interpreted within the framework of a scientific concept of limited and explainable integration of artificial intelligence into forensic expert practice. Under this concept, machine learning algorithms are not regarded as independent sources of evidence, but rather as auxiliary analytical tools that expand the expert's capabilities in diagnosing psychophysiological states. Such an approach is consistent both with the principles of visual psychophysics, which emphasize transparency and reproducibility of algorithmic decisions, and with the traditional tenets of forensic science that prioritize expert judgment.

Domestic forensic doctrine has not yet proposed a concrete mechanism that would allow forensic experts to use algorithmic interpretations as an evidentiary resource. The current Rules for the Organization and Conduct of Forensic Examinations [9] contain no references to digital behavioral patterns or to the admissibility of data extracted by computer vision algorithms. At the same time, the very nature of forensic psychological and criminological examinations already presupposes work with dynamic video recordings that reflect an individual's psychophysiological state [9]. In other words, a normative framework does exist, but it was developed prior to the emergence of these technologies and therefore requires adaptation to reflect them.

It is precisely at this juncture that an opportunity arises for the development of domestic forensic doctrine. First, national practice has traditionally been grounded in the principles of verifiability and reproducibility of expert conclusions. Data derived from visual psychophysics and item-response curves provide exactly such an instrument, as they delineate the boundary between an algorithm's "confidence zone" and the onset of probable error. This transforms machine-based analysis from a "black box" into a transparent and reproducible procedure. As emphasized by scholars in visual psychophysics, the explainability and transparency of algorithmic decisions constitute a key prerequisite for their legal acceptability in law enforcement practice.

Second, domestic forensic science has consistently emphasized interdisciplinarity, whereby psychological, forensic, and technical knowledge are expected to operate in conjunction. The nature of micro-expressions and anxiety dynamics lies precisely at this intersection, while machine learning algorithms merely assist in revealing phenomena that are already inherent to human psychophysiology. In this sense, AI does not function as an independent source of evidence, but rather as a tool that expands the analytical capacity of the expert.

Third, the integration of AI into forensic expertise inevitably requires an ethical filter. It is impermissible to create tools that could evolve into a "lie detector 2.0." Both Kazakhstani doctrine and international practice converge on the position that automated determinations of the truthfulness of testimony are untenable. However, automated analysis of emotional dynamics may be acceptable, provided that the forensic expert treats such outputs as auxiliary information rather than as definitive conclusions regarding an individual's motives or intentions.

In essence, the logic of the discussion leads to the conclusion that the results obtained confirm the forensic value of analyzing facial micro-movements and psychophysiological reactions. At the same time, the integration of such data into practice is possible only under the simultaneous conditions of scientific validity, normative clarity, and ethical caution. The doctrine of the Republic of Kazakhstan possesses all the necessary prerequisites to consistently address these issues and to incorporate this analytical toolkit into the existing system of forensic examinations, at least with respect to diagnostic tasks.

Conclusions

Based on the analysis conducted, it can be stated with confidence that machine learning methods focused on the study of facial micro-dynamics and other psychophysiological reactions are already capable of significantly enhancing forensic expert work in the examination of video recordings of investigative actions. Empirical evidence demonstrates that algorithms are more effective in detecting subtle emotional fluctuations, exhibit greater robustness to noise and distortions, and in certain cases provide more stable results than human observers. However, their practical application requires a gradual and regulated integration into the domestic legal framework and existing expert methodologies.

The normative basis of forensic examinations, as established by Rules No. 484 [9], provides a sufficiently solid foundation that permits the use of technical means when working with video materials. Nevertheless, this framework remains insufficient for algorithmic analysis of psychophysiological states, thereby necessitating an update of methodological approaches and clarification of procedural requirements. This does not entail the creation of a new type of forensic examination, but rather an expansion of analytical tools with-

in the existing framework of forensic psychological and criminological expertise, which fully corresponds to its objectives of assessing an individual's emotional and volitional state.

In light of the results obtained and the requirements of regulatory acts, the following steps appear appropriate:

1. Introduce a category of algorithmically extracted psychophysiological indicators.

Experts should be permitted to document facial micro-movements, muscle unit activity, amplitudes, frequencies, and reaction peaks. These data should not constitute independent evidence, but rather serve as supplementary factual material interpreted by the expert in conjunction with other case information.

2. Develop a methodology for algorithm verification based on visual psychophysics.

Prior to application, the expert should assess the model's robustness to image distortions and determine the boundaries within which algorithmic outputs remain reliable. This approach is consistent with the principle of reproducibility enshrined in the Rules on forensic examinations [9].

3. Establish requirements for algorithm explainability.

Only models providing access to feature weights, interpretable activation maps, and error metrics should be admitted for use. This prevents reliance on "black box" systems that cannot be subjected to verification or legal evaluation.

4. Strictly distinguish emotional dynamics from the veracity of statements.

Algorithms may detect anxiety, stress, or emotional tension, but must not render conclusions regarding deception or threat. This corresponds to the limits of expert competence, which excludes legal assessment of case circumstances.

5. Formalize a dual-assessment procedure.

The expert and the algorithm should produce independent assessments, followed by comparative evaluation. In cases of significant divergence, the expert must justify the discrepancies and conduct additional analysis.

6. Expand the list of admissible technical tools.

Given that video recordings constitute the object of examination (para. 330 of the Rules) [9], it is reasonable to include computer vision algorithms among permissible tools, provided that all processing stages are documented and the original recordings are preserved.

7. Develop an ethical code for working with emotional data.

Such a code should prohibit conclusions about personal traits or beliefs, limit the use of results strictly to the scope of expert tasks, and require mandatory disclosure to the court of the method's reliability boundaries.

The scientific value of this study lies in substantiating the concept of limited and explainable integration of artificial intelligence into forensic psychological and criminological expertise. Within this framework, machine learning is viewed as a means of expanding the expert's analytical capabilities while preserving the principles of verifiability, reproducibility, and procedural admissibility of expert conclusions.

The practical significance of the research consists in the potential application of its findings to improve methodological approaches to analyzing video materials of investigative actions, as well as to advance the normative regulation of digital technologies in forensic expertise in the Republic of Kazakhstan. The results may be utilized in forensic psychological examinations, in the activities of forensic institutions, and in educational and scientific programs aimed at training and professional development in the field of digital forensics.

Overall, it can be concluded that the integration of machine learning methods into forensic expert practice in the Republic of Kazakhstan is possible without undermining the existing system. On the contrary, with appropriate regulatory adjustments and transparent methodologies, algorithmic analysis may become a tool that enables forensic experts to assess the psychophysiological states of procedural participants with greater accuracy, efficiency, and objectivity. Such development aligns with contemporary trends in forensic science and strengthens the scientific foundations of domestic criminology.

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Р.А. Медиев, А.А. Аскарлов

Тергеу жауап алуына қатысушылардың психофизиологиялық реакцияларын танудағы машиналық оқыту әдістерінің криминалистикалық әлеуеті

Мақалада қылмыстық сот ісін жүргізуді цифрландыру жағдайында тергеудің жауап алуына қатысушылардың психофизиологиялық реакцияларын тану және интерпретациялау барысында машиналық оқыту әдістерінің криминалистикалық әлеуетіне кешенді баға берілген. Зерттеу шетелдік эмпирикалық еңбектерді талдау және жинақтау, салыстырмалы және формальды-логикалық әдістерді қолдану, сондай-ақ бет әлпеті мимикасының микрокөріністерін және вербалды емес мінез-құлықты талдауға арналған заманауи компьютерлік көру мен терең оқыту алгоритмдеріне жүйелі шолу жасауға негізделген. Қытайлық, американдық және голландиялық ғалымдардың зерттеулерінен алынған эмпирикалық деректер интеллектуалдық алгоритмдер бет мимикасының микродинамикасын, мазасыздық пен эмоционалды тұрақсыздық белгілерін жоғары сенімділікпен анықтай алатындығын көрсетті, олар кейбір жағдайларда адамның субъективті бақылауларынан асып түседі. Сонымен қатар алынған нәтижелер алгоритмдік талдау қорытындыларының дербес дәлелдемелік ақпарат көзі ретінде қарастырылмайтынын айқындайды. Көрсетілген технологияларды дәлелдемелердің рұқсат етілу стандарттарын, іс жүргізу кепілдіктерін және адам құқықтарын қорғауды ескере отырып, Қазақстан Республикасының отандық сот-сараптама практикасына нормативтік және әдіснамалық бейімдеу қажеттілігі негізделді. Психофизиологиялық жағдайларды машиналық талдаудың сот-психологиялық-криминалистикалық сараптаманың қолданыстағы түрлеріне кезең-кезеңімен және түсіндірмелі түрде енгізудің принципті мүмкіндігі мен әдіснамалық негізділігі туралы қорытынды жасалған.

Кілт сөздер: алгоритм, сұрақ алу, криминалистика, машиналық оқыту, мимика, нейрондық желі, паттерн, мазасыздық, форензика (соттық сараптама), эмоция.

