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Official Interpretative Acts of Normative Legal Instruments in the Republic of Kazakhstan: Legal Analysis and Issues of Application

The article examines acts of official interpretation concerning normative legal acts issued by executive bodies of the Republic of Kazakhstan, with particular attention to their place within the system of non-normative legal acts. It analyzes their legal nature, functional purpose, and role in the implementation of legislation. The objective of the study is to clarify the legal nature and functional significance of official interpretative acts and to determine their place within the system of non-normative legal acts issued by executive authorities. The research is based on a formal-legal methodology, complemented by an examination of administrative practice in the adoption of such interpretative acts. Based on the provisions of the Law of the Republic of Kazakhstan “On Legal Acts” (2016) and the practice of issuing official interpretations by central executive bodies, the study substantiates its conclusions and develops new scholarly propositions. It argues that, although they do not possess normative legal force, acts of official interpretation play a crucial role in ensuring consistency in the activities of public administration and executive bodies and in reducing legal uncertainty in the sphere of public administration.

Keywords: non-normative legal acts, individual acts, official interpretative acts, executive authorities, law enforcement, Republic of Kazakhstan.

Introduction

However, despite the growing practical relevance of official interpretative acts within Kazakhstan’s system of public administration, their legal nature and functional role remain insufficiently elaborated in national legal scholarship. In much of the existing literature, such acts are examined primarily through the broader categories of interpretation of law or administrative rulemaking, while their independent place within the system of executive legal instruments often receives only limited attention. In the author’s view, this approach does not fully reflect the actual significance of interpretative acts in contemporary administrative practice. The author proceeds from the position that official interpretative acts should not be regarded merely as auxiliary explanatory documents accompanying normative regulation. In practice, they perform a far more substantial function: they shape administrative discretion, influence the day-to-day application of legislation by executive bodies, and directly affect the realization of rights and obligations by individuals and legal entities. At the same time, the expanding use of interpretative acts raises a number of theoretical and practical concerns. Excessively broad or formally unstructured interpretation may create risks of implicit modification of normative content under the guise of clarification. This becomes particularly significant in situations where executive authorities effectively supplement legislative regulation through interpretative practice

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without formally adopting new normative acts. For this reason, the author considers it necessary to examine official interpretative acts not only from the standpoint of legal technique, but also through the prism of legality, limits of administrative discretion, and guarantees of legal certainty.

From this perspective, official interpretative acts represent not simply a technical instrument of explanation, but an increasingly influential element of contemporary administrative governance in Kazakhstan. Their growing role reflects the broader transformation of the relationship between executive power, legal regulation, and the protection of individual rights within the evolving administrative state. The significance of official interpretative acts is also reflected in Kazakhstan's ongoing legal and administrative reforms. The Law of the Republic of Kazakhstan "On Legal Acts" of 2016 [1] provides the legal basis for official interpretation, while the Concept of Legal Policy until 2030 [2] and the Concept for the Development of Public Administration until 2030 [3] highlight the importance of legal certainty and consistency in the application of law.

Both policy frameworks emphasize the need to enhance the quality of regulatory governance, ensure transparency in the activities of executive authorities, and promote a stable and consistent law enforcement practice. As the institutional framework of legal regulation continues to develop, acts of official interpretation are assuming an increasingly important place within the legal system of the Republic of Kazakhstan. Although formally regarded as non-normative instruments, in practice their function extends well beyond a merely supportive role.

The experience of the Russian Federation and the Kyrgyz Republic is especially instructive in this regard, providing a basis for identifying common patterns in the functioning of official interpretative acts as a form of non-normative legal instruments [4], as well as for outlining potential avenues for their further development in Kazakhstan [5]. The increasing role of official interpretative acts in the activities of executive authorities has brought renewed attention to a number of issues that remain unsettled in Kazakhstani legal scholarship. There is no generally accepted view of their legal nature, and their place within the system of non-normative legal acts remains a matter of discussion. At the same time, insufficient attention has been paid to the limits of official interpretation and its relationship with law-making. As a result, the criteria for distinguishing interpretation from the effective expansion of regulatory content have yet to be clearly articulated. This uncertainty is reflected not only in legal doctrine but also in administrative practice, where the legal significance of interpretative acts is often assessed inconsistently.

A.V. Gabov's study of official explanations issued in the context of anti-sanctions regulation highlights their role not only in ensuring the uniform application of legal provisions, but also in maintaining coherence in state regulatory policy. His findings suggest that official interpretative acts have acquired an increasingly important place in contemporary legal regulation, which calls for closer attention to their legal nature and position within the system of executive legal acts [6; 46]. Abdrasulova A.E. likewise points to gaps in the legal regulation of official interpretation in Kazakhstan. Her comparative analysis of EAEU member states suggests that questions concerning the legal framework, procedures, and institutional organization of interpretative activity remain only partially resolved, which continues to generate practical difficulties in the application of normative legal acts [7; 11-12]. Polezhaev D.A. examines official interpretation through the prism of administrative discretion, noting that explanatory acts often reflect choices made by public authorities when applying broadly framed legal requirements. His analysis highlights the continuing difficulty of distinguishing between interpretation and the effective shaping of regulatory outcomes [8; 138].

These considerations underscore both the scholarly and practical relevance of the present study. It seeks to advance a comprehensive understanding of official interpretative acts of normative legal instruments not only as a distinct category of non-normative legal acts, but also as an integral component of the broader mechanism of legal regulation and of the law enforcement activities carried out by executive authorities in the Republic of Kazakhstan.

The purpose of this study is to provide a comprehensive theoretical and legal analysis of the nature, institutional position, and functional significance of official interpretative acts of normative legal instruments within the system of legal regulation in the Republic of Kazakhstan. It also seeks to clarify their role in promoting consistency in law enforcement practice and enhancing the effectiveness of executive authorities in the context of ongoing administrative and legal reforms.

To achieve this objective, the article addresses a set of interrelated tasks:

- to elucidate the essence of official interpretative acts beyond their formal definition, identifying their actual place within the system of legal acts in Kazakhstan at the point where the boundary between the norm itself and its understanding becomes particularly nuanced;

- to conceptualize their legal nature as a distinct category of non-normative acts that emerge within the sphere of law enforcement, where executive authorities do not formally create law, yet inevitably shape its practical operation;
- to identify and substantiate the underlying principles of official interpretation, treating them not as abstract declarations but as operative criteria through which the requirements of legality, legal certainty, and transparency in public administration are realized;
- to compare approaches to the institution of official interpretation across different legal systems—primarily those of the Russian Federation and the Kyrgyz Republic—in order to reveal not only structural similarities but also differences in legal culture and interpretative practice;
- to formulate, on the basis of this analysis, conclusions and recommendations aimed not merely at supplementing the existing regulatory framework, but at guiding its further development, while maintaining a delicate balance between the need for authoritative interpretation and the risk of encroaching upon the sphere of law-making.

Methods and Materials

The study is grounded in a combination of general scientific and specialized legal research methods. A formal legal approach was employed to examine the provisions of the Law of the Republic of Kazakhstan “On Legal Acts”, along with subordinate legislation and interpretative documents issued by executive authorities [1]. A systemic and structural method made it possible to situate official interpretative acts within the broader framework of legal instruments and administrative decision-making. The use of a logical-legal method facilitated an assessment of the internal coherence and functional orientation of these acts. In addition, a comparative legal approach was applied to analyze the regulation and practice of official interpretation in the Republic of Kazakhstan, the Russian Federation [5], and the Kyrgyz Republic [4].

The normative basis of the research includes the Constitution of the Republic of Kazakhstan [9], the Law “On Legal Acts” [1], and other regulatory legal acts governing the adoption and application of official interpretative acts by executive authorities. The study also considers the provisions of the Concept of Legal Policy of the Republic of Kazakhstan until 2030 [2] and the Concept for the Development of Public Administration until 2030 [3], since both documents largely determine the current direction of administrative and legal reforms in Kazakhstan.

The empirical material of the research consists of 13 official interpretative acts adopted by central executive bodies of the Republic of Kazakhstan [10–22]. The examination of these materials made it possible to trace how interpretative powers are exercised in practice and to identify a number of recurring problems related to the uniform application of legislation.

The theoretical foundation of the study is based on the works of Kazakhstani and foreign scholars in the fields of administrative law, legal theory, legal interpretation, and law enforcement [23; 100-101]. Their approaches were used not only as background material, but also as a basis for assessing different views on the legal nature of official interpretative acts and their place within the system of executive legal instruments.

The research methodology combines both general scientific and special legal methods. The formal legal method was used in the analysis of legislative provisions regulating interpretative activity. Comparative legal analysis helped identify differences in doctrinal approaches to the understanding of official interpretative acts and their practical role in administrative governance. Systemic analysis was applied to examine the relationship between interpretative acts, administrative procedures, and law enforcement mechanisms. In addition, elements of analytical interpretation were used when studying administrative and judicial practice related to official explanations issued by executive authorities.

Results

The conducted research made it possible to move beyond the purely formal understanding of official interpretative acts that has long prevailed in domestic legal literature. In practice, these acts function not simply as auxiliary clarifications accompanying normative regulation, but as an independent legal mechanism through which executive authorities shape a uniform approach to the implementation of legislation. Although such acts do not formally amend legal norms or create new rules of conduct, they substantially influence the way existing provisions are understood and applied within administrative practice.

The analysis demonstrated that the legal nature of official interpretative acts cannot be reduced solely to technical explanations of legislative wording. Their actual role is considerably broader. They operate at the intersection of law enforcement and administrative regulation, where the executive authority, while remain-

ing formally outside the sphere of lawmaking, nonetheless participates in shaping the practical meaning of legal norms. In this respect, interpretative acts serve not only a clarifying function but also a coordinating one, since they help establish consistent administrative approaches among different state bodies and officials.

The authors view acts of official interpretation as a separate category of legal acts issued by executive authorities. These acts cannot be fully equated either with individual administrative decisions or with internal administrative documents. Their distinctive feature is that, while they do not establish legal norms, they nevertheless shape the application of existing legislation by providing authoritative guidance for administrative and enforcement practice. Particular attention in the study was devoted to the principles underlying official interpretation. The research showed that legality, legal certainty, transparency, reasonableness, and consistency are not merely declarative foundations of interpretative activity. In administrative practice these principles act as practical safeguards limiting arbitrary interpretation by public authorities. The absence of clear interpretative guidance frequently leads to fragmented enforcement practices, contradictory administrative decisions, and unequal treatment of individuals in similar legal situations. Official explanatory acts therefore perform a compensatory function aimed at preserving predictability in public administration.

The study also revealed that the practical significance of interpretative acts increases proportionally with the growth of legislative complexity. The continuing expansion of regulatory material, the accelerated pace of legal reforms, and the broad use of blanket and reference provisions create conditions in which executive authorities inevitably face difficulties in ensuring uniform implementation of legislation. Under such circumstances, official interpretation becomes not an exceptional mechanism but a regularly used instrument of administrative coordination.

Comparative analysis of the legal systems of the Russian Federation and the Kyrgyz Republic demonstrated that, despite similarities in the general purpose of interpretative acts, the institutional models of official interpretation differ in meaningful ways. In the Russian legal system, interpretative practice has developed through a more extensive doctrinal and judicial elaboration of the distinction between normative clarification and hidden lawmaking. In the Kyrgyz Republic, interpretative mechanisms remain more closely connected to the administrative structure of executive bodies themselves [4, 5]. These differences reflect not only variations in legislative technique but also broader distinctions in administrative legal culture and in the degree of proceduralization of public administration.

The research further established that one of the central unresolved issues in Kazakhstani practice concerns the boundary between permissible official interpretation and the de facto expansion of regulatory content through interpretative acts. In a number of cases, interpretative documents issued by executive authorities influence the practical scope of rights and obligations more substantially than the original normative provisions themselves. This creates a risk of substituting legislative regulation with departmental interpretation, particularly in areas characterized by extensive administrative discretion. In this regard, the study substantiates the need for a more precise differentiation between interpretative activity and quasi-lawmaking practices within the executive branch. The absence of clearly articulated legal criteria for such differentiation continues to generate uncertainty both in administrative practice and in judicial assessment of explanatory acts. Strengthening procedural requirements concerning the adoption, publication, and legal justification of official interpretative acts would therefore contribute not only to greater transparency of executive activity but also to reinforcing guarantees of legality and legal certainty.

The novelty of the obtained results lies in the fact that official interpretative acts are examined not as secondary technical instruments of legal clarification, but as a structurally significant element of the contemporary administrative-law mechanism. The study demonstrates that the growing role of interpretation reflects a broader transformation of public administration itself from a model based primarily on formal execution of normative prescriptions toward a more procedurally organized system in which interpretation increasingly influences the practical realization of rights, duties, and administrative discretion.