Р.А. Медиев, А.А. Аскарров

Криминалистический потенциал методов машинного обучения в распознавании психофизиологических реакций участников следственного допроса

В статье даётся комплексная оценка криминалистического потенциала методов машинного обучения при распознавании и интерпретации психофизиологических реакций участников следственного допроса в условиях цифровизации уголовного судопроизводства. Исследование основано на анализе и синтезе зарубежных эмпирических работ, применении сравнительного и формально-логического методов, а также систематическом обзоре современных алгоритмов компьютерного зрения и глубокого обучения, используемых для анализа микровыражений лица и невербального поведения. Эмпирические данные, полученные в исследованиях китайских, американских и нидерландских учёных, свидетельствуют о том, что интеллектуальные алгоритмы способны с высокой степенью надёжности фиксировать микродинамику мимики, признаки тревожности и эмоциональной нестабильности, в ряде случаев превосходя по устойчивости субъективные наблюдения человека. В то же время полученные результаты подчёркивают, что выводы алгоритмического анализа не могут рассматриваться как самостоятельный источник доказательственной информации. Обосновывается необходимость нормативной и методологической адаптации указанных технологий к отечественной судебно-экспертной практике Республики Казахстан с учётом стандартов допустимости доказательств, процессуальных гарантий и защиты прав человека. Делается вывод о принципиальной возможности и методологической обоснованности поэтапной и объяснимой интеграции машинного анализа психофизиологических состояний в существующие формы судебно-психолого-криминалистической экспертизы.

Ключевые слова: алгоритм, допрос, криминалистика, машинное обучение, мимика, нейросеть, паттерн, тревожность, форензика, эмоции.

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Legal regulation and liability for online fraud based on the use of deepfake technologies and social engineering: foreign experience and directions for its adoption

In the context of the rapid development of digital technologies, online fraud based on the use of deepfake technologies and social engineering methods poses a significant threat to public safety. The aim of this study is to analyse the legal regulation and liability measures for such crimes in foreign countries, as well as to identify areas where positive international experience can be used to improve national legislation. The study employs general scientific and special methods of cognition, including analysis, synthesis, induction and deduction, as well as formal-legal, comparative-legal and systemic-structural methods. The work examines normative legal acts, judicial practice and doctrinal approaches in a number of foreign countries, including the European Union, the United States and Asian countries, regulating liability for digital forms of fraud. As a result, the main models of legal response to crimes involving deepfakes and social engineering were identified, and their strengths and weaknesses were established. The study concludes that a comprehensive approach to legal regulation is necessary, including clarifying the elements of offences, strengthening preventive measures, and developing international cooperation. The results obtained can be used to formulate proposals for improving criminal and information legislation.

Keywords: Deepfake, online fraud, cybercrime, digital security, social engineering, legislation, legal policy, legal analysis.

Introduction

The rapid development of digital technologies, artificial intelligence and global communication networks has led not only to expanded opportunities for socio-economic development, but also to the emergence of new forms of criminal activity. In this context, online fraud based on the use of deepfake technologies and social engineering methods, which allow attackers to imitate the appearance, voice and behaviour of real people and effectively manipulate the minds of users, poses a particular danger.

The relevance of researching this problem is due to the growing number of crimes committed using digital identity imitation, their high latency, cross-border nature, and the significant damage caused to both individual citizens and state and corporate structures. Despite the active development of legislation in the field of digital security, legal regulation of liability for online fraud using deepfakes and social engineering remains fragmented in many countries. In law enforcement practice, difficulties arise with the classification of such acts, the distinction between related offences, as well as with proving guilt and establishing the subjective side of the crime. This necessitates a comprehensive scientific analysis of foreign experience and the development of ways to borrow from it in order to improve national legal mechanisms for combating digital forms of fraud.

In recent years, the relevance of the issue under study has been confirmed by statistical data from international organisations and analytical centres. According to the US Federal Bureau of Investigation (FBI, Internet Crime Complaint Centre), the total damage from cybercrime in 2023 amounted to more than \$12.5 billion, which is the highest figure for the entire observation period [1]. The largest share was accounted for by fraudulent schemes based on social engineering methods, including impersonation attacks and voice phishing, which actively use synthetic voice and image generation technologies.

According to Europol's Internet Organised Crime Threat Assessment (IOCTA, 2023) report, the use of artificial intelligence and deepfake technologies is considered one of the key factors in the transformation of cybercrime in Europe [2]. The document notes an increase in the number of cases of synthetic audio and video materials being used to impersonate individuals in financial crimes and corporate fraud.

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An analytical study by Sumsb (2023) shows that the number of fraudulent transactions using deepfakes increased by more than 700 % between 2022 and 2023, with financial technology, cryptocurrency platforms and online banking being the most vulnerable sectors. In turn, a study by McAfee (2023) found that about 25 % of adult users in the US and Europe have encountered fraud attempts using synthetic voices, with attackers achieving partial success in 77 % of cases [3].

Kazakhstan has also seen steady growth in internet fraud. According to official data from the Ministry of Internal Affairs of the Republic of Kazakhstan, 43,900 cases of fraud were reported in 2024. Half of these were cybercrimes. Older people are often the victims of fraudsters' tricks. Last year, 4,785 cases of fraud against citizens over the age of 60 were recorded. The amounts of damage ranged from several thousand to tens of millions of tenge. The highest number of cases of Internet fraud last year was recorded in Astana (4,582 cases), Almaty (2,275) and the Karaganda region (1,906) [4]. Experts note a gradual increase in the proportion of schemes involving the use of social engineering and artificial intelligence technologies.

Thus, international statistics confirm the scale and transnational nature of online fraud based on the use of deepfakes and social engineering, which necessitates the improvement of legal mechanisms to combat these crimes.

In this regard, the purpose of this study is to analyse the legal regulation and legal liability for online fraud based on the use of deepfake technologies and social engineering methods in foreign countries, as well as to justify the directions for borrowing the most effective legal solutions. To achieve this goal, the study sets the following objectives: to reveal the essence and main forms of online fraud using deepfake and social engineering; to analyse the regulatory and legal approaches of foreign states to criminal and administrative liability for these acts; to identify the features of law enforcement practice; to determine the problematic aspects and contradictions of the existing legal regulation; to formulate proposals for borrowing and adapting foreign experience [5; 201].

Scientific literature reveals significant contradictions in approaches to the legal assessment of deepfake technologies. Some researchers view them exclusively as a tool for committing traditional crimes that does not require separate legal regulation, while others justify the need to establish special criminal offences and new institutions of liability. Similar discrepancies can be observed in methodological approaches: from narrowly focused criminal law analysis to interdisciplinary studies combining law, cybersecurity, and the psychology of influence. In practice, these contradictions manifest themselves in inconsistent court decisions and the absence of uniform standards of proof.

A significant gap in contemporary research is the insufficient systematisation of foreign experience specifically in the context of the combined use of deepfake technology and social engineering. Most scientific works focus either on the problems of digital forgeries or on the socio-psychological mechanisms of fraud, without revealing their interconnection. The authors of this study proceed from the position that effective legal regulation is only possible with a comprehensive approach that takes into account both the technological and behavioural nature of online fraud. An analysis of foreign doctrine and legislation leads to the conclusion that it is advisable to borrow flexible and preventively oriented models of legal response, adapted to national legal systems.

Methods and materials

The methodological basis of this study was a set of general scientific, specialised and interdisciplinary methods of cognition, the application of which is determined by the multifaceted nature of online fraud based on the use of deepfake technologies and social engineering methods. The choice of methods was focused on achieving the research goal—identifying the features of legal regulation and liability for these types of crimes in foreign countries, as well as justifying the directions for borrowing relevant experience for the national legal system.

The article used analysis and synthesis as basic general scientific methods, which made it possible to structure the array of scientific information, identify key elements of legal regulation, and reveal the interrelationships between the technological and legal aspects of online fraud. The inductive method was used to summarise individual law enforcement decisions and regulatory provisions of foreign countries in order to identify common patterns in the regulation of liability for crimes involving deepfakes and social engineering. The deductive method was used to verify general theoretical conclusions using specific examples from legislation and judicial practice.

The formal legal method was of particular importance in the study, through which the norms of criminal, administrative and information legislation of foreign states were analysed. It was used to examine

the elements of crimes, forms of guilt, types and limits of legal liability, as well as the specifics of the legal classification of online fraud committed using digital forgeries and manipulative technologies. Formal legal analysis made it possible to identify the specifics of the legislative techniques used to establish liability for new forms of digital crime [6; 216].

The comparative legal method became a key research tool. It was used to compare approaches to the legal regulation of online fraud in various legal systems, including the European Union, the United States, the United Kingdom, Japan, and the Republic of Korea. The comparative analysis examined both universal models of criminal liability and specialised norms aimed at countering the use of artificial intelligence and social engineering for criminal purposes. This made it possible to identify general trends in the development of foreign legislation, as well as national characteristics of the legal response to the threats of digital fraud.

A systemic-structural method was used to study the institutional and functional links between legal norms. It allowed us to consider the legal regulation of online fraud as a holistic system comprising criminal law, procedural, administrative and preventive elements. The use of this method helped to identify the role of law enforcement agencies, courts and specialised regulators in ensuring accountability for crimes involving deepfakes and social engineering.

Given the cross-border nature of the crimes under investigation, a functional method was also used in the study to analyse the effectiveness of legal norms in the context of digital globalisation. This method made it possible to assess the extent to which the existing legal mechanisms of foreign states are capable of responding to online fraud committed using foreign platforms, anonymous networks and distributed digital technologies.