On this basis, the research formulates the conclusion that further development of the institution of official interpretation in Kazakhstan requires not only legislative refinement but also a clearer doctrinal understanding of the limits and functions of interpretative authority. Without such clarification, the expansion of explanatory practice may gradually weaken the distinction between implementation of law and indirect participation in lawmaking by executive bodies.

The findings are grounded in an examination of official interpretative acts adopted by central executive bodies responsible for a range of areas of public administration, including healthcare, environmental protection, public-private partnerships, finance, foreign affairs, and subsoil management. Similar trends observed

across these regulatory fields indicate that the empirical material provides a sufficiently broad basis for analysis and lends additional support to the conclusions reached in the study.

Discussion

In contemporary legal systems, ensuring the uniform application of normative legal acts constitutes one of the central tasks of public administration. It is at the stage of implementing legal norms that gaps, conflicts, and ambiguities become most apparent-factors that can undermine the effectiveness of public governance and compromise the principle of legal certainty. The distinctive feature of the executive branch lies in its continuous interaction with private individuals and organizations, as well as in the breadth of public functions it performs, many of which require detailed procedural regulation and clearly defined administrative frameworks. Under such conditions, even formally clear legal provisions may give rise to divergent interpretations in practice, shaped by variations in administrative practice, differences in the professional competence of officials, and the institutional specificities of particular authorities.

Here is a substantially reworked version that preserves the academic substance and legal terminology while making the text read more naturally and less formulaic:

Acts of official interpretation of normative legal acts occupy a particular place within the legal framework of the Republic of Kazakhstan, serving not only as an auxiliary instrument of legal implementation but also as an independent mechanism contributing to the overall effectiveness of law-enforcement activity. Their growing relevance is closely connected with the increasing sophistication of modern legislation, the multilayered structure of the system of normative legal acts, and the practical need to secure a uniform understanding and application of legal provisions across both public-law and private-law relations. As Kazakhstan continues to pursue legislative modernization alongside comprehensive administrative reforms, the practical importance of interpretative acts has become progressively more pronounced. Through such instruments, legal provisions are translated into workable administrative practice and adapted to concrete socio-economic and institutional conditions in which they are applied.

Under the Law of the Republic of Kazakhstan "On Legal Acts", official interpretation is intended to eliminate inconsistencies arising in the course of applying normative legal acts and is not associated with the introduction of amendments or additions to their substantive content [1]. This characteristic fundamentally differentiates interpretative acts from normative legal acts and supports their classification as non-normative instruments operating within the sphere of law enforcement. The distinction is particularly important for determining their place both within the system of legal sources and within the broader framework through which legislation is implemented in practice. Such acts do not establish new legal prescriptions; rather, they perform an organizational and facilitating function aimed at ensuring the correct and consistent application of existing legal norms by executive authorities. In this regard, official interpretative acts may be viewed as a form of secondary legal regulation concerned not with the creation of new rules of conduct, but with securing the coherent realization of already existing normative provisions.

From a theoretical legal perspective, such acts may be viewed as an intermediate link between normative regulation and individual law-enforcement decisions. Although they lack normative character, they possess a generalizing function and are addressed to an indefinite range of law-appliers. This allows them to be conceptualized as a distinct form of administrative legal interpretation, carried out within the competence of executive bodies and aimed at maintaining the coherence and stability of administrative practice.

In the theory of administrative law, administrative acts are traditionally classified along several dimensions: by their legal significance (normative and non-normative), by the scope of addressees (individual acts and those addressed to an indeterminate group), by functional purpose (regulatory, procedural, interpretative, and informational), and by their sphere of operation (intra-agency and external) [23; 100-101]. Within this framework, acts of official interpretation occupy a distinctive position. They are non-normative administrative acts of an interpretative and organizational nature, primarily directed at public administration bodies and subordinate entities, yet in practice they also shape the conduct of private actors by establishing stable patterns of administrative response.

At the same time, the research showed that official interpretative acts issued specifically by executive authorities still remain only fragmentarily examined in contemporary Kazakhstani legal scholarship. Domestic studies usually address this issue indirectly most often within broader discussions of administrative acts, law-enforcement practice, or general questions of legal interpretation. Because of this, explanatory acts of executive bodies are frequently treated as a secondary procedural instrument rather than as an independent legal phenomenon with its own functions, legal characteristics, and practical effects.

This tendency is noticeable throughout the available literature. Most authors focus either on judicial interpretation or on general issues of administrative procedure. Questions connected with interpretative activity of executive authorities are usually mentioned only briefly and, as a rule, alongside other forms of non-normative administrative decisions. In many cases, different legal instruments are grouped together without a clear distinction between interpretative acts, organizational acts, methodological recommendations, and individual administrative decisions. As a result, the specific legal nature of official explanatory acts issued by executive authorities often remains insufficiently defined.

The present research proceeds from a different perspective. The article examines interpretative acts of executive authorities not as an accompanying technical element of administrative practice, but as a separate mechanism influencing the practical operation of legislation. Particular attention is paid to their role in ensuring uniform law enforcement, limiting excessive administrative discretion, and maintaining legal certainty in relations between public authorities and private persons. This difference in approach is important not only theoretically, but methodologically as well. Studies devoted to administrative acts in general usually analyze interpretative activity only as one element within a much broader system of public administration. In the present work, by contrast, official explanatory acts themselves constitute the central object of analysis. This made it possible to examine more closely how executive authorities actually shape approaches to the application of legal norms in everyday administrative practice.

The research also revealed another important point. Despite the growing practical significance of interpretative acts, specialized studies devoted exclusively to this category of legal instruments remain extremely limited in Kazakhstan. In practice, the issue is often overshadowed by broader discussions concerning administrative justice, administrative procedures, or the classification of administrative acts as a whole. Because of this, direct comparison with existing domestic scholarship is not always possible. Comparable studies focusing specifically on official interpretative acts of executive authorities as an independent object of research remain relatively rare. At the same time, this absence of extensive specialized literature increases the relevance of the present study itself. The lack of clearly developed doctrinal approaches partly explains why interpretative practice of executive authorities continues to evolve unevenly, while the boundary between interpretation and de facto regulatory activity still remains uncertain in both theory and practice.

In practice, they shape consistent administrative approaches and operational standards, which in turn influence the conduct of private actors engaged in legal relations with the state. A defining feature of acts of official interpretation is the absence of law-making content. They do not introduce new standards of conduct or modify existing legal rules. Instead, official interpretative acts clarify and elaborate on provisions that are already in force. Rather, they serve to explain how applicable provisions ought to be interpreted and implemented, especially in recurring practical situations. In this respect, they occupy an intermediate position within the legal system: unlike normative acts, they do not possess autonomous regulatory authority, and unlike individual administrative decisions, they are not aimed at producing direct legal consequences for specifically designated persons. Their legal function is thus auxiliary and facilitative in relation to the primary framework of normative regulation.

The significance of acts of official interpretation within the system of public administration is primarily reflected in their capacity to enhance legal certainty and reduce the risks associated with inconsistent application of legislation. By means of these interpretative tools, executive bodies help maintain consistency in administrative practice, curb excessive discretion by officials, and encourage more uniform approaches to how rights and duties are exercised within administrative and other public-law relationships. In conditions where legislation is both intricate and subject to frequent change, such acts take on a stabilizing role in the application of law, reinforcing confidence in public administration and enhancing the overall quality of regulatory governance.

It is equally relevant to situate these decisions within the broader typology of administrative action based on their place in the governance cycle, namely, strategic, tactical, and operational levels. Official interpretative acts are most appropriately associated with the tactical tier, as they are aimed at refining the day-to-day processes of implementing legislation and resolving practical issues that emerge in the course of executing public functions.

In this way, they serve as a mechanism for adapting normative regulation to specific socioeconomic conditions without altering the formal legal structure of existing norms.

Unlike individual administrative acts, which generate concrete legal consequences for a specific addressee such as the granting of licenses, appointment to public office, or the imposition of sanctions—interpretative acts neither create, modify, nor terminate subjective rights and obligations.

The connection between official interpretative acts and the broader process of administrative decision-making is also apparent at the procedural level. In carrying out their responsibilities, executive authorities must respond in a timely manner both to changes in legislation and to practical issues that emerge during the application of legal norms.

At the same time, the introduction of amendments to normative legal acts is generally associated with complex and time-consuming law-making procedures involving interdepartmental coordination, expert evaluation, and mandatory state registration. In this context, interpretative non-normative acts provide a means of ensuring flexibility in administrative regulation and enable the adaptation of law-enforcement practice to evolving conditions without undermining the principle of legality or the formal hierarchy of legal acts.

Moreover, such acts perform a coordinating function within the system of executive power by promoting uniform approaches across territorial subdivisions and reducing departmental fragmentation in law enforcement practice. This is particularly significant in a unitary state with a developed system of central and local executive bodies, where inconsistencies in practice may lead to violations of the principle of equality before the law and the state [9].

The practical significance of acts of official interpretation as non-normative instruments of executive authorities is clearly demonstrated through such forms as official letters, methodological guidelines, and interpretative instructions issued by competent public bodies.

Official interpretative acts issued by the Ministry of National Economy of the Republic of Kazakhstan reveal a clear and consistent move toward institutionalizing interpretative practice in the field of public-private partnership (PPP) implementation [10]. Their content indicates that these acts do not operate as sources of new legal rules; rather, they serve as instruments for clarifying and harmonizing law enforcement in situations marked by regulatory ambiguity.

An examination of the first interpretative act, concerning the Rules for planning and implementing PPP projects, shows that it is primarily aimed at specifying the financial and legal implications of early termination of contractual obligations. In particular, it addresses compensation payments in cases where a contract is terminated due to the fault of the public partner, as well as in situations involving force majeure. Without altering the substance of the underlying legal provisions, the interpretative act effectively establishes a uniform approach to construing such categories as “lost income” and “other payments”. This clarification is critical for ensuring legal certainty and enhancing the predictability of the investment environment.

The second interpretative act focuses on the more institutional dimensions of the PPP framework. It addresses, *inter alia*, the classification of projects into national and local categories, as well as the criteria for designating projects as being of special significance. This reflects a practical need among implementing authorities for a clear delineation of competences and procedural regimes, a need that arises from the multitiered structure of public administration in Kazakhstan. Given that the underlying regulatory instrument (Order No. 725) sets out only general principles, the interpretative act performs a coordinating function by promoting consistency in the actions of executive bodies operating at different levels [11].

Taken together, the interpretative acts examined confirm that official clarifications issued by central executive authorities constitute an integral component of the law-enforcement framework in the relevant regulatory domain. They reduce legal risks associated with divergent interpretations of statutory provisions while simultaneously preserving regulatory flexibility without requiring formal amendments to the existing legal framework.

An illustrative example is provided by the interpretative act addressing the application of the Rules governing the identification, assessment, and registration of historically contaminated sites. This act reflects a typical form of interpretative engagement by an authorized body within the field of environmental regulation, prompted by the procedural complexity and multistage nature of the regulatory process. Its content demonstrates a clear effort to ensure a consistent understanding of Article 143 of the Environmental Code of the Republic of Kazakhstan, as well as the relevant secondary legislation, by clarifying the procedural algorithm for including sites in the state register [12].

A central feature of the interpretative act under consideration is its detailed elaboration of the procedural dimension-specifically, the process by which a suspected site is classified as an object of historical contamination and subsequently recorded. The regulatory provisions set out in the Rules are largely framework in nature and therefore require further interpretation at the stage of practical application. This is particularly evident with regard to the criteria for identifying such sites, the sequence of actions to be undertaken by competent authorities, and the formal documentation of assessment outcomes. In this context, the interpreta-

tive act performs not only a clarifying but also a methodological function, establishing a standardized approach to the implementation of environmental procedures.

An especially important issue relates to the legal consequences that follow the inclusion of a site in the state register of historically contaminated areas. This measure is not merely classificatory; it activates specific legal duties—above all, obligations to undertake remediation—and may restrict certain forms of economic activity within the designated territory. Considering the wider social and environmental impact of such decisions, interpretative acts play a key role in minimizing the risk of divergent or overly discretionary application of the relevant legal provisions. At the same time, they help preserve a balanced relationship between public environmental interests and the rights of business actors.

A similar dynamic can be observed in interpretative guidance relating to auctions conducted under paragraph 4 of Article 278 of the Code of the Republic of Kazakhstan “On Subsoil and Subsoil Use”. In this context, such clarifications reflect a wider pattern characteristic of the extractive sector, where complex procedural frameworks frequently require additional interpretative support to ensure their consistent and effective implementation.