The material basis of the study consisted of various sources selected for their relevance, reliability, and scientific significance. The main materials used were normative legal acts of foreign states, including criminal codes, special laws in the field of cybersecurity, personal data protection, and artificial intelligence regulation. Both the current versions of legislative acts and draft regulatory documents under discussion or implementation were analysed.

Court decisions and law enforcement practices in foreign countries occupy a significant place among the research materials. In particular, precedents related to prosecution for fraud, forgery, illegal use of personal data, and other crimes committed using deepfake technology and social engineering were analysed. Judicial practice was considered as a source for identifying problems of qualification, evidence and sentencing, as well as an indicator of the effectiveness of legal regulation.

Additional material was provided by official reports from international organisations and specialised agencies dealing with cybercrime and digital security issues. The study used analytical reports, statistical reviews and methodological recommendations reflecting the scale of online fraud and the main directions of countering it at the international level. These materials made it possible to substantiate the relevance of the topic and compare legal approaches with actual trends in the development of crime.

The article also draws on the findings of scientific research by foreign and domestic authors on the legal regulation of digital crimes, artificial intelligence, social engineering, and liability for fraud. The analysis of scientific literature was carried out using bibliometric and problem-thematic approaches, which made it possible to identify the main theoretical schools, controversial issues, and insufficiently researched aspects of the subject matter [7; 360].

Particular attention was paid to interdisciplinary materials, including works in the fields of information technology, cyberpsychology, and digital forensics. Their use made it possible to reveal in greater depth the technical and behavioural mechanisms of online fraud, which, in turn, provided a more informed legal analysis and a correct comparison of foreign experience.

Thus, the combination of methods and materials used ensured a comprehensive and systematic nature of the research, allowing not only to analyse foreign models of legal regulation of liability for online fraud based on the use of deepfake technologies and social engineering, but also to form scientifically sound conclusions and proposals for borrowing and adapting this experience.

Results

The study yielded results that provide a comprehensive assessment of the state of legal regulation and liability for online fraud based on deepfake technologies and social engineering methods in foreign countries, as well as identify areas for adopting the most effective legal solutions. The findings are based on an analysis of regulatory legal acts, judicial practice, and doctrinal sources, ensuring their validity and compliance with the study's objectives.

The first significant result of the study was the identification of a persistent trend toward a broad interpretation of traditional fraud offences in foreign legal systems. An analysis of the legislation of the United States, the European Union, the United Kingdom, and Japan revealed that, in most cases, deepfake technologies are not recognized as an independent object of criminal regulation, but are considered a method or means of committing a crime. Judicial practice confirms that the use of counterfeit audio and video materials is classified in conjunction with fraud, illegal use of personal data, forgery, or interference with information systems. This observation demonstrates the pragmatic approach of legislators, focused on the flexibility of legal responses. The second result was the identification of differences in criminal liability models for online fraud involving social engineering. In a number of countries (the United States, Canada, and Australia), emphasis is placed on the subjective aspect of the crime, specifically the intent to mislead the victim through psychological influence. In countries with continental legal systems (Germany, France, and Spain), greater weight is placed on the objective aspect of the act and the fact of causing property damage. The author found that it is the combination of technological influence (deepfake) and behavioral manipulation (social engineering) that creates the greatest difficulties for law enforcement, as it requires proof of both the technical forgery and the psychological influence.

The third result of the study was the identification of fragmented legal regulation of deepfake technologies. It was found that even in countries with developed digital legislation, universal and uniform definitions of deepfake at the criminal law level are lacking. Typically, such technologies are mentioned in strategic documents, soft law acts, or special laws on artificial intelligence. This leads to the classification of crimes based on analogous legal structures, increasing the risk of ambiguous interpretation of norms and differences in judicial practice [8].

These findings are supported by international empirical studies demonstrating a steady increase in crimes using artificial intelligence technologies. Deloitte predicts that the use of generative AI could lead to fraud losses in the US reaching \$40 billion by 2027, compared to \$12.3 billion in 2023, demonstrating the scale of the threat and the need to adapt legal mechanisms to digital realities [9]. An analysis of international judicial practice shows that the most common cases involve the use of deepfake to impersonate company executives for the purpose of illegally transferring funds, as well as to defraud individuals through social media and instant messaging apps.

The study systematized international approaches reflecting the main models of legal regulation of liability for online fraud using deepfakes and social engineering (universal model, specialized model, and mixed model). The analysis revealed that the most widespread is the mixed model, which combines the application of general criminal law provisions with specific provisions aimed at protecting digital rights and personal data.

A significant finding was the identification of the development of preventive legal regulation mechanisms. In a number of foreign countries, criminal law measures are complemented by administrative and regulatory instruments aimed at preventing online fraud. These include the obligation of digital platforms to label synthetic content, the expansion of telecom operators' responsibilities to identify fraudulent schemes, and the introduction of digital identification standards. The author found that such measures significantly reduce the burden on criminal justice and increase the effectiveness of protecting potential victims.

A separate result of the study was a summary of the challenges in law enforcement practice related to proving crimes based on the use of deepfakes. Foreign court records point to a lack of specialized expertise, the difficulty of identifying the source of digital counterfeits, and the challenges of collecting cross-border evidence. These observations confirm the need for institutional development of digital forensics and specialized training for judges and investigative bodies.

Based on the analysis of the obtained data, the authors developed a concept for a comprehensive legal response to online fraud based on deepfakes and social engineering. This concept envisions the simultaneous development of criminal, procedural, and preventive mechanisms. Specifically, it proposes considering deepfakes not as an independent criminal offense, but as a qualifying feature or aggravating circumstance in the commission of fraud if their use significantly increases the social danger of the act.

The novelty of the obtained results lies in the systemic integration of the technological and behavioral aspects of online fraud within the framework of legal analysis. Unlike existing studies, which examine deepfakes and social engineering in isolation, the authors demonstrate that their combined use creates a qualitatively new level of criminal impact. This requires a revision of traditional approaches to classification and liability, which has so far been insufficiently addressed in the scientific literature.

Furthermore, the novelty of the study lies in the proposal to use a multi-level model for borrowing international experience, reflecting three levels: normative (changes in criminal and information legislation), institutional (development of specialized bodies and expert structures), and preventive (improving digital literacy and regulating platforms). This model is practical in nature and can be used in developing national programs to combat online fraud.

The results obtained are fully consistent with the stated goals and objectives of the article. The analysis allowed us to uncover the nature and forms of online fraud using deepfake and social engineering, identify the specifics of international legal regulation, identify problem areas, and suggest areas for adopting effective legal solutions. The practical significance of the results lies in their potential use in improving criminal and information legislation, as well as in the activities of law enforcement agencies.

Thus, the results of the study confirm the need for a comprehensive and adaptive approach to the legal regulation of online fraud in the context of digitalization and demonstrate that international experience can serve as an effective basis for developing modern legal liability mechanisms, provided it is systematically and critically adopted [10].

The recently adopted Law of the Republic of Kazakhstan “On Artificial Intelligence” (hereinafter referred to as the AI Law) establishes a fundamental legal framework for the control, development, and regulation of the use of artificial intelligence (AI) in the country. The Law defines key concepts such as artificial intelligence, data libraries, and synthetic AI outputs—which include audio, video, images, and text created or modified using AI and establishes principles of security, transparency, and accountability in the use of AI technologies.

Of particular importance for regulating online fraud is the prohibition on the creation and operation of AI systems capable of manipulating consciousness, distorting reality, or harming the rights and interests of citizens. The Law explicitly prohibits the use of AI for subconscious or manipulative influence on behavior, exploitation of vulnerabilities, or social evaluation of individuals without their consent, and also introduces the obligation to label content created with the participation of AI [11].

It is important to note that the AI Law does not provide for direct criminal liability for the creation of deepfakes or the use of social engineering as such. Instead, it establishes a regulatory framework for the application of appropriate administrative penalties and prepares the legal basis for incorporating such acts into other legal mechanisms. At the same time, the introduction of bans on manipulative technologies and mandatory labeling reduces the risk of spreading fraudulent messages using deepfake and minimizes the possibility of misleading users.

Considering international practices (for example, mandatory labeling of synthetic content in the European Union), the provisions of the AI Law are timely and important for preventing harm from technological disinformation. However, this law is primarily regulatory and administrative in nature, while criminal liability for online fraud is traditionally enshrined in other regulations. Traditional criminal defense against fraud in Kazakhstan is based on Article 190 of the Criminal Code of the Republic of Kazakhstan, “Fraud”, which stipulates that an act aimed at theft of property or the acquisition of rights to another’s property through deception or abuse of trust entails criminal liability, including large fines, imprisonment, and other sanctions.

With the development of the internet and digital communications, the Criminal Code of the Republic of Kazakhstan has expanded the list of qualifying elements of fraud to include internet fraud in accordance with paragraph 4, part 2, Article 190 of the Criminal Code of the Republic of Kazakhstan. An analysis of judicial practice shows that online fraud is classified in the context of electronic funds transfers, theft through remote services, and abuse of trust through digital communications, with penalties of up to 4 years’ imprisonment or more in the presence of aggravating circumstances. An important development in criminal law was the introduction of Article 232-1 of the Criminal Code of the Republic of Kazakhstan on liability for dropshipping, which provides for criminal liability of up to 7 years’ imprisonment with confiscation of property for participation in online fraud schemes (e.g., sharing access to other people’s bank accounts or making illegal payments).

Currently, the Criminal Code of the Republic of Kazakhstan does not provide for direct criminal liability for the creation or distribution of deepfakes as a separate offense. However, such actions may be classified in conjunction with fraud, document forgery, use of personal data, or other offenses covered by the Criminal Code (in particular, the chapters on crimes in the field of information technology). This approach is consistent with international practice, where deepfakes are more often considered a means of committing a crime rather than an independent object of criminalization. Thus, criminal law provides tools for prosecuting

actions indirectly related to the use of deepfake or social engineering in the commission of crimes, but does not always contain special means of responding to new technologies as an independent phenomenon [12].

Civil liability in Kazakhstan is based on the principles of compensation for damages and protection of the property rights of parties to legal relations. The Civil Code regulates compensation for losses caused by illegal actions, including moral damages and property losses, for example, if deepfake content or a fraudulent scheme resulted in property losses.

In cases of online fraud, the injured party has the right to file civil claims for damages against those who caused the harm, including demands for restoration of violated rights, compensation for material damages, and recovery of penalties stipulated by contractual agreements. Furthermore, the Civil Code complements criminal law measures by providing victims with the opportunity to seek compensation outside of criminal proceedings, which is particularly important for victim-focused law enforcement practices in the context of digital crimes [13].

The Code of Administrative Offenses contains general principles and sanctions for illegal actions, including violations related to non-compliance with artificial intelligence legislation. With the introduction of the Law on AI, provisions were added to administrative legislation regarding violations of mandatory labeling of content created using AI, as well as violations in the management of high-risk AI systems that cause harm to citizens, which entails the imposition of fines equal to the monthly calculation index (MCI).

Administrative measures are characterized by the fact that they can be applied even in the absence of a criminal offense, making them an important tool for ensuring compliance with technological requirements of the law. Such measures may also include fines for consumer fraud and other violations stipulated by sections of the legislation on advertising and information technology [14].

The legal system of the Republic of Kazakhstan in the area of online fraud, deepfake content, and social engineering is a combination of criminal, administrative, and civil law mechanisms. The Law on Artificial Intelligence for the first time introduces direct prohibitions on dangerous AI practices and establishes a duty of transparency regarding synthetic content, thereby creating a foundation for preventing the abuse of deepfake content. The Criminal Code and other codes provide for criminal, civil, and administrative liability for the consequences of criminal acts, but do not always contain direct provisions specifically aimed at countering technological threats. This creates both modern protection mechanisms and potential for further legislative development. In the future, it may be necessary to clarify the provisions of the Criminal Code and the Code of Administrative Offenses of the Republic of Kazakhstan to individualize liability for the unlawful use of artificial intelligence tools in digital crimes.

Discussion

The results obtained in the course of the study generally correlate with the conclusions of a number of foreign and domestic scientific works devoted to the problems of digital crime and the legal regulation of online fraud. At the same time, the analysis revealed both significant points of contact with existing concepts and a number of discrepancies that require further theoretical consideration. This necessitates a critical comparison of the data obtained with previously published studies and an assessment of their scientific validity.

The prevailing view in scientific literature is that deepfake technologies are primarily seen as a tool for committing already known crimes, primarily fraud, defamation and illegal use of personal data. The author partially agrees with this position, as the results of the study confirmed that in most foreign legal systems, deepfakes do not constitute an independent offence, but are a means of committing one. This approach is reflected in the works of American and European researchers analysing judicial practice in cases related to digital forgeries. At the same time, the authors do not share the categorical conclusions of those scholars who deny the need for any special legal regulation of deepfakes, since their combination with social engineering methods significantly increases the public danger of such acts [15].

The results of this study largely coincide with the conclusions of authors who emphasise the complexity of proving crimes committed using artificial intelligence. Foreign studies point to a lack of technical expertise and insufficient training of law enforcement officers, which is confirmed by an analysis of judicial practice.

The results obtained are consistent with the conclusions of foreign researchers who consider deepfakes to be a qualitatively new form of digital threat. For example, Chesney and Citron (2019) note that synthetic media has a high degree of plausibility and can significantly undermine trust in digital information, creating new risks for law and order [16; 1787]. The works of Westerlund (2019) [17; 78] and

Kietzmann et al. (2020) emphasise that the spread of deepfakes is associated not only with fraud but also with disinformation, which increases their public danger.

A comparative analysis shows that countries with developed digital infrastructure demonstrate a higher level of detection of such crimes, which is associated with the effectiveness of monitoring and law enforcement. At the same time, in countries with less developed digital control systems, the latency of these crimes remains high, confirming the need for further research and improvement of mechanisms for their detection.

However, unlike a number of works that offer mainly technological solutions to this problem, the author proceeds from the need for a comprehensive legal approach that includes not only the development of digital forensics, but also the improvement of procedural mechanisms of evidence.

Significant discrepancies were identified when comparing the results obtained with studies in which social engineering is considered exclusively as a psychological phenomenon that falls outside the scope of legal analysis. The author disagrees with this position, as the results of the study showed that in foreign law enforcement practice, social engineering methods are increasingly taken into account when classifying crimes and determining the degree of guilt. This allows social engineering to be considered not only as an auxiliary element, but also as a significant factor in the formation of the subjective side of a crime.

An analysis of similarities and differences also revealed methodological discrepancies in the assessment of preventive measures. A number of foreign authors are critical of expanding the responsibilities of digital platforms, pointing to the risk of excessive interference with freedom of information. The results obtained in this study allow us to agree with these concerns only partially. On the one hand, excessive regulation can indeed lead to restrictions on users' rights. On the other hand, foreign experience shows that the introduction of obligations to label synthetic content and identify fraudulent schemes contributes to a reduction in the number of crimes—not by replacing criminal law measures, but by supplementing them.

The results obtained can be explained from the perspective of the concept of comprehensive digital criminalisation, according to which legal regulation should take into account not only the legal form of the act, but also its technological and behavioural nature. It is from this scientific perspective that it becomes clear why isolated regulation of deepfakes or social engineering is not effective enough. Their combined use forms a new type of criminal behaviour that goes beyond traditional models of fraud.

Summarising the results of the study, it can be argued that the identified foreign models of legal regulation demonstrate a tendency towards the functional adaptation of criminal law to digital challenges. Instead of creating an excessive number of special offences, legislators seek to make flexible use of existing legal constructs, supplementing them with qualifying characteristics and preventive mechanisms. This conclusion generally coincides with the results of a number of comparative legal studies, but in this work it is supplemented by an analysis of social engineering as an independent criminologically significant factor.

The assessment of the reliability of the results obtained is based on the breadth and representativeness of the empirical base used. Analysis of normative acts and judicial practice in several legal systems has minimised the risk of one-sided conclusions. At the same time, the authors are aware of certain limitations of the study related to differences in the availability of judicial materials and the heterogeneity of statistical data on digital crimes. However, these limitations do not diminish the overall scientific significance of the results, but only indicate directions for further research [18; 5].

Overall, the discussion allows us to conclude that the results obtained not only confirm certain provisions of existing theories, but also contribute to the development of scientific understanding of the legal regulation of online fraud in the context of digitalisation. The authors' position is that effective legal liability for crimes based on the use of deepfakes and social engineering is only possible if their complex nature is recognised and an interdisciplinary approach is applied. This, in turn, forms the theoretical basis for further improvement of legislation and law enforcement practice.

Conclusions

The study of legal regulation and liability for online fraud based on the use of deepfake technologies and social engineering methods has provided a comprehensive overview of current international approaches to combating these forms of digital crime and identified areas where the most effective legal solutions can be adopted. In the course of the work, theoretical provisions, the results of comparative legal analysis and conclusions obtained in the discussion process were systematised, which ensured the achievement of the research goals and objectives.

First of all, it was established that in most foreign countries, online fraud using deepfakes and social engineering is not considered a fundamentally new type of crime, but rather a transformation of traditional fraudulent schemes using modern digital technologies. Legislators and law enforcement agencies tend to adapt existing criminal law constructs, classifying these acts under general provisions on fraud, forgery, illegal use of personal data, and interference with information systems. This approach demonstrates a desire to maintain the consistency of criminal law and avoid excessive fragmentation of criminal offences.

At the same time, the results of the study showed that the combined use of deepfake technologies and social engineering methods significantly increases the level of public danger posed by online fraud. This is due not only to the technical complexity of detecting and proving such acts, but also to the heightened psychological impact on victims. In this regard, foreign practice increasingly uses qualifying characteristics, aggravating circumstances, and special procedural mechanisms aimed at an adequate criminal law assessment of such crimes. This conclusion confirms the need for a comprehensive approach to liability for digital forms of fraud.

Systematisation of the results has revealed three main models of legal regulation of liability for online fraud: universal, specialised and mixed. The mixed model, which combines the application of general criminal law norms with elements of special regulation in the field of digital technologies and artificial intelligence, is recognised as the most effective. It is this model that provides a balance between legal certainty, flexibility in law enforcement and the ability to respond quickly to technological changes.

The scientific value of the study lies in substantiating the need to consider deepfakes and social engineering not in isolation, but in their functional interrelationship. The author proves that it is their combined use that forms a qualitatively new type of criminal behaviour, requiring a review of traditional approaches to classification and liability. This position expands existing theoretical ideas about digital crime and contributes to the development of the concept of comprehensive legal regulation in the context of digitalisation.