In the present case, the interpretative clarification is directed toward specifying the requirements governing both the composition and the substantive content of documents submitted within the application process, with particular emphasis on materials confirming the applicant’s professional, technical, and financial capabilities [13].

The analytical value of this clarification derives from its role in removing uncertainty generated by the interaction between the provisions of the Code and the subordinate Rules regulating auction procedures.

Although these requirements are formally, in practice they are frequently expressed in overly general and abstract language. As a result, administrative bodies may apply them differently from one case to another. This lack of consistency increases the likelihood of unequal treatment and can, in turn, influence the competitive environment. By establishing a uniform approach to evidence, the interpretative act essentially defines how applicants are expected to prove that they possess the qualifications, resources, and capacities necessary for participation. As the analysis demonstrates, acts of official clarification occupy a distinctive and, in many respects, intermediate position within the legal system. They cannot be fully attributed either to the sphere of lawmaking or to the sphere of law enforcement in its traditional understanding. On the one hand, such acts do not create new legal prescriptions; on the other, they cannot be reduced to a purely mechanical reproduction of existing regulatory provisions. A closer analysis of these acts shows that their role goes beyond providing purely technical explanations. In reality, they reflect a far more nuanced interpretative process. When issuing such clarifications, authorized bodies do not simply restate legal provisions. They reconstruct their practical meaning by interpreting them in connection with other related legislative norms and regulatory requirements. This understanding corresponds with the position advanced by G.A. Vasilevich, who regards interpretation as an integral element of legal implementation, since the practical application of legal norms necessarily requires the clarification of their meaning and scope [24; 20].

For example, explanatory guidance issued by the Ministry of Health illustrates an attempt not merely to clarify individual sanitary rules, but to place them within a wider regulatory context. This context may include urban planning requirements, hygiene standards, and risk assessment criteria, all of which are treated as interconnected elements of the broader legal framework. This represents not a literal reading but a systematic interpretation of norms, requiring specialized legal reasoning [14, 15].

In this context, a crucial feature emerges: explanatory acts function as a form of mediation between abstract legal norms and concrete real-world situations. By their nature, laws generalize, whereas legal application demands specificity. Explanatory acts bridge this gap, allowing the norm to “resonate” in practical terms. Consequently, such acts often take on a casuistic character, they arise in response to specific inquiries, uncertainties, or the confrontation of normative provisions with practical realities.

In this context, interpretative acts function as a means of aligning law-enforcement practice, effectively serving as authoritative guidance that explains, in practical terms, how a given legal norm should be applied in accordance with the principle of uniformity.

An illustrative example is provided by an official interpretative act of the Ministry of Foreign Affairs, which, drawing on established principles of international law, offers clarification of Article 20 of the Law of the Republic of Kazakhstan “On International Treaties” [16].

In such contexts, explanatory acts take on an additional layer of significance: they do not merely clarify the content of legal norms, but also communicate the state’s official legal position. In this sense, these acts extend beyond domestic law enforcement, becoming instruments of both legal and foreign policy.

The official interpretative act issued by the Ministry of Justice of the Republic of Kazakhstan is aimed at clarifying the content of paragraph 8–3 of the Model Regulations on Legal Services within state bodies. The very fact that this provision required clarification indicates practical difficulties in its application, particularly with regard to understanding the role and functional scope of legal services within public authorities [17].

At its core, the interpretative act does not introduce new legal rules; rather, it provides a more precise understanding of an existing norm. Since provisions governing the activities of legal services are often formulated in broad and general terms, their application in practice may give rise to differing interpretative approaches. In practice, the act helps bring order to the application of the rule. It sets out a common way of understanding how the provision is meant to work. As a result, the likelihood of mistakes or overly free interpretation is noticeably reduced.

It also matters who issues such clarification. In this case, it comes from the Ministry of Justice, which is tasked with ensuring coherence and consistency across the entire system of public administration.

Its involvement lends particular authority to the interpretation, effectively setting a common standard for how state bodies structure and carry out the work of their legal services. At the same time, this dual positioning exposes an underlying tension. On the one hand, explanatory acts formally remain non-normative—they are not intended to create new rules. On the other hand, the depth and precision of their interpretation can bring them close to de-facto regulation. The boundary between interpretation and “hidden” norm creation is often fluid, especially when an explanatory act does more than clarify a provision and effectively determines the only acceptable way it may be applied.

The analysis of additional official interpretative acts [18–22] issued by central executive authorities of the Republic of Kazakhstan reveals a consistent pattern in their orientation toward concrete practical issues arising in the course of law enforcement. These instruments are not designed to establish new regulatory frameworks; rather, they are intended to refine and clarify the meaning of existing legal provisions.

Considered as a whole, the materials reviewed suggest that interpretative practice in Kazakhstan’s current legal system serves a distinctly stabilizing role.

This observation points to a broader conclusion. Explanatory acts should not be seen merely as ancillary instruments; they reflect the level of development of the legal system itself.

Preserving an appropriate equilibrium between the clarification of existing legal provisions and respect for the supremacy of formally enacted legislation remains one of the principal challenges facing the continued development of interpretative practice.

Acts of official interpretation issued by executive authorities form a separate category of non-regulatory legal acts. Their function is straightforward: to explain how existing legal provisions should be understood and applied in administrative practice. Without such clarification, identical legal rules may be interpreted differently by different state bodies. The result inconsistent enforcement and legal uncertainty.

Interpretative acts do not establish new legal obligations. Formally, they remain outside the system of normative legal acts. Still, reducing their role to “mere explanation” would be misleading. In reality, executive authorities rely on these documents when applying legislation on a daily basis. Citizens and organizations encounter this not in theory, but in concrete administrative procedures: licensing, inspections, public services, tax administration, migration matters.

Because of this, official interpretation affects the actual operation of legal norms. Much depends not only on the wording of a statute itself, but on the administrative understanding behind it. Sometimes that understanding becomes more influential than the legislative text. Especially where legal provisions are broad, vague, or internally inconsistent.

This raises an obvious question: where is the boundary between interpretation and de facto regulation? In practice, the distinction is not always clear. Some interpretative acts merely clarify legislative intent. Others go further and effectively supplement the content of legal regulation. The issue remains unresolved and continues to provoke discussion in administrative law scholarship. The practical importance of this distinction extends beyond legal theory. As Zaripov has shown, interpretative acts may become the subject of judicial scrutiny where their legal effects go beyond mere clarification and influence the rights and obligations of affected persons [25; 19].

There is also a more practical problem. Access to official interpretative acts remains extremely limited. While preparing this study, the authors encountered fragmented publications, isolated departmental explanations, and, in many instances, the complete absence of publicly available materials. Finding relevant interpretative documents often requires searching through separate ministerial resources, unofficial databases, or ar-

chived correspondence. A centralized electronic register could significantly improve the situation. Particularly now, when digitalization has become a central principle of public administration rather than a purely technical reform. Such a system would make administrative practice more transparent and help ensure greater consistency in the application of legislation. Measures of this kind would contribute to strengthening legal certainty while simultaneously reducing dependence on internal departmental channels of communication in the process of applying legal norms.

The conclusions reached in this study are based not only on doctrinal analysis, but also on the examination of interpretative acts issued by central executive authorities working in very different regulatory fields. The materials reviewed covered environmental regulation, public-private partnership, healthcare, subsoil use, and foreign affairs. Despite the differences between these sectors, the analysis revealed a number of recurring features. Similar approaches to interpretation, comparable legal functions, and common practical objectives appeared across almost all of the examined materials. This point is important. The interpretative acts under consideration were adopted by different authorities, in different administrative contexts, and for different practical purposes. Yet they demonstrated remarkably similar institutional characteristics. In each case, interpretation was used not to create new legal rules, but to stabilize administrative practice where legislative provisions alone proved insufficiently clear for uniform application.

The research also showed that interpretative practice in Kazakhstan has gradually developed its own recognizable administrative logic. Regardless of the specific regulatory sphere involved, executive authorities tend to rely on explanatory acts in situations where legislation contains broad wording, procedural uncertainty, or overlapping regulatory requirements. In practice, such acts often become a working mechanism for aligning approaches between state bodies and reducing inconsistencies in day-to-day law enforcement.

Conceptually, the study proceeds from the understanding that official interpretation occupies an intermediate position between normative regulation and practical administrative implementation. Interpretative acts therefore cannot be viewed merely as auxiliary technical documents accompanying legislation. Their role is considerably broader.

In many situations, these acts function as a form of legal mediation between abstract statutory provisions and the realities of administrative practice. Through interpretation, executive authorities effectively adapt legislative norms to concrete procedural situations without formally altering the content of the law itself. This explains why interpretative acts play such a noticeable role in maintaining continuity, predictability, and coherence in the operation of public administration.

Overall, official explanatory acts should be regarded as an independent and substantively important component of the legal system. They contribute to the coherence and stability of regulatory practice, minimize legal uncertainty, and promote greater consistency in law enforcement. At the same time, the further institutional development of this mechanism requires a more precise delineation of interpretative authority in order to preserve the delicate boundary separating legitimate interpretation from *de facto* lawmaking.

Considered through the lens of legal certainty, acts of official interpretation serve an important role in promoting coherence and predictability in the application of legal norms by executive authorities. In doing so, they contribute to the stability of administrative practice and reduce the risk of divergent interpretations. The reliability of the obtained results is supported by the analysis of official interpretative acts issued by several central executive bodies operating in different spheres of public administration, including healthcare, environmental regulation, public-private partnership, finance, foreign affairs, and subsoil use. The consistency of the identified patterns across different sectors confirms the representative nature of the empirical material and increases the validity of the conclusions.

Conclusions

The research leads to a broader conclusion: official interpretative acts issued by executive authorities play a far more noticeable role in Kazakhstan's legal system than is usually reflected in administrative-law literature. Formally, these documents remain outside the system of normative legal acts. In practice, however, they strongly influence how legislation is actually understood and applied by state bodies in everyday administrative work. This becomes especially evident in areas where regulation is dense, legislation changes frequently, and officials retain broad discretionary powers. The study also showed that explanatory acts cannot be viewed as purely technical clarifications. Their practical role is much wider. In many situations, executive authorities rely on such acts to maintain consistency in administrative practice without constantly revising legislation itself. Through interpretative documents, state bodies gradually develop stable approaches to applying legal norms, eliminate contradictions in administrative practice, and adapt abstract legislative pro-

visions to concrete practical circumstances. For this reason, interpretative acts increasingly affect the real functioning of public administration even though they formally remain non-normative in character.

Particular attention was given to the place these acts occupy within the broader system of administrative decisions. They differ from normative legal acts because they do not establish new rules of conduct. At the same time, they also differ from individual administrative acts, since they are not aimed at resolving one specific case concerning an individually identified person. Their role is more nuanced. In effect, explanatory acts operate between legislation and its practical implementation, linking abstract legal provisions with the realities of administrative decision-making.

The materials examined in the article further suggest that interpretative practice in Kazakhstan is no longer occasional or fragmented. Similar approaches to official clarification can now be observed across very different sectors of public administration, including environmental regulation, healthcare, public-private partnership, subsoil use, and international legal cooperation. This recurring pattern is difficult to treat as accidental. It indicates that explanatory acts have gradually become a relatively stable element of administrative practice rather than a subsidiary instrument used only in exceptional cases.

The practical significance of the study appears in several interconnected areas.

First, the conclusions formulated in the article may be useful for the development of legislation governing administrative procedures and non-normative acts of executive authorities. The research revealed several unresolved issues that continue to create difficulties in practice. Among them are the absence of clear criteria separating interpretative acts from de facto regulatory decisions, insufficient procedural regulation of official clarification, and the limited accessibility of interpretative materials for citizens, businesses, and even public officials themselves.

Second, the results may also be applied directly in the work of executive authorities. A clearer understanding of the legal nature and limits of interpretative activity could help reduce situations in which explanatory acts effectively replace normative regulation. This issue is especially sensitive in areas where administrative discretion remains broad and where inconsistent interpretation may substantially affect the rights and legitimate interests of private persons.

The study may likewise have practical value for administrative courts. One of the central difficulties in judicial practice concerns determining whether a particular explanatory act merely clarifies existing legislation or, in substance, introduces additional regulatory requirements that go beyond the competence of the issuing authority. As Kazakhstan's system of administrative justice continues to develop, this distinction is becoming increasingly important not only theoretically, but in concrete judicial practice as well. Another issue identified during the research concerns transparency. In practice, access to official interpretative acts remains inconsistent and often fragmented. Some explanations are published openly, others circulate only within departmental practice, while certain interpretative materials are difficult to locate even through official resources. During the preparation of this study, relevant documents frequently had to be collected from separate ministerial sources, archived correspondence, and scattered administrative publications. Under these conditions, the creation of a unified electronic register of official interpretative acts could significantly improve legal accessibility and strengthen consistency in administrative practice.