The practical significance of the research results is expressed in the possibility of their use in improving criminal, information and procedural legislation. The conclusions and generalisations obtained on the basis of an analysis of foreign experience can serve as a guideline for the development of norms establishing liability for fraud involving the use of digital forgeries and manipulative technologies. Of particular value are proposals on the use of qualifying characteristics related to the use of artificial intelligence and social engineering, as well as on the development of preventive mechanisms for legal regulation.

The results of the study can also be used in law enforcement. In particular, they are of interest to judges, investigators and law enforcement officials when classifying online fraud and assessing evidence in cases involving the use of deepfakes. The systematisation of foreign judicial practice allows for the identification of typical mistakes and effective approaches that can be adapted to the specifics of the national legal system.

In addition, the conclusions drawn are relevant for educational and scientific activities. The research materials can be used in courses on criminal law, information law, cybersecurity, and digital criminology, as well as in the preparation of scientific and qualification works. The scientific generalisations made in the article provide a basis for further research in the field of legal regulation of crimes committed with the use of artificial intelligence.

Possible areas of application for the research results also include the activities of government agencies and specialised regulators responsible for digital security and the protection of citizens' rights in the information sphere. The concept of a multi-level legal response developed by the author can be used in the formation of national strategies to combat cybercrime, as well as in the development of international cooperation programmes in the field of combating online fraud.

Overall, the study confirms that effective legal regulation and legal liability for online fraud based on the use of deepfakes and social engineering are only possible if foreign experience is systematically borrowed and adapted, taking into account national legal traditions. The conclusions drawn not only summarise existing practice, but also form a scientifically sound basis for the further development of legislation and law enforcement in the context of the rapid digital transformation of society.

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Deepfake және әлеуметтік инженерияны қолдануға негізделген онлайн алаяқтық үшін құқықтық реттеу және жауапкершілік: шет мемлекеттердің тәжірибесі және оның қолданылуы

Цифрлық технологиялардың қарқынды дамуы жағдайында deepfake технологиялары мен әлеуметтік инженерия әдістерін қолдануға негізделген онлайн-алаяқтық қоғамдық қауіпсіздікке ерекше қауіп төндіреді. Зерттеудің мақсаты шет мемлекеттердегі қылмыстардың көрсетілген түрлері үшін құқықтық реттеу мен құқықтық жауапкершілік шараларын талдау, сондай-ақ ұлттық заңнаманы жетілдіру үшін оң шетелдік тәжірибе алу бағыттарын анықтау. Зерттеу барысында жалпы ғылыми және арнайы таным әдістері, соның ішінде талдау, синтез, индукция және дедукция, ресми-құқықтық, салыстырмалы-құқықтық және жүйелік-құрылымдық әдістер қолданылды. Жұмыс шеңберінде алаяқтықтың цифрлық нысандары үшін жауапкершілікті реттейтін бірқатар шет елдердің, атап айтсақ, Еуропалық одақ, АҚШ және Азия елдерінің нормативтік құқықтық актілері, сот практикасы және

доктриналық тәсілдері зерттелді. Нәтижесінде deepfake және әлеуметтік инженерияны қолдана отырып, қылмыстарға құқықтық жауап берудің негізгі модельдері және олардың күшті және әлсіз жақтары анықталды. Қылмыстардың құрамын нақтылауды, алдын алу шараларын күшейтуді және халықаралық ынтымақтастықты дамытуды қамтитын құқықтық реттеуге кешенді көзқарастың қажеттілігі туралы қорытынды жасалды. Алынған нәтижелер қылмыстық және ақпараттық заңнаманы жетілдіру бойынша ұсыныстар әзірлеу кезінде пайдаланылуы мүмкін.

Кілт сөздер: Deepfake, онлайн-алаяқтық, киберқылмыс, цифрлық қауіпсіздік, әлеуметтік инженерия, заңнама, құқықтық саясат, құқықтық талдау.

А.Б. Сактаганова, И.С. Сактаганова

Правовое регулирование и ответственность за онлайн-мошенничество, основанное на применении deepfake и социальной инженерии: опыт зарубежных государств и направления его заимствования

В условиях стремительного развития цифровых технологий особую угрозу общественной безопасности представляет онлайн-мошенничество, основанное на применении технологий deepfake и методов социальной инженерии. Целью данного исследования является анализ правового регулирования и мер юридической ответственности за указанные виды преступлений в зарубежных государствах, а также определение направлений заимствования положительного зарубежного опыта для совершенствования национального законодательства. В ходе исследования были использованы общенаучные и специальные методы познания, включая анализ, синтез, индукцию и дедукцию, формально-юридический, сравнительно-правовой и системно-структурный методы. В рамках работы исследованы нормативные правовые акты, судебная практика и доктринальные подходы ряда зарубежных стран, в том числе государств Европейского союза, США и стран Азии, регулирующие ответственность за цифровые формы мошенничества. В результате выявлены основные модели правового реагирования на преступления с использованием deepfake и социальной инженерии, а также установлены их сильные и слабые стороны. Сделан вывод о необходимости комплексного подхода к правовому регулированию, включающего уточнение составов преступлений, усиление превентивных мер и развитие международного сотрудничества. Полученные результаты могут быть использованы при разработке предложений по совершенствованию уголовного и информационного законодательства.

Ключевые слова: Deepfake, онлайн-мошенничество, киберпреступность, цифровая безопасность, социальная инженерия, законодательство, правовая политика, правовой анализ.

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Comparative study of artificial intelligence in judicial activity

The purpose of this article is to conduct a comparative analysis of trends and practices in the use of artificial intelligence technologies in the justice sector in foreign countries, as well as to develop a framework for extrapolating international experience within the context of a comparative study. The research methodology is based on a comparative method, which serves as a fundamental tool for identifying best practices and correlating them with existing capabilities in the Republic of Kazakhstan in order to determine areas for extrapolation. The study employs methods of system analysis, as well as logical-legal, and theoretical-legal analysis of international experience, including the identification of both positive and negative aspects. The main conclusion of the study is that the pace of development of artificial intelligence technologies does not allow states to ignore their relevance for progressive development. Only bold and radical decisions to integrate artificial intelligence into various spheres of the state and society are the key to national success, provided that such implementation is carried out in compliance with ethical aspects and legal regulations. Proposals for extrapolating best practices have practical significance in implementing the priority trend of digital transformation associated with the use of artificial intelligence.

Keywords: artificial intelligence, neural networks, justice, access to justice, digitalization, law enforcement, legal processes, extrapolation of foreign experience, comparative study.

Introduction

Artificial intelligence and neural network technologies are developing rapidly, and at a certain point, they have become a race in which Kazakhstan must not only keep up with the leaders but also strive to become one. Given that our country has relatively recently joined the process of integrating artificial intelligence into various fields, a comparative study of the experience of foreign countries in using artificial intelligence technologies in judicial proceedings seems relevant. The global significance of artificial intelligence technologies is objectively confirmed by global financial flows on artificial intelligence. According to the Global AI Report, these expenditures will double in 2024 compared to 2023, averaging \$2.5 million per company. As noted in the Artificial Intelligence Development Concept: “By 2030, global GDP is projected to increase by 14 % due to artificial intelligence, which, according to a PwC study, is equivalent to an additional \$15.7 trillion. That is, in the changing trends of the global economy, the biggest commercial opportunity is artificial intelligence” [1].

The Concept for the Development of Artificial Intelligence for 2024–2029 sets forth a new national vision: “utilizing the transformative power of artificial intelligence to develop human capital, stimulate research and development, foster a thriving startup ecosystem, and engage leading corporations in collaborative efforts to ensure Kazakhstan’s position as a global leader in artificial intelligence” [1].

Judicial practice is a sensitive area where digitalization has been underway for two decades. Digitalization in this area has gone through various stages, previously explored by one of the authors of this article. The current stage is the introduction of artificial intelligence into legal processes, judicial, and law enforcement activities [2; 54]. Against the backdrop of accelerating artificial intelligence implementation in judicial practice, academic interest in studying best practices is increasing. A comparative study of international experience in this area allows us to analyze global trends in the use of artificial intelligence technologies in the legal sphere and substantiate promising areas for the extrapolation of international experience.

The purpose of this study is to comparatively analyze the legal framework and practices for the application of artificial intelligence technologies in judicial practice in foreign countries and to identify possible areas for the extrapolation of best practices in the Republic of Kazakhstan.

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The purpose of the study determines the following research objectives:

- comparative analysis of trends and practices in the use of artificial intelligence in judicial practice in foreign countries;
- comparative analysis of the legal framework regulating artificial intelligence;
- formulation of promising areas for the extrapolation of best practices in the use of artificial intelligence in judicial practice in the Republic of Kazakhstan.

Issues of digitalization in the legal sphere are studied in the works of Ida Koivisto, Riikka Koulu, Stefan Larsson [3; 1]; Shepitko, V., Shepitko M., Latysh K., Kapustina M., Demidova E. [4; 135]; Idrysheva S.K. [5; 72]; Inozemcev M.I. [6; 8]; Mefod'eva K.A. [7]; Konobeevskaya I.M. [8]; Sarpekov R.K. [9; 12]; Sidorova N.V., Serikbaev A.M. [2; 54]; Sulejmenov M.K. [10]; Fedorchenko S.N. [11; 161] and others. The works of these authors have an industry focus and are devoted to the study of digitalization issues in the context of a separate industry and a separate group of legal relations, or within the framework of a separate institution (body).