Overall, the study supports the view that official interpretative acts issued by executive authorities should be regarded as an independent category of non-normative legal instruments within Kazakhstan's system of public administration. Their practical importance is already evident. At the same time, the expansion of interpretative practice inevitably raises a more difficult question: where does legitimate interpretation end and implicit norm-making begin? The answer remains unsettled both in legal doctrine and in administrative practice. Much will depend on how consistently this boundary is maintained in future legislation, judicial review, and the everyday activity of executive authorities themselves.

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Қазақстан Республикасындағы нормативтік құқықтық актілерге ресми түсіндірме беру актілері: құқықтық талдау және қолдану мәселелері

Мақалада Қазақстан Республикасының атқарушы органдары шығаратын нормативтік-құқықтық актілерді ресми түсіндіру актілері қарастырылды және олардың нормативтік емес актілер жүйесіндегі орны талданған. Зерттеу барысында олардың құқықтық табиғаты, функционалдық мәні және заңнаманы іске асыру механизміндегі рөлі зерттелді. Зерттеудің мақсаты — ресми түсіндіру актілерінің құқықтық сипаты мен функционалдық мақсатын талдау, сондай-ақ оларды атқарушы органдардың нормативтік емес құқықтық актілер жүйесіндегі орнына сәйкес анықтау. Сонымен қатар зерттеу формальды-құқықтық әдісті қолдануға негізделген және ресми түсіндіру актілерін шығару тәжірибесін талдаумен толықтырылған. 2016 жылғы «Құқықтық актілер туралы» Қазақстан Республикасы Заңының ережелеріне, Қазақстан Республикасының орталық атқарушы органдарының нормативтік құқықтық актілерін ресми түсіндіру актілеріне сүйене отырып, ресми түсіндіру актілері нормативтік құқықтық күшінің болмауына қарамастан, атқарушы және басқарушылық қызметтің біркелкілігін қамтамасыз етуде және атқарушы билік саласындағы құқықтық белгісіздікті азайтуда маңызды рөл атқаратыны туралы қорытынды мен жаңа ғылыми ұсыныстар тұжырымдалған.

Кілт сөздер: нормативтік емес құқықтық актілер, жеке актілер, ресми түсіндірме актілері, атқарушы органдар, құқық қолдану, Қазақстан Республикасы.

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Акты официального разъяснения нормативных правовых актов в Республике Казахстан: правовой анализ и вопросы применения

В статье рассматриваются акты официального разъяснения нормативных правовых актов, издаваемые исполнительными органами Республики Казахстан в контексте их отношения к системе ненормативных актов. Анализируется их правовая природа, функциональное назначение и место в механизме реализации законодательства. Цель исследования заключается в анализе правовой природы, функционального назначения и определении места актов официального разъяснения в системе ненормативных правовых актов исполнительных органов. Исследование основано на применении формально-юридического подхода, дополненного анализом практики издания актов официального разъяснения. На основе положений Закона Республики Казахстан «О правовых актах» 2016 года, актов официального разъяснения нормативных правовых актов центральных исполнительных органов Республики Казахстан обосновываются вывод и новые научные предложения о том, что акты официального разъяснения, несмотря на отсутствие нормативной юридической силы, играют ключевую роль в обеспечении единообразия исполнении и распорядительной деятельности и снижении правовой неопределённости в сфере исполнительной власти.

Ключевые слова: ненормативные правовые акты, индивидуальные акты, акты официального разъяснения, исполнительные органы, правоприменение, Республика Казахстан.

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Two concepts of understanding tax justice based on historical and legal analysis of income taxation in the Federal Republic of Germany and the Republic of Kazakhstan

The article examines income taxation as more than a fiscal instrument. In modern legal systems, it also functions as a mechanism through which the state defines justice, solidarity, public responsibility, and the permissible limits of redistribution. The purpose of the research is to determine how historical development, constitutional principles, political structures, and legal traditions have shaped different concepts of tax justice in the Federal Republic of Germany and the Republic of Kazakhstan. The methodological basis of the study includes comparative legal analysis, the historical-legal method, the formal-legal method, systemic analysis, and the interpretation of normative legal acts. The research draws on constitutional provisions, income tax legislation, doctrinal approaches, and institutional mechanisms of tax policy in both countries. The article identifies two models of tax justice: the German socially oriented model, grounded in the principle of ability to pay and the constitutional principle of the social state, and the Kazakhstani fiscal-stabilization model, historically associated with administrative simplicity, budgetary stability, and economic manageability. The central conclusion is that tax justice is shaped by the historical, political, and legal characteristics of the state and directly affects the content, direction, and legitimacy of tax policy.

Keywords: taxation, tax justice, social justice, Germany, Kazakhstan, tax system, social state, fiscal policy, tax law.

Introduction

Economic instability, growing social inequality and changing public expectations have made the question of fair taxation especially sensitive for modern states. Income taxation can no longer be reduced to a technical mechanism for collecting budget revenues. It also performs a social and legal function. Through the distribution of the tax burden, the state demonstrates how it understands equality, solidarity, responsibility and the balance between public interest and individual rights.

Historical and legal analysis allows income taxation to be examined not as a set of isolated fiscal rules, but as part of a wider legal and institutional order. Tax policy is connected with constitutional values, political traditions, legal culture and the structure of state power. This connection becomes especially visible when comparing the Federal Republic of Germany and the Republic of Kazakhstan. These countries represent different models of state organization and different historical trajectories of tax development. Germany is a federal, democratic and social state governed by the rule of law; the principle of social statehood is constitutionally established and directly influences the understanding of fair taxation [1]. Kazakhstan is also constitutionally defined as a democratic, secular, legal and social state [2]. Yet the practical implementation of this principle in income taxation has developed in another historical and institutional environment.

The relevance of the topic is strengthened by the current stage of tax reform in Kazakhstan. The adoption of the Tax Code of the Republic of Kazakhstan dated July 18, 2025 No. 214-VIII ZRK reflects an attempt to modernize tax regulation, strengthen transparency and fairness, and introduce elements of differentiated taxation [3]. In Germany, the legal basis of the socially oriented model is also reflected in the German Income Tax Act, the Fiscal Code and the case law of the Federal Constitutional Court of Germany [4–6]. In this context, the German experience is valuable not as a ready-made scheme for borrowing, but as a legal and theoretical reference point. It shows how tax justice can be institutionalized through constitutional norms, tax legislation, judicial practice and public trust.

The scientific literature contains a wide range of works on national tax systems, income taxation and tax administration. German doctrine gives particular attention to the principle of ability to pay, proportionality, constitutional limits of taxation and the social function of income tax. These issues are developed in the

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works of K. Tipke, J. Lang, R. Seer, J. Englisch, H. Kube, C. Küstner and M. Birnbaum, while S. Bach, M. Beznoska, T. Hentze, J. Jirmann and C. Trautvetter analyze historical development, tax burden and current debates on tax justice in Germany [7–13]. Kazakhstani and international studies, including OECD materials, official information of the State Revenue Committee, and the works of E.V. Porokhov, G.V. Vershinina, N.K. Kuandykov and T. Rakhmetova, mainly examine the formation of the national tax system, tax administration, fiscal stability and tax policy modernization in Kazakhstan [14–19]. Recent research also connects tax instruments with the problem of reducing social inequality, which is relevant for assessing the social function of income taxation in Kazakhstan [20]. At the same time, the comparative historical and legal explanation of how different concepts of tax justice emerge under the influence of political structure, constitutional principles and legal institutions remains insufficiently developed.

Here lies the main theoretical gap. Comparative research often concentrates on visible tax elements: rates, deductions, tax bases, exemptions and administrative procedures. The deeper historical and legal factors that shape the meaning of tax justice remain less examined. Why does one legal system develop a socially oriented model of taxation, while another gives priority to fiscal stability and administrative simplicity? This question requires a broader explanation than a technical comparison of tax rules.

The purpose of the research is to identify and compare the historical and legal foundations of different concepts of tax justice using income taxation in the Federal Republic of Germany and the Republic of Kazakhstan as the main example.

To achieve this purpose, several research objectives are formulated: to analyze the historical evolution of income tax legislation in Germany and Kazakhstan; to identify the constitutional and legal principles that influence the understanding of tax justice in both states; to compare the institutional mechanisms through which fair taxation is implemented; to determine the role of state structure, legal tradition and political institutions in shaping the dominant model of tax justice; and to formulate a theoretical explanation of the relationship between political-legal factors and the concept of tax justice.

The author proceeds from the position that tax justice is not merely a technical category of tax law. It is a complex socio-legal and historical phenomenon. Its content depends on the constitutional model of the state, the maturity of legal institutions, the role of courts, the quality of public administration and the level of trust between the state and taxpayers. The comparison of Germany and Kazakhstan makes it possible to show that the fairness of income taxation is determined not only by tax rates, but also by the broader institutional environment in which tax policy is created, justified and applied.

Methods and Materials

The research relies on a set of legal and historical methods: comparative legal analysis, the historical-legal method, the formal-legal method, systemic analysis and interpretation of normative legal acts. They are used here as working instruments, not as a decorative methodological list. Each method serves a specific purpose: to compare two income tax systems, trace their development, read the relevant legal norms and explain why the idea of tax justice takes different forms in Germany and Kazakhstan.

The comparative legal method is central to the article. It allows the German and Kazakh approaches to income taxation to be examined through several indicators: constitutional foundations, structure of tax rates, legal principles of fairness, status of the taxpayer, mechanisms of legal protection and the role of fiscal administration. The comparison does not stop at the external form of legislation. It also concerns a deeper question: how each legal system defines the relationship between the state, the taxpayer and the public interest.

The historical-legal method is used to reconstruct the development of income taxation in both countries. For Germany, the analysis focuses on the gradual emergence of progressive taxation, the constitutional meaning of the social state principle and the development of the ability-to-pay doctrine. For Kazakhstan, the research follows another trajectory: from pre-modern and Soviet fiscal practices to the creation of a national tax system after independence and the present stage of reform connected with the Tax Code of the Republic of Kazakhstan dated July 18, 2025 No. 214-VIII ZRK [3].

The formal-legal method is applied to the study of legal texts. The main normative materials include the Basic Law for the Federal Republic of Germany, the Constitution of the Republic of Kazakhstan, the Tax Code of the Republic of Kazakhstan, the German Income Tax Act, the Fiscal Code of Germany and the case law of the Federal Constitutional Court of Germany [1–6]. These sources make it possible to determine how the principles of social statehood, equality, legality, certainty, transparency and tax fairness are fixed in law.

The interpretation of normative legal acts is used to clarify the content of key concepts: “social state”, “ability to pay”, “fair taxation”, “tax burden” and “fiscal obligation”. These terms cannot be read mechani-

cally. The same constitutional formula may acquire different practical meaning in different institutional settings. Both Germany and Kazakhstan recognize the idea of a social state, yet its expression in income taxation is not identical.

Systemic analysis helps to view income taxation as part of a wider institutional order. Tax law does not operate in isolation. It is connected with constitutional principles, courts, fiscal bodies, public administration, expert debate and the level of trust between the state and society. From this perspective, the German model appears more closely linked with social redistribution, while the Kazakhstani model has historically been shaped by fiscal stability and administrative simplicity.

The materials of the research include normative legal acts, judicial practice, academic literature and analytical materials. The German part is based on the Basic Law, the Income Tax Act, the Fiscal Code, the decision of the Federal Constitutional Court of Germany of November 10, 1998, and the works of K. Tipke, J. Lang, R. Seer, J. Englisch, H. Kube, C. Küstner, M. Birnbaum, S. Bach, M. Beznoska, T. Hentze, J. Jirmann and C. Trautvetter [1; 4–13]. The Kazakh part relies on the Constitution of the Republic of Kazakhstan, the Tax Code of the Republic of Kazakhstan, OECD materials, official information of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan, and the works of E.V. Porokhov, G.V. Vershinina, N.K. Kuandykov, T. Rakhmetova and other researchers [2, 3; 14–22].

Such a methodological combination allows the article to move beyond a narrow comparison of rates and exemptions. Income taxation is examined as a historical, legal and institutional expression of tax justice.

Results

The research identifies two models of tax justice in the field of income taxation: the German socially oriented model and the Kazakhstani fiscal-stabilization model. Their difference cannot be reduced to the contrast between progressive and flat taxation. The deeper distinction lies elsewhere—in how each state links public finance with legal equality, social responsibility and the taxpayer's place in the constitutional order.

The German model rests on the constitutional idea of the social state, the principle of ability to pay and a developed system of judicial protection for taxpayers [1; 4–6]. Income tax in this model performs more than a revenue-raising function. It also redistributes part of the tax burden and supports the legitimacy of public finance. Progression, allowances and deductions are used to connect taxation with the actual economic capacity of the taxpayer.

The Kazakhstani model followed another path. Its formation was influenced by Soviet administrative practice, the fiscal demands of the post-independence period and the preference for simple, predictable tax administration [14–18]. For many years, personal income taxation in Kazakhstan relied on a flat rate. Such a design made the system easier to administer, yet narrowed its redistributive capacity. The Tax Code of the Republic of Kazakhstan dated July 18, 2025 No. 214-VIII ZRK marks a new stage: legislation now introduces elements of differentiated taxation, including a higher rate for income exceeding the established threshold [3, 21, 22]. This reform does not turn the Kazakhstani model into a German-style social tax model. It does, however, indicate a cautious shift from purely fiscal reasoning toward a more flexible reading of fairness.

The historical comparison shows that the two systems diverged under the influence of constitutional principles, legal traditions, political structure and institutional maturity. In Germany, income taxation developed through gradual constitutionalization, judicial review and social compromise. In Kazakhstan, tax policy passed through more discontinuous stages: traditional levies, Soviet fiscal centralization, post-Soviet state-building and current modernization. These trajectories explain why the social state principle, although present in both legal systems, produces different tax-law outcomes (Table 1).

Table 1

Historical development of income taxation and models of tax justice

Period	Germany	Kazakhstan
Late 19th — early 20th century	Industrialization increased the demand for direct taxation. Income tax gradually became linked with the social question and the idea of progression.	Traditional and imperial fiscal practices prevailed. Payments such as zakat, ushur and other levies did not create a modern monetary income tax system.
First half of the 20th century	The Erzberger reforms strengthened fiscal centralization and expanded the role of progressive income taxation in public finance.	Sovietization turned taxation into an administrative and ideological instrument. Income tax was subordinated to class policy and state planning.

Second half of the 20th century	The Basic Law of 1949 constitutionalized the social state principle. The ability-to-pay doctrine developed through legislation and constitutional adjudication.	Within the Soviet system, income tax had limited independent significance. Fiscal relations were shaped mainly by centralized planning and administrative redistribution.
Post-independence / late 20th century	Progressive income taxation was refined through tax brackets, allowances, family-related mechanisms and judicial control.	Kazakhstan built its national tax system after independence. Early differentiated elements were later replaced by a flat personal income tax rate, justified by simplicity and fiscal stability.
2025–2026 reform stage	The German model preserves progressive taxation, tax-free subsistence protection and differentiated burden according to income capacity.	The Tax Code of 2025 introduces limited differentiation in personal income taxation, including 10 % taxation up to 8,500 monthly calculation indices and 15 % on the excess [3, 21, 22].

Source – compiled by the authors based on [1, 3, 4, 6, 11, 15–18, 21, 22].

The comparison confirms that tax justice is shaped not only by rates. It depends on the wider legal and institutional environment: constitutional provisions, legislative technique, judicial protection, administrative practice, public trust and the state's ability to justify the distribution of the tax burden (Table 2).

Table 2

Comparative legal characteristics of the two models

Aspect	German socially oriented model	Kazakhstani fiscal-stabilization model
Historical path	Gradual development through industrialization, constitutional consolidation, social dialogue and legal continuity.	Discontinuous development through traditional practices, Soviet fiscal centralization, post-independence reforms and contemporary modernization.
Constitutional foundation	The social state principle is connected with the rule of law, proportionality and protection of the minimum subsistence level [1, 6].	The Constitution recognizes Kazakhstan as a social state, but this principle has historically been implemented in tax law less consistently [2, 3].
Core principle of justice	Ability to pay, vertical justice and differentiated distribution of the tax burden [7–10].	Formal equality, administrative simplicity, fiscal stability and gradual movement toward limited differentiation [3, 14, 19].
Institutional mechanism	Constitutional Court, financial courts, parliamentary debate, federal participation and strong doctrinal development.	Centralized tax administration, dominant role of executive fiscal bodies and developing mechanisms of taxpayer protection.
Economic function of income tax	Redistribution within a social market economy; income tax supports the financing of the welfare state.	Stabilization of budget revenues; income tax historically complemented other fiscal sources in a resource-dependent economy [14, 19].
Current tax design	Progressive income taxation with a tax-free allowance, deductions and family-related mechanisms [4, 12].	Personal income taxation with limited differentiation introduced by the 2025 Tax Code and related amendments [3, 21, 22].
Dominant legal and social perception	Taxation is more closely associated with social solidarity and the visible return of taxes through public services.	Taxation is often perceived mainly as a fiscal obligation, although recent reforms create conditions for stronger legitimacy.

Source – compiled by the authors based on [1–22].

The scientific novelty of the research lies in the distinction between two concepts of tax justice: the socially oriented model and the fiscal-stabilization model. Germany and Kazakhstan are not treated simply as examples of different tax rates. The comparison is built around the connection between taxation, constitutional principles, institutional design and historical development.

The German model is interpreted as a form of constitutional-social tax justice. Its main features are the principle of ability to pay, progressive income taxation, protection of the taxpayer's minimum subsistence level and active judicial control. The Kazakhstani model is interpreted as a fiscal-administrative concept of justice. In this model, formal equality, manageability and budget stability have historically played a stronger role than redistribution. This distinction explains why tax justice may be legally recognized in both systems, yet implemented through different instruments and with different intensity.

A separate element of novelty is the assessment of Kazakhstan's current tax reform through the prism of tax justice. The Tax Code of 2025 and the introduction of limited differentiation in personal income taxation are considered not only as technical fiscal amendments, but also as a possible step toward a more socially sensitive tax model.

The practical significance of the research is connected with the modernization of Kazakhstan's tax policy. The German model cannot be copied mechanically, since it emerged under different historical, economic and institutional conditions. Its value lies in showing which legal mechanisms strengthen the perception of taxation as fair: a clearer connection between tax burden and ability to pay, protection of socially vulnerable taxpayers, developed deductions, judicial review and transparent public discussion of reforms.

For Kazakhstan, the results of the research point to several possible directions. The first is the gradual development of differentiated income taxation, especially for high-income groups. The second is the expansion of socially significant deductions, including expenses related to education, healthcare, dependents and minimum living needs. The third is stronger protection of taxpayers through specialized tax dispute mechanisms, clearer administrative procedures and broader public access to information on tax revenues and public expenditures.

The practical value of the proposed distinction also extends to further comparative legal research. The socially oriented and fiscal-stabilization models may be used to analyze other states where tax reform is shaped by the search for balance between fiscal efficiency and social justice.

Discussion

The comparison of Germany and Kazakhstan shows that income taxation is not merely a matter of rates, deductions or administrative procedure. Behind these instruments stands a more fundamental legal question: how does the state understand justice when it distributes public burdens among citizens? The German answer is rooted in constitutional social statehood and the idea of fair participation in public expenditures. The Kazakh answer has developed through another historical path, where fiscal stability, administrative manageability and predictable revenue collection long remained dominant.

German tax doctrine offers one of the most developed theoretical foundations for tax justice. In the works of K. Tipke, J. Lang and R. Seer, the principle of ability to pay occupies a central position [7]. Fair taxation, from this perspective, cannot be reduced to formal equality. Equal treatment of taxpayers is not enough when their real economic situations differ. A person whose income covers only basic needs and a person with substantial disposable income cannot be placed under the same material burden without weakening the very idea of justice.

J. Englisch and H. Kube develop this argument through the constitutional requirements imposed on substantive tax law [8]. Their approach is significant because it connects taxation with equality, proportionality and protection of fundamental rights. In this interpretation, tax justice becomes more than a political preference. It is a constitutional category. The legislator may choose between different tax instruments, yet this discretion is limited by the requirement that taxation should not become arbitrary, excessive or indifferent to real social conditions.

C. Küstner's work on income tax progression adds another layer to the discussion. Progression is treated not simply as a redistributive technique, but as a legal expression of vertical justice [9]. The progressive scale reflects a basic assumption: the economic meaning of an additional unit of income differs for taxpayers at different income levels. This explains why German income taxation is linked with the social question. The tax burden is adjusted not only to nominal income, but also to the taxpayer's actual economic strength.

M. Birnbaum reaches a similar conclusion through the analysis of the *Leistungsfähigkeitsprinzip* [10]. Ability to pay is not a narrow arithmetical formula. It includes family obligations, minimum subsistence needs and other circumstances that affect the taxpayer's real capacity. This doctrinal position corresponds to the case law of the Federal Constitutional Court of Germany, especially the decision of November 10, 1998, which concerned family taxation and the constitutional protection of the tax-free subsistence minimum [6]. Judicial practice in Germany therefore does more than apply tax rules. It gives legal content to the idea of fair taxation.

German scholarship, however, does not describe the existing model as perfect. S. Bach shows that the modern German tax system was shaped by crises, social conflicts and political compromises [11]. Its socially oriented character did not arise instantly. It developed through industrialization, war, post-war reconstruction and the consolidation of the social market economy. M. Beznoska and T. Hentze also show that the income tax burden differs depending on household type and family situation [12]. Even a mature progressive system

needs permanent correction. Its fairness is maintained through legislation, judicial review and expert criticism, not by the progressive scale alone.

Kazakhstani scholarship reveals a different legal and historical background. E.V. Porokhov analyzes the development of Kazakhstan's tax system through the processes of state-building and institutional transformation [16]. After independence, Kazakhstan had to construct a national fiscal system under conditions of economic instability, legal reform and transition to a market economy. In that context, the central task was not immediate redistribution. The priority was the creation of a workable and controllable tax mechanism.

G.V. Vershinina also links the formation of Kazakhstan's tax system with the post-Soviet transition [17]. Her analysis helps explain the strong role of administrative simplicity. Kazakhstan inherited a fiscal culture in which taxation was often seen as an instrument of state mobilization rather than as part of a negotiated social contract. This legacy continued to influence tax administration and public perception even after the adoption of national tax legislation.

N.K. Kuandykov's research on universal declaration of income and expenses is particularly relevant for the problem of tax justice [18]. A more differentiated income tax model requires reliable information about real income, property and expenses. Without such information, fair taxation may remain only a formal promise. It may even create new inequalities in enforcement. Kuandykov's position reveals a practical limitation of directly transferring the German model to Kazakhstan: progression and deductions require not only legal norms, but also administrative capacity, digital infrastructure and trust in fiscal authorities.

International and recent Kazakhstani studies support this interpretation. The OECD Tax Policy Review of Kazakhstan emphasizes the need to broaden the tax base, improve transparency and reduce excessive dependence on resource-related revenues [14]. T. Rakhmetova points to structural shortcomings of the Kazakh tax system and argues for its further improvement in social and institutional terms [19]. Z. Lukpanova and co-authors examine tax instruments as a means of reducing social inequality, bringing the Kazakh debate closer to the question of substantive rather than purely formal justice [20]. These works show that tax fairness is gradually becoming a more visible issue in Kazakhstani legal and economic scholarship.

The comparison with existing literature confirms the distinction between the socially oriented and fiscal-stabilization models. The German model corresponds to the doctrinal approach developed by Tipke, Lang, Seer, Englisch, Kube, Küstner and Birnbaum: justice in taxation is connected with ability to pay, proportionality, constitutional limits and judicial protection [7–10]. The Kazakhstani model corresponds more closely to the conclusions of Porokhov, Vershinina, Kuandykov and OECD materials: tax policy was historically shaped by fiscal stabilization, administrative manageability and the need to build a national system after the Soviet period [14; 16–18].

The two systems also share several common features. Germany and Kazakhstan both constitutionally recognize the principle of the social state [1, 2]. Both rely on income taxation as an important source of public revenue. Both also face the problem of tax legitimacy. Yet these similarities operate primarily at the level of general constitutional and legal principles. Their practical expression differs considerably. In Germany, the social state principle is closely connected with the rule of law, constitutional review, the ability-to-pay principle, progressive taxation, and the protection of the taxpayer's minimum subsistence level [1, 4, 6]. In Kazakhstan, a comparable constitutional principle exists, but its expression in tax law has historically been more limited and more strongly influenced by fiscal priorities [2, 3, 14].

In Kazakhstan, the same constitutional idea exists, but its expression in tax law has historically been more limited and more dependent on fiscal priorities [2, 3, 14].