The works of the following authors are devoted to the study of artificial intelligence in the legal field: Amijanc K.A., Chemerinskij K.V. [12; 49]; Ahmetzakirov N.R. [13]; Buglaeva E.A. [14; 7]; Karpika A.G. [15; 130]; Klychev R.A., Mankieva A.V. [16; 57]; Morhat P.M. [17]; Sidorova N.V., Dulatbekov N.O., Kusainova L.K. [18; 78]; Temirbekov Zh.R. [19; 142]; Tlembaeva Zh.U. [20; 61]; Sherstoboev O.N., Miheeva I.V. [21; 178]; Shul'gin E.P. [22; 179] and others. Nevertheless, the dynamic development of technologies and the legal framework for regulating artificial intelligence are causing scientific research to lag behind the implemented tracks of digital modernization.

Publications in the field of integration of artificial intelligence into judicial and law enforcement activities based on comparative studies belong to the following authors: Calo R [23]; Castillo del A.P.F. [24; 11]; Hilgendorf E., Kim M. [25]; Felipe Calderon-Valencia, Juan-Jose Perez-Montoya, Fausto Santos de Morais [26; 143]; Birjukov P.N. [27; 79]; Galkina N.M., Kuznetcova D.V., Vorob'ev M.A. [28; 35]; Kashkin S.Ju. [29; 151]; Shahnazarova Je.A. [30; 34]; Sheveleva K.V. [31; 448]. In the domestic scientific school, a comparative study of artificial intelligence in legal processes, judicial and law enforcement activities has not been conducted. Some domestic scientists in their scientific publications on the use of artificial intelligence in the legal sphere reveal foreign experience, but in the context of the related topic under consideration, for example, Konusova V.T. [32; 48]; Simonova V., Seitova A., Aubakir Zh. [33]; Adilov S.A., Shul'gin E.P. [34; 4]. Significant independent scientific studies of artificial intelligence in judicial activity in a comparative aspect have not been conducted in domestic legal science, which is due to the novelty of the institution of "artificial intelligence" as an object of legal regulation, and, consequently, an object of scientific and legal research.

Particular attention is being paid to artificial intelligence technologies at the state level, and the importance of the country's innovative development is also reflected in the draft Constitution of the Republic of Kazakhstan [35]. Analysis of conceptual documents on digital transformation [36] and artificial intelligence development [1] shows that the implementation of the digital transformation indicators stated in these documents should be carried out, including through best practices.

We believe that the need for scientific research in this area is obvious, and this determines the relevance and scientific novelty of this article. This comparative study of artificial intelligence in judicial activity fills a gap in Russian legal science. The formation of the national scientific school on issues of artificial intelligence in law and legal activity is at the initial stage of formation, which is due to the novelty of the technology of artificial intelligence in the global sense, as well as applied to such a sensitive area as justice. The scientific novelty of the work consists in the study of theoretical approaches to the formation of a separate direction of digital modernization of judicial activity through the use of artificial intelligence technologies, as well as the generalization of advanced practices in the field of using artificial intelligence in judicial activity. The practical significance of the study lies in identifying the prospects for extrapolation, formed on the basis of best practices, experience in using artificial intelligence technologies in law, as well as in identifying the barriers and risks of these processes.

Methods and materials

The research methodology is based on a comparative method, through which an analysis of the legal framework and practices of integrating artificial intelligence into the judicial system was conducted, which

allowed us to correlate the research results with the conceptual directions of innovative development of judicial activity in Kazakhstan. The comparative research method is successfully complemented by fundamental methods based on the analysis and synthesis of legal knowledge. A logical-legal and theoretical-legal analysis of international experience made it possible to identify existing doctrinal approaches and best practices in the topic under study. Systemic and structural analyses, in addition to the comparative method, expanded the possibilities for formulating proposals for extrapolating international experience in Kazakhstan. The use of this methodology made it possible to realize the research objectives and achieve the stated goal. The theoretical basis of the study includes publications on the stated topic. The legal basis of the study consists of legal acts of foreign states and the Republic of Kazakhstan, in the context of an analysis of the legal prerequisites for the use of artificial intelligence technologies in judicial activity. The empirical basis includes materials from scientific missions to Dubai (UAE) and Shanghai (China).

Results

A comparative study of international experience in integrating artificial intelligence technologies into judicial practice demonstrates that defining conceptual priorities for digital transformation and developing institutional tools for implementing these areas, both strategically and in the near term, are key to the development of artificial intelligence technologies. A key component of the successful integration of artificial intelligence into various spheres is the development of a legal framework and the creation of relevant legislation.

The conducted doctrinal analysis shows that polar approaches to the use of artificial intelligence in judicial and law enforcement activities have been formed in the scientific environment.

1. Assistive aspect of introduction of technologies to artificial intelligence. Solomatina A.G. adheres to this position [37; 97] and Kartashov I.I. [38; 75]. That is, the main purpose of using artificial intelligence is improvement and assistance in the implementation of the functions of a judge, investigator, police officer, etc., as well as the implementation of consulting activities, document processing, and analytical work.

2. Full replacement of participants in criminal proceedings with artificial intelligence technologies. This prospect of applying artificial intelligence in judicial and law enforcement activities is substantiated in the publications of Gavrilin A.V., Filatov A.A. [39], Gordeev A.Ju. [40; 123].

A critical analysis of these approaches shows that at the current stage of the development of artificial intelligence technologies and their application in judicial and law enforcement activities, according to the research of advanced practices, it shows that these technologies have an auxiliary aspect and are aimed at the complete replacement of a person in the justice system. However, the dynamics of the development of artificial intelligence technologies, the format of their use, can exclude the reliability of forecasts, supporters of the second approach. In this case, only time can prove or disprove the forecast of full replacement of a person in court proceedings.

The author's position on this issue is the adoption of the auxiliary function of artificial intelligence in judicial and law enforcement activities, the effectiveness of which is confirmed by foreign experience. According to the authors, the complete replacement of human units with artificial intelligence contradicts the principles of justice and its essence.

While foreign countries' practices in using artificial intelligence in judicial practice have their own unique characteristics, there is a universality in the trends of using artificial intelligence in courts across the globe (Tab. 1) [41].

Table 1

Trends in the use of artificial intelligence in foreign courts

№	Direction of use	State	Functional
1	Informatization and systematization	USA	automatic recognition of documents submitted by the parties
			case materials analysis (eDiscovery)
		Brazil	document systematization (Victor system)
		China	analysis of visual evidence, processing of scanned documents
		United Kingdom	improving the efficiency of electronic document management (HMCTS Digital Case System)
		European Union	improving the efficiency of electronic judicial document management
		Netherlands	electronic document management

Continuation of Table 1			
2	Search for legislation and judicial practice	China	automatic search for court decisions on similar cases (Pkulaw)
			intelligent search of relevant legal norms (Pkulaw)
			search with analysis of meaning at the level of articles, points, paragraphs and sentences (Pkulaw)
		Brazil	search for judicial precedents
		United Kingdom	searching for information in legal archives and repositories
France	an internal state semantic search engine used by courts and law enforcement agencies		
3	Document project designer	China	automatic generation of draft procedural documents
			preliminary generation of draft court decisions
			provides recommendations for sentencing based on the case
		Brazil	intelligent generation of draft documents (draft court decisions)
		Argentina	preliminary generation of draft court decisions (Prometea system)
Netherlands	in-depth data mining of text documents and their processing generating document templates		
4	Routine tasks	China	automatic generation of court hearing minutes
			automatic speech-to-text transcription
			automatic recognition of speakers and the content of a court hearing
			the ability for judges and parties to view the transcribed text in real time
			automatic calculation of interest (costs)
		India	translation of court documents into other languages
UAE	blockchain technology aimed at reducing financial costs and expediting the enforcement of court decisions access of the parties and the legal community to court documentation		
5	Predictive justice	USA	an algorithm predicting the correct decision of the US Supreme Court with 70 % accuracy
		USA	cautious attitude towards predicted justice
		Canada	cautious attitude towards predicted justice
		United Kingdom	79 % predictability of European Court of Human Rights decisions
		European Union	private companies (lawyer investment pools) are buying the results of predictive forensic analytics
		Netherlands	predictive forensic and law enforcement analytics
		France	preventive forensic analytics systems for private law firms
6	Intelligent answers to legal questions	China	answers to legal questions based on the knowledge base
		USA	intelligent responses to legal questions, supported by judicial precedent and legal norms (Ross system, “robot lawyer”)
		France	AI-powered chatbots

Some of the aforementioned trends in the implementation of AI systems in judicial practice are also present in Kazakhstan. For example, automated judicial workstations; digital analytics of judicial practice; robotic automation of certain processes (authorizing travel restrictions, issuing court orders for alimony collection); and the execution of routine tasks. However, the predictive justice system, developed using artificial intelligence tools by one of the study's authors, remains to be tested.

The use of artificial intelligence in the judicial system in most countries is in the early stages of its integration. An analysis of trends in the use of artificial intelligence in foreign countries revealed that a pool of leading countries has emerged, and these countries are developing best practices that are subsequently extrapolated to other countries.

Priority practices that, according to the authors, can be extrapolated in the near future in Kazakhstan:

1. In the field of digital support for judicial activities:

- automated analysis of case materials, including document recognition and processing;
- smart validation of documents and visual materials;
- smart systematization of case materials;
- improved efficiency of electronic document management.