The main difference lies in the institutional environment. In Germany, tax justice develops through several channels at once: legislation, constitutional adjudication, financial courts, academic doctrine, parliamentary debate and public discussion. The system is complex, sometimes even cumbersome. Yet this complexity performs a legal function. It allows the tax burden to be adjusted to different life situations and gives the taxpayer several forms of protection. Kazakhstan's tax system has long been more centralized. Executive and fiscal authorities play the leading role, while courts, public debate and doctrinal interpretation have had less influence on the development of tax justice.

Kazakhstan's current reform changes this landscape, though not radically. The Tax Code of the Republic of Kazakhstan dated July 18, 2025 No. 214-VIII ZRK opens a new stage in tax regulation [3]. The introduction of limited differentiation in personal income taxation, including a higher rate for income exceeding the established threshold, shows that the flat-rate model is no longer treated as the only possible solution [21, 22]. This does not amount to a full transition to a socially oriented model. Still, it creates legal space for a more flexible understanding of fairness.

The German experience also shows that progression alone does not guarantee justice. A fairer system requires a wider legal structure: protection of the minimum subsistence level, deductions, procedural guarantees, judicial control and transparency in the use of public funds. Without these elements, a higher tax rate may be perceived merely as an additional fiscal burden. Kazakhstan's reform should therefore be assessed not only through changes in rates, but also through the development of institutions that make taxation more transparent, predictable and socially responsive.

The comparison must remain cautious. Germany and Kazakhstan cannot be treated as systems at the same institutional stage. German tax law developed over a long period under conditions of federalism, constitutional continuity and strong legal doctrine. Kazakhstan's national tax system is much younger and emerged during a difficult market transformation. For this reason, the German model cannot be presented as a ready-made template. It is more accurate to view it as a reference point showing how tax justice can be embedded in legal institutions.

The Kazakhstani fiscal-stabilization model should not be dismissed as simply underdeveloped. Its emphasis on simplicity and manageability had clear practical reasons. During the formation of the national economy, an overly complex progressive system could have created additional administrative risks. The limitations of this model become more visible later, when economic stabilization increases the demand for redistribution, public trust and a stronger connection between taxation and social policy.

The reliability of the research results is supported by the use of several groups of sources: normative legal acts, constitutional provisions, judicial practice, doctrinal works and analytical materials. The German part relies on the Basic Law, the Income Tax Act, the Fiscal Code and the case law of the Federal Constitutional Court [1; 4–6]. The Kazakh part relies on the Constitution, the Tax Code, OECD materials and Kazakhstani scholarship [2, 3, 14; 16–20]. Legal norms are compared with academic positions, while doctrinal conclusions are checked against institutional practice. This reduces the risk of a one-sided interpretation.

The discussion points to a broader conceptual result. Tax justice is not produced by one rate, one rule or one constitutional declaration. It arises when legal principles, administrative procedures, judicial protection and public trust operate together. Germany demonstrates a model where these elements are closely connected. Kazakhstan demonstrates a model in transition: from fiscal stabilization and administrative simplicity toward a more differentiated and socially responsive understanding of income taxation. The future of this transition will depend not only on the Tax Code, but also on the development of institutions capable of giving the principle of justice real legal force.

Conclusions

The comparison of income taxation in the Federal Republic of Germany and the Republic of Kazakhstan shows that tax justice is not a fixed legal formula. It is shaped by history, constitutional doctrine, political organization and the everyday work of institutions. Germany represents a socially oriented model, where income taxation is tied to the social state principle, the rule of law, the ability-to-pay doctrine and judicial protection of the taxpayer. Kazakhstan represents a fiscal-stabilization model, formed under the influence of Soviet administrative legacy, post-independence reforms and the need to build a simple, controllable and predictable tax system.

The main result of the research is the distinction between two concepts of tax justice. The German concept is based on substantive equality and differentiated participation of taxpayers in financing public needs. The Kazakh concept has historically relied more on formal equality, fiscal stability and administrative manageability. The recent reform connected with the Tax Code of the Republic of Kazakhstan dated July 18, 2025 No. 214-VIII ZRK shows that Kazakhstan is beginning to move away from a strictly flat personal income tax model toward limited differentiation [3, 21, 22]. This shift is meaningful, although it remains only the first stage of a broader transformation.

The scientific value of the research lies in its explanation of tax justice through the interaction of legal doctrine, constitutional norms, state structure and institutional mechanisms. The article proposes a distinction between the socially oriented model and the fiscal-stabilization model of tax justice. This distinction can be used in further comparative legal research on taxation, social policy, constitutional law and public finance.

The theoretical significance of the research is connected with the conclusion that tax justice cannot be reduced to formal equality before the law. A formally equal tax rate may produce unequal social consequences if it ignores the taxpayer's real economic capacity. For that reason, the German doctrine of ability to pay is valuable not as a ready-made scheme for direct borrowing, but as a theoretical framework for understanding how taxation can combine fiscal efficiency with social legitimacy.

The practical significance of the research is linked to the modernization of Kazakhstan's tax policy. The German experience shows that a fairer income tax system requires more than differentiated rates. It also requires protection of the minimum subsistence level, socially significant deductions, judicial review, procedural guarantees and transparency in the use of public funds. For Kazakhstan, these conclusions may be applied to the further development of personal income taxation, tax deductions, taxpayer protection mechanisms and public discussion of fiscal reforms.

The results of the research can be applied in several areas. They may serve as a basis for further academic studies in comparative tax law. They may also be used in evaluating future tax reforms in Kazakhstan. In practical terms, they contribute to the development of legal approaches aimed at strengthening public trust in taxation. A tax system gains legitimacy not only through efficiency, but also through a visible connection between the tax burden, the taxpayer's economic capacity and the social functions of the state.

For Kazakhstan, the most reasonable direction is not mechanical borrowing from the German model, but the gradual formation of its own socially sensitive tax policy. This may include moderate differentiation of personal income taxation, expansion of deductions for education, healthcare and dependents, development of specialized tax dispute mechanisms, stronger procedural rights for taxpayers and regular publication of accessible information on tax revenues and budget expenditures. Such measures can help transform taxation from a primarily fiscal obligation into a more transparent and socially justified legal institution.

Tax justice is created not by one rule, one rate or one constitutional declaration. It appears when law, institutions and public trust work together. Germany demonstrates a mature model of constitutional-social tax justice. Kazakhstan demonstrates a model in transition, where fiscal stability remains important, but the demand for fairness, transparency and social responsiveness is becoming increasingly significant.

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Германия Федеративтік Республикасы мен Қазақстан Республикасындағы табыс салығын тарихи-құқықтық талдау негізінде салық әділеттілігін түсінудің екі тұжырымдамасы

Мақалада табыс салығы тек фискалдық құрал ретінде ғана емес, сонымен қатар мемлекет әділеттілікті, ынтымақтастықты, қоғамдық жауапкершілікті және қайта бөлудің рұқсат етілген шектерін айқындайтын құқықтық әрі әлеуметтік механизм ретінде қарастырылады. Зерттеудің мақсаты — тарихи даму, конституциялық қағидаттар, саяси құрылым және құқықтық дәстүрлер Германия Федеративтік Республикасы мен Қазақстан Республикасында салық әділеттілігінің әртүрлі тұжырымдамаларын қалай қалыптастырғанын анықтау. Зерттеудің әдіснамалық негізін салыстырмалы-құқықтық талдау, тарихи-құқықтық әдіс, формальды-құқықтық әдіс, жүйелік талдау және нормативтік құқықтық актілерді түсіндіру құрайды. Зерттеу материалы екі елдің конституциялық ережелерін, табыс салығы туралы заңнамасын, доктриналық тәсілдерін және салық саясатының институционалдық тетіктерін қамтиды. Мақалада салық әділеттілігінің екі моделі айқындалады: төлем қабілеттілігі қағидатына және әлеуметтік мемлекеттің конституциялық негізіне сүйенетін Германияның әлеуметтік бағдарланған моделі және әкімшілік қарапайымдылықпен, бюджет тұрақтылығымен және экономикалық басқарылумен тарихи тұрғыдан байланысты Қазақстанның фискалдық-тұрақтандыру моделі. Негізгі қорытынды бойынша, салық әділеттілігі мемлекеттің тарихи, саяси және құқықтық ерекшеліктерінің ықпалымен қалыптасады және салық саясатының мазмұнына, бағытына әрі заңдылығына тікелей әсер етеді.

Кілт сөздер: салық салу, салық әділеттілігі, әлеуметтік әділеттілік, Германия, Қазақстан, салық жүйесі, әлеуметтік мемлекет, фискалдық саясат, салық құқығы.

К.Ж. Алтаева, З.М. Раимкулов

Две концепции понимания налоговой справедливости на основе историко-правового анализа подоходного налогообложения в Федеративной Республике Германия и Республике Казахстан

В статье подоходное налогообложение рассматривается не только как фискальный инструмент, но и как правовой и социальный механизм, посредством которого государство определяет справедливость, солидарность, публичную ответственность и допустимые пределы перераспределения. Цель исследования заключается в определении того, каким образом историческое развитие, конституционные принципы, политическое устройство и правовые традиции сформировали различные концепции налоговой справедливости в Федеративной Республике Германия и Республике Казахстан. Методологическую основу исследования составляют сравнительно-правовой анализ, историко-правовой метод,

формально-юридический метод, системный анализ и толкование нормативных правовых актов. Материал исследования охватывает конституционные положения, законодательство о подоходном налогообложении, доктринальные подходы и институциональные механизмы налоговой политики обеих стран. В статье выделяются две модели налоговой справедливости: немецкая социально ориентированная модель, основанная на принципе платежеспособности и конституционном принципе социального государства, и казахстанская фискально-стабилизационная модель, исторически связанная с административной простотой, бюджетной устойчивостью и экономической управляемостью. Главный вывод состоит в том, что налоговая справедливость формируется под влиянием исторических, политических и правовых особенностей государства и непосредственно влияет на содержание, направленность и легитимность налоговой политики.

Ключевые слова: налогообложение, налоговая справедливость, социальная справедливость, Германия, Казахстан, налоговая система, социальное государство, фискальная политика, налоговое право.

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Қазақстан Республикасында жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды реттеудің құқықтық аспектілері

Мақалада Қазақстан Республикасындағы жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарына инвестиция салуды реттеудің құқықтық аспектілері қарастырылған. Зерттеудің мақсаты — платформалық жұмыспен қамтудың және еңбек нарығының цифрлық трансформациясының зейнетақы жинақтарын қалыптастыру, басқару және инвестициялау механизмдеріне әсерін талдау, сондай-ақ осы саладағы заңнаманы жетілдірудің құқықтық мәселелері мен перспективаларын анықтау. Зерттеуде жалпы ғылыми және мамандандырылған құқықтық әдістер, соның ішінде ресми құқықтық, салыстырмалы құқықтық, жүйелік, аналитикалық және статистикалық әдістер қолданылды. Зерттеудің эмпирикалық негізін Қазақстан Республикасының Әлеуметтік және еңбек кодекстерінің ережелері, Бірыңғай жинақтаушы зейнетақы қорының (БЖЗҚ) ресми материалдары, әлеуметтік зерттеулердің нәтижелері, платформалық жұмыспен қамтудың пилоттық жобаларының деректері және цифрлық экономика мен зейнетақымен қамсыздандыру бойынша ғылыми басылымдар құрайды. Зерттеу жұмыспен қамтуды цифрландыру платформа қызметкерлері мен өзін-өзі жұмыспен қамтыған адамдарды тарту арқылы жинақтаушы зейнетақы жүйесінің қамтуын кеңейтуге ықпал ететіні анықталды. Сондай-ақ цифрлық платформаларды және міндетті зейнетақы жарналарын төлеудің автоматтандырылған тетіктерін енгізу әлеуметтік төлемдерді басқаруды жеңілдететіні және бейресми жұмыспен қамту деңгейін төмендететіні анықталды. Платформа қызметкерлерінің мәртебесіне қатысты құқықтық белгісіздік, зейнетақы активтеріне инвестициялардың тиімсіздігі және халықтың белгілі бір топтарының қаржылық сауаттылығының төмендігі айқындалды. Авторлар Қазақстан Республикасының еңбек, әлеуметтік және цифрлық заңнамасын одан әрі жетілдіру, сондай-ақ платформа қызметкерлерінің құқықтарын қорғау және экономиканы цифрландыру аясында зейнетақы жинақтарын басқарудың тиімділігін арттырудың кешенді тетіктерін әзірлеу қажет деген тұжырымдама жасаған.

Кілт сөздер: цифрландыру, БЖЗҚ, зейнетақы жинақтарын инвестициялау, әртараптандыру, көлеңкелі экономика, әлеуметтік қорғау, қаржылық сауаттылық.

Кіріспе

Цифрлық экономиканың қарқынды дамуымен дәстүрлі жұмыспен қамту нысандары, әлеуметтік қамсыздандыру тетіктері және зейнетақы жинақтарын басқару тәсілдері өзгеруде. Қазақстан үшін бұл процестер мемлекеттік басқаруды белсенді түрде цифрландыру, платформалық жұмыспен қамтуды дамыту, қашықтықтан жұмыс істеу және зейнетақы активтерін инвестициялауға қаржылық технологияларды енгізу негіздерімен ерекше маңызды. Осыған байланысты зейнетақы жүйесі мемлекеттің әлеуметтік тұрақтылығы мен азаматтарының қаржылық қауіпсіздігінің негізгі элементі болғандықтан, жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды реттеудің құқықтық аспектілерін кешенді зерттеу қажет.

Тақырыптың өзектілігі бірнеше өзара байланысты факторлардан туындайды. *Біріншіден*, жұмыспен қамтуды цифрландыру еңбек нарығының құрылымын өзгертуде: өзін-өзі жұмыспен қамтылғандардың, фрилансерлердің, цифрлық платформа қызметкерлерінің және жұмысы әрқашан дәстүрлі зейнетақы механизмдеріне жатпайтын басқа да азаматтар санаттарының саны артып келеді. Бұл зейнетақы жарналарының тұрақты еместігі, жинақтардың азаюы және мұндай адамдардың жинақтаушы зейнетақы жүйесіне қатысуы заңмен реттелмеуі қауіп тудырады.

Екіншіден, қаржы секторындағы цифрлық технологиялардың дамуы зейнетақы активтерін басқару тетіктерін жаңғыртуға ықпал етеді. Алгоритмдік инвестициялауды, цифрлық

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платформаларды, жасанды интеллект пен үлкен деректерді талдау технологияларын пайдалану инвестициялық тиімділікті арттыруға мүмкіндік береді, бірақ сонымен бірге жеке деректерді қорғауға, киберқауіпсіздікке, инвестициялық шешімдердің ашықтығына және қаржы нарығына қатысушылар арасында жауапкершілікті бөлуге байланысты жаңа құқықтық тәуекелдерді тудырады.

Үшіншіден, Қазақстанның қазіргі зейнетақы жүйесі негізінен жинақтаушы қағидатқа негізделген, зейнетақы активтерін инвестициялау тиімділігін халықтың болашақтағы әлеуметтік қамсыздандыру деңгейіндегі маңызды факторға айналдырады. Әлемдік қаржы нарықтарының тұрақсыздығын және экономиканың цифрлық трансформациясын ескере отырып, БЖЗҚ және басқа да активтерін басқару, субъектілердің инвестициялық қызметін құқықтық реттеу барған сайын маңызды болып келеді.

Бұл тақырыпты цифрлық экономика мен электрондық үкіметті дамытудың мемлекеттік бағдарламалары арқылы жүзеге асырылатын Қазақстанның цифрландыру саясаты одан әрі күшейтеді. Үкімет қаржы секторының инновациялық дамуы мен азаматтардың әлеуметтік құқықтарын қорғау қажеттілігі арасындағы тепе-теңдікті қамтамасыз етуге тырысады. Дегенмен қолданыстағы заңнама жұмыспен қамтудың және қаржылық қатынастардың жаңа цифрлық түрлеріне әрқашан бейімделе алмай құқықтық қақтығыстар мен нормативтік олқылықтарға әкелуде.

Зерттеудің мақсаты — Қазақстан Республикасында жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды реттеудің құқықтық аспектілерін кешенді талдау, сондай-ақ осы саладағы заңнама мен құқық қолдану тәжірибесін жетілдіру бойынша ұсыныстар әзірлеу.

Осы мақсатқа жету үшін зерттеудің келесі *міндеттері* анықталды:

- жұмыспен қамтуды цифрландырудың ерекшеліктерін және оның Қазақстандағы зейнетақымен қамсыздандыру жүйесіне әсерін зерттеу;
- зейнетақы жинақтарын инвестициялауды реттейтін қолданыстағы заңнаманы талдау;
- цифрлық экономика қызметкерлерінің жинақтаушы зейнетақы жүйесіне қатысуының құқықтық проблемаларын анықтау;
- зейнетақы активтерін басқару саласындағы мемлекеттік бақылау және қадағалау тетіктерін қарастыру.

Зерттеудің ғылымилығы, зейнетақы қатынастарын құқықтық реттеу теориясы мен практикасында бірқатар қайшылықтардың болуымен анықталады. *Бір жағынан*, қаржылық құқықтың қазіргі заманғы теориясы цифрлық экономика жағдайында құқықтық тетіктердің икемділігі мен бейімделу қажеттілігін болжайды. *Екінші жағынан*, зейнетақы жүйесі дәстүрлі түрде тұрақтылық, ұзақ мерзімді және мемлекеттік бақылаудың жоғары деңгейіне негізделген. Нәтижесінде инновациялық қаржылық технологияларды енгізу қажеттілігі мен азаматтардың зейнетақы жинақтарын сенімді қорғауды қамтамасыз ету қажеттілігі арасында қайшылық туындайды.

Құқық қорғау тәжірибесінде де елеулі қайшылықтар бар. Цифрлық зейнетақы қызметтерінің дамуына қарамастан, қолданыстағы заңнама негізінен еңбек қатынастарының дәстүрлі түрлеріне бағытталған. Нәтижесінде цифрлық экономиканың көптеген қатысушылары зейнетақы жүйесінің толық шеңберінен тыс қалады немесе зейнетақы жарналарын төлеуде қиындықтарға тап болады. Сонымен қатар зейнетақы қорларының инвестициялық қызметін реттейтін тетіктер цифрлық қаржы құралдарымен және автоматтандырылған инвестициялық технологиялармен байланысты тәуекелдерді жеткіліксіз шешеді.

Ғылыми зерттеулердегі белгілі бір олқылықтарды да атап өткен жөн. Ресейлік заң әдебиетінде зейнетақы мәселелері дәстүрлі түрде әлеуметтік құқық тұрғысынан немесе зейнетақы қоры қызметін қаржылық және құқықтық реттеу шеңберінде қарастырылады. Дегенмен жұмыспен қамтуды цифрландыру мен зейнетақы жинақтарын инвестициялауды құқықтық реттеу арасындағы байланысқа арналған кешенді зерттеулер іс жүзінде жоқ.

Платформа қызметкерлерінің құқықтық мәртебесі, инвестициялық қызметті бақылаудың цифрлық механизмдері және қаржы нарығын цифрландыру аясында зейнетақы активтерін қорғаудың құқықтық кепілдіктері жеткіліксіз зерттелген күйінде қалып отыр.

Бұл мәселе шетелдік ғылыми әдебиеттерде кеңінен зерттелген. Зейнетақы моделіндегі, экономиканың цифрландыру деңгейі мен мемлекеттік реттеудің ерекшеліктері арасындағы айырмашылықтарға байланысты көптеген тұжырымдарды қазақстандық құқықтық жүйеге тікелей қолдану мүмкін емес. Бұл Қазақстанда ұлттық құқықтық және экономикалық ерекшеліктерін ескеретін тәуелсіз ғылыми тәсілді әзірлеуді қажет етеді.

Бұл зерттеудегі авторлар жұмыспен қамтуды цифрландыру, зейнетақы заңнамасының ережелеріне жеке дара өзгерістер енгізуді емес, зейнетақы жинақтары мен оларды инвестициялауды құқықтық реттеудің бүкіл жүйесін кешенді жаңғыртуды қарастырады.

Қазіргі заманғы цифрлық процестер жұмыспен қамту нысандарын ғана емес, сонымен қатар мемлекет, азаматтар және зейнетақы активтерін басқару институттары арасындағы қаржылық қатынастардың сипатын да өзгертуде. Сондықтан зейнетақы жинақтарын инвестициялаудың тиімділігін, зейнетақы жүйесінің қаржылық тұрақтылығын және азаматтардың әлеуметтік құқықтарын қорғаудың жоғары деңгейін бір мезгілде қамтамасыз ете алатын икемді және технологиялық тұрғыдан бейімделген құқықтық модельді әзірлеу қажет.

Әдістер мен материалдар

Қазақстанда жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды реттеудің құқықтық аспектілерін зерттеу аясында еңбек қатынастарын цифрландырудың зейнетақы жүйесіне және зейнетақы активтерін инвестициялау тетіктеріне әсерін кешенді талдауға мүмкіндік беретін жалпы ғылыми және мамандандырылған құқықтық зерттеу әдістерінің жиынтығы пайдаланылды.

Зерттеу еңбек, кәсіпкерлік, әлеуметтік және зейнетақы қатынастарын реттейтін Қазақстан Республикасының заңнамалық және нормативтік актілеріне негізделген. Атап айтқанда, Қазақстан Республикасының Әлеуметтік кодексі [1], Қазақстан Республикасының Еңбек кодексі [2] ережелері, сондай-ақ платформалық жұмыспен қамтуды, міндетті зейнетақы жарналарын, Бірыңғай жинақтаушы зейнетақы қорының (БЖЗҚ) қызметін және цифрлық жұмыспен қамту платформаларының жұмысын реттейтін ережелер талданды.

Зерттеудің эмпирикалық базасы ретінде БЖЗҚ-тың ресми материалдары, талдамалық жарияланымдар, әлеуметтік зерттеу нәтижелері, сондай-ақ таксидің цифрлық сервистері «E-Salyq Business» мобильдік қосымшасының қатысуымен іске асырылатын платформалық жұмыспен қамтудың пилоттық жобасының материалдары пайдаланылды. Осы құжаттарды талдау платформалық қызметкерлердің зейнетақымен қамсыздандыру жүйесіне қатысу дәрежесін, халықтың қаржылық сауаттылық деңгейін және зейнетақы жарналарын цифрлық әкімшілендіру ерекшеліктерін бағалауға мүмкіндік берді.

Зерттеуде зейнетақы жинақтарын инвестициялау цифрлық жұмыспен қамтуды реттейтін қолданыстағы құқықтық нормалар зерттелген ресми-құқықтық әдіс қолданылды. Салыстырмалы-құқықтық әдісті қолдану платформалық жұмыспен қамтуды реттеудің қазақстандық моделін шетелдік тәсілдермен салыстыруға, сондай-ақ еңбек нарығын трансформациялау жағдайында жұмыспен қамтудың цифрлық нысандарын дамытудың жалпы тенденциялары ерекшеліктерін анықтауға мүмкіндік берді.

Құқықтық талдау әдісі платформалық жұмыспен қамтуды реттеудегі олқылықтар мен қайшылықтарын, платформалық жұмысшылардың құқықтық мәртебесін және әлеуметтік қорғау тетіктерін анықтау үшін қолданылды. Жүйелілік әдісінің көмегімен экономиканы цифрландыру, халықты жұмыспен қамту құрылымының өзгеруі және зейнетақы активтерін инвестициялау тетіктерінің трансформациясы арасындағы өзара байланыс зерттелді.

Бұдан басқа, салымшылардың саны, халықтың қаржылық сауаттылық деңгейі, зейнетақы жинақтарының көлемі және зейнетақы активтерінің инвестициялық табыстылығы туралы БЖЗҚ деректерін талдауға негізделген зерттеудің статистикалық әдісі қолданылды.

Бұл жұмыспен қамтуды цифрландырудың Қазақстанның жинақтаушы зейнетақы жүйесінің тұрақтылығына әсерін объективті бағалауға мүмкіндік берді.

Нәтижелер

Қазақстан Республикасында жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды реттеудің құқықтық аспектілерін зерттеу платформалық жұмыспен қамтудың дамуы азаматтардың зейнетақы жүйесіне қатысу механизмін айтарлықтай өзгертіп жатқанын көрсетуде. Қолданыстағы заңнаманы, платформалық жұмыспен қамту тәжірибесін және зейнетақы жарналарын төлеу тетіктерін талдау Қазақстанда өзін-өзі жұмыспен қамтығандар платформа қызметкерлерін әлеуметтік және зейнетақы жүйелеріне біріктіруге бағытталған цифрлық еңбекті құқықтық реттеудің тәуелсіз моделін біртіндеп әзірлеп жатқанын көрсетеді [3; 935].