2. “Smart search” for relevant legislation and judicial practice.

3. Document designer (in the advisory context):

- automatic generation of a draft court decision;

- automatic generation of a court document to assist the parties;
- automatic generation of draft procedural documents;

4. Routine tasks:

- automatic preparation of court hearing minutes;
- automatic transcription of speech to text;
- automatic calculation of legal costs;
- automatic translation of court documents into other languages;
- expediting the enforcement of court decisions.

5. Predictable justice, including for the purpose of financing legal costs.

6. Legal assistance to the public.

The implementation of certain areas of artificial intelligence in the justice system will be carried out within the framework of the targeted funding program “Innovative approaches to ensuring access to justice for the population of the Republic of Kazakhstan, using artificial intelligence tools” and the completion of work on the digital platform LegalExpert.kz (<https://legalexpert.kz/request>), created on the basis of artificial intelligence [42; 80].

Discussion

At an extended government meeting on January 28, 2025, Prime Minister K. Tokayev instructed to intensify efforts to develop artificial intelligence and implement it in the activities of government agencies and national companies [43]. Issues of artificial intelligence and the importance of its integration into various spheres of Kazakhstan’s life are addressed by the Head of State in the overwhelming majority of his speeches, messages, interviews, and other publications.

The United States and China occupy leading positions in the development of artificial intelligence technologies. Legal processes, judicial, and law enforcement activities are also among the clusters subject to digital transformation in these countries, including in the direction of integrating artificial intelligence. According to I.A. Filipova, “In the AI technology race, countries compete on three indicators:

1. The level of artificial intelligence development, with the United States leading the way, and China in second place.
2. The pace of artificial intelligence development, with China firmly in the lead, and the United States lagging behind.
3. The level of legal regulation of artificial intelligence; according to this indicator, China and the European Union occupy leading positions” [42; 80].

In 2017, China adopted a Next-Generation Artificial Intelligence Development Plan, which set an ambitious goal of achieving global leadership in this field by 2030. An important aspect worth noting is the institutional support for the plan’s implementation, which included the establishment of an Advisory Committee on Artificial Intelligence Strategy within the Ministry of Science and Technology of the People’s Republic of China. Currently, regulatory functions in the field of artificial intelligence are vested in the Cyberspace Administration of China [44; 46].

The development of artificial intelligence technologies in the PRC occurred in parallel with the formation of a legal framework. The legal basis for regulating the development of artificial intelligence in China includes the following acts: The Cybersecurity Law of the PRC of November 7, 2016 (came into force on June 1, 2017); the 2018 White Paper on Artificial Intelligence Standardization; the 2019 Beijing Principles on Artificial Intelligence; the 2021 Code of Ethics for Next-Generation Artificial Intelligence; Regulations on the Administration of Deep Synthesis Internet Information Services dated November 25, 2022 (came into effect on January 10, 2023) and others [44; 46].

China’s list of legal acts regulating artificial intelligence includes not only policy documents but also legislative and bylaws. Particular attention should be paid to bylaws (regulations) regulating the technological, generative, and algorithmic aspects of artificial intelligence. The authors believe the key provisions of these documents should be studied in more detail to determine the prospects for their adoption in Kazakhstan’s legal framework:

- labeling of generated content;
- registration of artificial intelligence algorithms;
- prohibition of the use of artificial intelligence to create fake news;
- prohibition of monopoly of artificial intelligence platforms; Prohibition of discriminatory tags in artificial intelligence algorithms;
- consumer right to disable algorithmic platforms, etc.

The use of artificial intelligence in legal processes, judicial, and law enforcement activities in China is under special management by generative artificial intelligence services. Thus, the integration of artificial intelligence into court operations, according to the documents under review, must be done cautiously and in compliance with copyright [45]. This means that content generated by artificial intelligence and used by the court or other legal community, including law enforcement agencies, is protected by copyright. This is associated with the commercialization of the results of companies developing algorithms for generating content in legal processes, judicial, and law enforcement activities.

China's experience in applying artificial intelligence in judicial activities is indicative, and includes the following clusters:

1. Strategic priorities for modernizing China's judicial system through the introduction of artificial intelligence technology (implementation of the "Smart Court" concept, as well as the formation of the "Guidelines of the Supreme People's Court of China on the Application of Artificial Intelligence in Judicial Activities").

2. Technological foundations (Table 2).

Table 2

An overview of key AI technologies and their application in China's judicial system

Artificial intelligence technologies	Specific judicial application	Examples
Natural language processing (NLP)	understanding legal texts, analyzing court records, converting natural language into legal language	Pkulaw, Shanghai Supreme Court System
Machine Learning	case selection, intelligent sentencing, evidence analysis, document generation, pattern identification	Pkulaw, Shanghai Supreme Court System, 206 System
Big Data Analytics	processing and analysis of huge amounts of legal information, identifying trends, and supporting decision-making	Pkulaw, Artificial Intelligence in Environmental Justice
Image Recognition	analysis of visual evidence, processing of scanned documents	Shanghai Supreme Court System

3. Artificial intelligence in judicial decision-making (assisted generation and review of legal documents using artificial intelligence; sentencing support using artificial intelligence and discretionary guidance; case selection).

4. Artificial intelligence in trial preparation and courtroom support (intelligent systems for pre-trial procedures and evidence management; a "mart litigation" ecosystem that goes beyond protocol and encompasses a range of artificial intelligence tools to assist judges).

5. Key platforms and systems (e.g., Pkulaw, the "206" system, etc.). Pkulaw is an artificial intelligence-based platform that has evolved from a legal information search system created in 1985 to a platform that actively utilizes artificial intelligence. Pkulaw's goal is to make legal services more professional, accurate, and intelligent (Table 3).

Table 3

An overview of Pkulaw's AI-powered litigation support features

Pkulaw's artificial intelligence function	Description of functionality	The corresponding system (module) Pkulaw
Intelligent determination of guilt and imposition of punishment	provides recommendations for sentencing based on the case	FABAO Zhixing
Selection of precedents	recommends similar previously considered cases	Smart Justice Business Platform FABAO Zhixing
Intelligent document generation	assists in drafting legal documents	FABAO Zhixing
Recognition of case elements	automatically identifies key elements of the case	Smart Justice Business Platform
Provision of laws and regulations	intelligently selects relevant legal norms	FABAO Zhixing
Analysis of deviations in sentence lengths	analyzes the proposed sentence for deviations from standard practice	FABAO Zhixing
Intelligent answers to questions	provides answers to legal questions based on a knowledge base	FABAO Cloud Service
Intelligent search with semantic analysis	provides search with analysis of meaning at the level of articles, points, paragraphs and sentences	Pkulaw

6. The symbiosis of humans and artificial intelligence, based on judicial autonomy and the advisory role of artificial intelligence (supporting judicial discretion, i.e., artificial intelligence as an auxiliary tool; analyzing the dynamics of judges' agreement and disagreement with artificial intelligence recommendations).

7. Ethical aspects of the use of artificial intelligence in judicial activities (ensuring data integrity, countering algorithmic bias and the "black box" problem; mechanisms for responsibility and accountability in decision-making using artificial intelligence; the implementation of artificial intelligence in parallel with the adaptation of the legal framework, forming the legal basis for overcoming existing risks).

In the Republic of Kazakhstan, informatization and digitalization are currently the subject of legal regulation of the Law of the Republic of Kazakhstan "On Informatization" dated November 24, 2015 No. 418-V [46]. However, this is not a single legislative act that regulates this sphere. The array of legal acts in the field of digitalization and informatization includes not only basic legislative acts, but also subordinate acts, the number of which is more than two hundred [18; 78]. A large array of normative legal acts was one of the reasons for the development of the draft Digital Code, which at the time of writing this article was adopted by the Parliament and signed by the President of the Republic of Kazakhstan, the code did not enter into force [47]. The project code contains chapter 19 "Guarantee of safe use of technologies (systems) of artificial intelligence" (15 articles) [48]. In the final version, the Digital Code does not contain independent chapters containing provisions on guarantees of safe use of artificial intelligence, as adopted by the Law of the Republic of Kazakhstan dated November 17, 2025 "On artificial intelligence" [49], which is also connected with the extrapolation of international experience.

The Artificial Intelligence Development Plan, approved by the State Council of the People's Republic of China in 2017, defined global goals through 2030 (hereinafter referred to as the Plan) [44]. The Plan envisages the integration of artificial intelligence into various clusters of the economy and public life. The Plan does not contain a direct reference to the use of artificial intelligence in the judicial system; however, the general political basis for the implementation of artificial intelligence in the judicial system is formed through the objective set out in the Plan: building a "safe, convenient, and smart society" [50].

Unlike China, the legal regulation of artificial intelligence in the United States is fragmented, unsystematic, and uncoordinated. Until recently, this area lacked a clearly defined national strategy and was predominantly decentralized [51; 134]. Legislative acts regulating artificial intelligence include: the National Artificial Intelligence Initiative Act of December 28, 2020; the Artificial Intelligence Training Under the Workforce Engagement Act of October 17, 2022; the Executive Order of the President of the United States of February 11, 2019, "On Maintaining American Leadership in Artificial Intelligence"; the Executive Order of December 3, 2020, "On Promoting the Use of Trustworthy Artificial Intelligence"; and the Executive Order of October 30, 2023, "On the Safe and Secure Development and Use of Artificial Intelligence".

The progressive leap in the application of artificial intelligence technologies in the United Arab Emirates is noteworthy. The main concept being implemented in this country is investing in artificial intelligence (attracting foreign specialists) and a stated desire to become a leader in this field. In the UAE, a specialized Ministry of Artificial Intelligence has been established [52], an Artificial Intelligence Council has been formed [53], and an Artificial Intelligence Center has been opened [54]. In the Republic of Kazakhstan, a Ministry of Artificial Intelligence and Digital Development was also established in the fall of 2025 as a tool for extrapolating the experience of foreign countries. Back in 2018, Abu Dhabi launched the first digital courtroom in global practice. Its features include digital documentary support, remote access to digital court materials, electronic registration, real-time broadcast recording, etc. In many countries, online justice was a response to the Covid-19 pandemic; the UAE implemented this system much earlier [55]. ADGM Courts have implemented blockchain technology, reducing financial costs and expediting the enforcement of court decisions. It also provides access for parties and the legal community to court documents, which are stored in digital format on a distributed ledger. A pilot version of this project has been tested in international trade and commercial cases [56].

One of the problems with the use of artificial intelligence in legal processes, judicial and law enforcement activities is ethical issues. An example of the "unethical" use of artificial intelligence technologies, according to a number of authors, is the American Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) system [28; 35]. The essence of the system is to make a decision about the possible recidivism of an individual under the jurisdiction's scrutiny, based on artificial intelligence algorithms that generate an analytical forecast based on the answers received during interrogation (other procedural actions), in conjunction with criminal record data and other information. Research has determined that the system contains discriminatory algorithms, since race influences the

artificial intelligence's predictions, according to which black people, compared to white people, are more often identified as prone to recidivism [57].

An example of a "smart assistant" for supporting legal processes is the American digital technology Ross. The primary users of this AI system are members of the legal community (attorneys and legal professionals), who can receive up-to-date answers to legal questions, supported by references to legal norms and case law. The commercialization of legal services related to artificial intelligence technologies is linked to predictive justice, which is used by law firms.

Predictive justice is also a new format for legal processes and judicial activity in the European Union. Artificial intelligence technologies minimize the labor costs of lawyers, thereby improving productivity [58]. Predictive justice predicts case outcomes based on machine learning algorithms that analyze large data sets. This prediction serves as a trajectory for formulating a case position, within which the financial prospects and financial costs of the case can also be assessed. According to a study, the effectiveness of artificial intelligence in predicting case outcomes is 80 % [59]. How effective is this indicator of a machine-generated case outcome prediction? It seems advisable to conduct research in this area based on testing predictive justice systems and real-world judicial practice. This, in turn, will require time resources for a more comprehensive and reasoned analysis of existing judicial practice and artificial intelligence forecast data [42; 80].

Predictive analytics is another area of artificial intelligence application in law enforcement agencies, which exists in Austria, the Netherlands, and France. In these countries, artificial intelligence is also used in electronic document management and archival management, enabling information retrieval and analysis relevant to the task at hand. However, in terms of the effectiveness and scope of AI-generated predictive analytics used by law enforcement agencies, EU countries lag behind the United States, China, and the United Kingdom (with the exception of the Netherlands) [60].

Predictive analytics is a tool that eliminates "subjectivity" and "bias" and is aimed at developing a "preemptive model" of law enforcement activities, which is actively used by law enforcement agencies in the European Union, individual Asian countries, and the United States (Table 1). Artificial intelligence makes it possible to create a model of an object of interest to law enforcement activities and proactively respond to emerging risks and threats based on big data analysis. For example, the Shanghai Pudong District Prosecutor's Office has integrated more than 17,000 cases since 2015 (for the following crimes: credit card fraud, dangerous driving, intentional damage, theft, fraud, hooliganism, obstruction of official duties) to analyze the information and develop leads in criminal cases, the accuracy of which, according to published data, is 97 % [61]. The positive aspects of the "AI prosecutor" include assistance to prosecutors, relief from a large caseload, reliable forecasts, and the redirection of prosecutorial efforts to other tasks. The main drawback is that the AI prosecutor is trained based on previously downloaded data, without taking into account modern realities. This factor is the key to the current rejection of predictive analytics.

Conclusions

A comparative study of international practices shows that artificial intelligence technologies, on the one hand, have innovative potential and are aimed at the technological modernization of processes and procedures in various fields, including the judiciary. On the other hand, the different approaches of states to integrating artificial intelligence into judicial activity are primary factors in choosing the format and direction of integrating artificial intelligence into judicial activity, taking into account potential risks. The conducted study allowed us to formulate the following conclusions:

- artificial intelligence is a tool for digital development, and states must create the legal, organizational, and technological conditions for the successful use of this tool;
- state leadership in the global context involves a complex set of components, including innovative transformations based on artificial intelligence and neural networks;
- a group of leading states in the field of artificial intelligence determines trends and directions for the implementation of artificial intelligence, including in the judicial sphere;
- the digital transformation of judicial activity is entering a qualitatively new direction, including the use of artificial intelligence tools;
- successful integration of artificial intelligence into all areas, including judicial activity, is possible through combining state priorities with the active involvement of the commercial sector (technology, investment, specialists, commercialization, etc.);

- the Republic of Kazakhstan, in light of adopted strategic documents, plans to take a leading position in the field of innovation using artificial intelligence;
- key areas of application of artificial intelligence in judicial activity in foreign countries: systematization and informatization; smart assistance to judges and other participants in the process; predictive justice; documentation of judicial activity; performance of routine tasks;
- extrapolation of best practices in the application of artificial intelligence in judicial activity should occur through the prism of domestic law, with respect for human rights and the implementation of ethical principles;
- best practices in the application of artificial intelligence in judicial activity can be transformed into Kazakhstani practice only after their testing and research into the effectiveness of these technologies;
- content generated by artificial intelligence for judicial purposes must be protected by copyright, which will require amendments and additions to this area of domestic law.

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Н.В. Сидорова, В.В. Филин

Сот тәжірибесіндегі жасанды интеллекттің салыстырмалы зерттеуі

Мақаланың мақсаты — шетелдердегі сот төрелігі саласында жасанды интеллект технологияларын пайдалану үрдістері мен тәжірибелеріне салыстырмалы талдау жүргізу, сондай-ақ салыстырмалы зерттеу аясында халықаралық тәжірибені экстраполяциялау үшін негіздеме әзірлеу. Зерттеу әдіснамасы салыстырмалы әдіске негізделген, ол ең үздік тәжірибелерді және оларды

экстраполяциялау салаларын анықтау үшін Қазақстан Республикасындағы бар мүмкіндіктермен байланыстырушы негізгі құрал. Зерттеуде жүйелік талдау, халықаралық тәжірибенің логикалық-құқықтық және теориялық-құқықтық талдау әдістері оң және теріс аспектілерді анықтау тұрғысынан қолданылды. Зерттеу процесінде негізделген негізгі қорытынды мынадай: жасанды интеллект технологияларының даму қарқыны мемлекеттерге олардың үдемелі дамуға деген сұранысын елемеуге мүмкіндік бермейді. Тек мемлекет пен қоғамның барлық салаларына жасанды интеллекті интеграциялау бойынша батыл және түбегейлі шешімдер ғана мемлекет табысының кілті болады, оны енгізу этикалық аспектілер мен құқықтық реттеуге сәйкес жүзеге асырылуы тиіс. Ең үздік тәжірибелерді экстраполяциялау бойынша ұсыныстар жасанды интеллекті пайдаланумен байланысты цифрлық трансформацияның басым үрдісін жүзеге асыруда практикалық маңызға ие.

Кілт сөздер: жасанды интеллект, нейрондық желілер, сот төрелігі, сот төрелігіне қолжетімділік, цифрландыру, құқық қолдану, құқықтық процестер, шетелдік тәжірибені экстраполяциялау, салыстырмалы зерттеулер.

Н.В. Сидорова, В.В. Филин

Компаративное исследование искусственного интеллекта в судебной деятельности

Цель статьи — сравнительный анализ тенденций и практик использования технологий искусственного интеллекта в зарубежных странах в сфере правосудия, а также формирование фрейма направлений экстраполяции зарубежного опыта в контексте компаративного исследования. Методология исследования основывается на сравнительном методе, который является базовым и позволяет определить передовые практики, соотнести их с имеющимися возможностями в Республике Казахстан для определения направлений экстраполяции. В процессе исследования применяются методы системного анализа, логико-правового и теоретико-правового анализа зарубежного опыта, в том числе в контексте определения положительных и отрицательных аспектов. Основной вывод, который обоснован в процессе исследования, заключается в том, что темпы развития технологий искусственного интеллекта не позволяют государству игнорировать их востребованность в поступательном развитии. Только смелые и кардинальные решения интеграции искусственного интеллекта во все сферы функционирования государства и общества являются залогом успешности государства, реализация которых должна осуществляться с соблюдением этических аспектов и при правовом регулировании. Предложения по экстраполяции передовых практик имеют практическое значение в реализации приоритетного тренда цифровой трансформации, связанного с использованием искусственного интеллекта.

Ключевые слова: искусственный интеллект, нейронные сети, правосудие, доступ к правосудию, цифровизация, правоохранительная деятельность, юридические процессы, экстраполяция зарубежного опыта, компаративное исследование.

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