Цифрлық экономиканың негізгі қиындықтарының бірі — платформа қызметкерлері үшін дәстүрлі әлеуметтік кепілдіктің болмауы. Платформа жұмыспен қамтуды дамыту туралы материалдарда интернет-платформалардың көбеюі тұрақсыз жұмыспен қамту, көлеңкелі экономика және әлеуметтік сақтандыру зейнетақымен қамсыздандыруға қол жеткізудің болмауы тәуекелдерімен қатар жүретіні анық көрсетілген. Сондықтан мемлекет өзін-өзі жұмыспен қамтыған және тәуелсіз жұмысшыларды жинақтаушы зейнетақы жүйесіне біріктірудің жаңа құқықтық тетіктерін әзірлеуге мәжбүр болды.

Осы трансформацияның негізгі элементі интернет-платформа операторларының өзін-өзі жұмыспен қамтығандарға арналған арнайы салық режимін пайдаланатын қызметкерлер үшін міндетті зейнетақы жарналарын және жұмыс берушінің міндетті зейнетақы жарналарын ұстап қалу және аудару міндеттемесі болды. Шын мәнінде, интернет-платформа операторы зейнетақы және сақтандыру құқықтық қатынастарында арнайы субъектінің сипаттамаларына ие болады, мемлекет пен платформа қызметкері арасындағы салық агенті және делдал ретінде әрекет етеді.

Бұл бұрын негізінен жұмыс беруші мен қызметкер арасындағы классикалық еңбек қатынастарына бағытталған дәстүрлі зейнетақыны реттеу моделіндегі айтарлықтай өзгерісті білдіреді [4].

Қазақстан Республикасының Әлеуметтік кодексіне платформалық жұмыспен қамту туралы ережелердің енгізілуі және кейіннен 102-1 бапқа платформа қызметкерлерін әлеуметтік қамсыздандыру механизмінің қосылуы цифрлық жұмыспен қамтуды институционализациялаудағы маңызды қадам болды. Интернет-платформа операторының құқықтық мәртебесі оның цифрлық өзара әрекеттесуді жеңілдетуші, транзакциялардың делдалы және әлеуметтік төлемдерді аудару бойынша жария-құқықтық міндеттемелердің орындалуын қамтамасыз ететін субъект ретіндегі рөлімен сипатталады. Цифрлық экономикада платформа операторы тек коммерциялық делдал ғана емес, сонымен қатар әлеуметтік қорғау жүйесінің элементіне айналады. Бұл тәсіл мемлекеттің платформадағы жұмыспен қамтудағы дәстүрлі жұмыс берушілердің болмауын кейбір әлеуметтік функцияларды цифрлық платформаларға қайта бөлу арқылы өтеуге деген ниетін көрсетеді [1].

«Yandex Taxi» қатысуымен платформалық жұмыспен қамту бойынша пилоттық жобаны талдау салық және зейнетақы әкімшілігін цифрландыру платформа қызметкерлерінің міндеттемелерін орындауын айтарлықтай жеңілдететінін көрсетті. «E-Salyq Business» мобильді қосымшасын пайдалану жеке кәсіпкерлерді тіркеу, сондай-ақ салықтарды, әлеуметтік аударымдарды және зейнетақы жарналарын есептеу автоматтандырылды.

«E-Salyq Business» қосымшасы платформа қызметкерлеріне жеке кәсіпкер ретінде тіркелуге, салықтар мен әлеуметтік аударымдарды автоматты түрде есептеуге, түбіртектерді жасауға және салық декларацияларын тапсырмай-ақ табысты бақылауға мүмкіндік береді. Осылайша цифрландыру өзін-өзі жұмыспен қамтыған жеке тұлғалардың зейнетақы жүйесіне қатысу рәсімдерін жеңілдетуге және табысты заңдастыруды жақсартуға көмектеседі. 2024 жылдың маусым айындағы жағдай бойынша пилоттық жобаға 12 200-астам такси жүргізушісі қатысты, бұл жеңілдетілген цифрлық реттеу моделіне деген сұранысты көрсетті [5].

Қазақстан Республикасында жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарына инвестиция салуды реттеудің құқықтық аспектілері Қазақстан Республикасы Еңбек кодексінің 146-1 бабы тұрғысынан қарастырылған. Онда онлайн платформалар мен платформалық жұмысқа орналастыру үшін мобильді қосымшалар арқылы жұмыс істейтін қызметкерлердің еңбек қатынастарының ерекшеліктері, сондай-ақ цифрлық экономиканың зейнетақы жүйесіне әсері талданды.

Икемді жұмыс кестесіне, арнайы еңбекақы шарттарына және мерзімді еңбек шарттарына байланысты еңбек қатынастарының жаңа түрлеріне ерекше назар аударылды. Жұмыспен қамтуды цифрландыру жұмыспен қамту мүмкіндіктерін кеңейтуге және өзін-өзі жұмыспен қамтыған азаматтарды міндетті зейнетақы жүйесіне қосуға ықпал ететіні анықталды. Сонымен қатар платформа қызметкерлерінің табысының тұрақсыздығына, зейнетақы жарналарының тұрақты еместігіне және олардың әлеуметтік мәртебесіне қатысты құқықтық сенімділіктің жеткіліксіздігіне байланысты мәселелер анықталды.

ҚР қолданыстағы заңнамасы цифрлық экономика жағдайларына біртіндеп бейімделіп келе жатқаны, бірақ платформа қызметкерлерінің еңбек және зейнетақы құқықтарын қорғау, цифрлық жұмыспен қамтуды реттеудің тиімділігін арттыру және зейнетақы жинақтарына инвестиция салу жүйесінің тұрақтылығын қамтамасыз ету тұрғысынан одан әрі жетілдіруді қажет етеді [2].

Зерттеу көрсеткендей, жұмыспен қамтуды цифрландыру зейнетақымен қамсыздандыру жүйесіне екі жақты әсер етеді. *Бір жағынан*, платформалық жұмыспен қамту халықтың экономикалық белсенділігін кеңейтуге және өзін-өзі жұмыспен қамтыған азаматтарды міндетті зейнетақы жинақтары жүйесіне тартуға ықпал етеді. *Екінші жағынан*, платформалық жұмысшылар табысының тұрақсыздығы, кепілдендірілген жалақы деңгейінің болмауы және цифрлық платформаларға жоғары тәуелділік ұзақ мерзімді перспективада зейнетақы жинақтарының жеткіліксіздігі тәуекелдерін қалыптастырады.

Ресей мен Қазақстанның зейнетақы жүйелерінің ғылыми әдебиеттері мен салыстырмалы зерттеулерін талдау зейнетақы активтерін инвестициялаудың негізгі проблемаларының бірі зейнетақы жинақтарының нақты кірістілігінің төмендігі болып қалатынын анықтауға мүмкіндік берді. Зерттеу көрсеткендей, Қазақстанда 2002-2013 жылдар кезеңінде инфляцияны ескере отырып, зейнетақы қорларының орташа алынған кірістілігі теріс мәнді құрады (-1,44 % орташа жылдық мәнде). Зейнетақы активтерінің едәуір бөлігі негізінен мемлекеттік бағалы қағаздар мен банктік құралдарға инвестицияланды, бұл зейнетақы жинақтарының экономиканың нақты секторының дамуына әсерін шектеді [6; 85].

Сонымен қатар халықтың зейнетақымен қамсыздандыру саласындағы қаржылық сауаттылық деңгейі біртіндеп артып келе жатқаны анықталды. БЖЗҚ-ның 2025 жылғы әлеуметтік зерттеу нәтижелеріне сәйкес респонденттердің 74,2 %-ы зейнетақы жүйесі туралы білімнің базалық деңгейін көрсетті, ал сұралғандардың 80,4 %-ы міндетті зейнетақы жарналарының мөлшерін дұрыс көрсетті. Халықтың зейнетақы активтерін инвестициялау тетіктері және жұмыс берушінің міндетті зейнетақы жарналары туралы жеткіліксіз хабардар болуы анықталды, бұл азаматтарды хабардар етудің цифрлық құралдарын одан әрі дамыту қажеттігін көрсетеді [7].

С.К. Ыдрышева мен Э.М. Мұратованың зерттеуі қазіргі Қазақстан заңнамасы платформалық жұмыспен қамту саласындағы еңбек және азаматтық-құқықтық қатынастарды әлі толық ажыратпайтынын атап өтеді. Платформа қызметкерлерінің құқықтық мәртебесін анықтаудың нақты критерийлерінің болмауы әлеуметтік кепілдіктерге, зейнетақы міндеттемелеріне және цифрлық экономика субъектілерінің жауапкершілігіне қатысты белгісіздік тудырады. Бұл зейнетақы жинақтарын инвестициялау тұрғысынан ерекше маңызды, себебі жұмыспен қамтудың тұрақсыздығы зейнетақы жарналарының тұрақтылығына және жинақталған жинақтардың мөлшеріне тікелей әсер етеді [8; 83].

Платформалық жұмыспен қамтудың өсуі зейнетақы активтерінің инвестициялық саясатына да әсер етеді. Дәстүрлі жинақталған зейнетақы моделі салыстырмалы түрде тұрақты еңбек қатынастарына және болжамды зейнетақы жарналарының түсімдеріне негізделген. Цифрлық экономика жұмысшылардың жоғары мобильділігімен, табыстың тұрақсыздығымен және бөлшектенген жұмыспен сипатталады. Нәтижесінде зейнетақы жүйесі өзінің инвестициялық стратегиясын белгісіздіктің арту жағдайларына бейімдеу қажеттілігіне тап болады.

Қазақстандағы зейнетақы активтеріне инвестиция салудың тиімділігін зерттеу зейнетақы жинақтарының нақты кірістілігінің төмендігін және зейнетақы жарналарын капиталдандырудың қолданыстағы тетіктерінің шектеулі тиімділігін атап өтеді. Авторлар зейнетақы активтерінің айтарлықтай бөлігі негізінен мемлекеттік бағалы қағаздар мен банк құралдарына инвестицияланатынын, бұл зейнетақы жинақтарының ұзақ мерзімді өсу әлеуетін шектейтінін атап өтеді. Жұмыспен қамтуды цифрландыру аясында бұл мәселе одан өзекті болып келеді, себебі платформа қызметкерлерінің тұрақты емес жарналары икемді және әртараптандырылған инвестициялық тетіктерді қажет етеді.

Зейнетақы жүйесін трансформациялаудың қосымша факторы — цифрлық зейнетақы активтерін басқару мүмкіндіктерінің кеңеюі. Әлеуметтік кодекс және 2023-2024 жылдардағы реформалар азаматтарға зейнетақы жинақтарының бір бөлігін сенімгерлік басқару үшін инвестициялық портфель менеджерлеріне беру құқығын береді. Бұл цифрлық қаржы технологияларына және инвестициялық шешімдерді жекешелендіруге бағытталған икемді зейнетақы басқару моделіне біртіндеп көшуді көрсетеді.

Сонымен бірге цифрлық жұмыспен қамтудың тұрақсыздығы өзін-өзі жұмыспен қамтыған және тәуелсіз жұмысшылардың зейнетақы құқықтарын қорғау тетіктерін жаңғыртуды талап етеді. Зерттеулер көрсеткендей, өзін-өзі жұмыспен қамтыған адамдардың қаржылық сауаттылығы зейнетақы жүйесі туралы хабардарлығы қызметкерлермен салыстырғанда төмен. Бұл халықтың осы

тобы үшін жинақтаушы зейнетақы жүйесіне қатысудың жеткіліксіздігі және болашақта зейнетақы жинақтарының жеткіліксіздігі қаупін тудырады.

Зейнетақы әкімшілігін цифрландыру бұл мәселені шешудің негізгі құралына айналуға. Бірыңғай зейнетақы қоры (БЗЖҚ) электрондық қызметтерді, мобильді қосымшаларды, жеке шоттарды және салымшылармен қашықтықтан өзара әрекеттесу механизмдерін белсенді түрде енгізуде. Цифрлық технологиялар жеке тұлғаларға мемлекеттік органдарға бармай-ақ зейнетақы шоттарын бақылауға, жинақтары туралы ақпарат алуға және зейнетақы жүйесімен өзара әрекеттесуге мүмкіндік береді. Бұл әсіресе жұмысы көбінесе мобильді және орталықсыздандырылған платформа қызметкерлері үшін маңызды.

Бүгінгі күнде цифрландыру жаңа тәуекелдерді де тудырады. Интернет-платформалар электрондық қызметтерді кеңінен пайдалану жеке деректерді құқықтық қорғауды күшейтуді, киберқауіпсіздікті қамтамасыз етуді және зейнетақы жинақтары саласындағы алаяқтықтың алдын алуды талап етеді. БЗЖҚ зейнетақы жинақтарын мерзімінен бұрын алуға байланысты жалған ақпарат пен алаяқтық схемалардың таралуын қазірдің өзінде тіркеп отыр. Цифрлық зейнетақыны басқару тетіктерін әзірлеу ақпаратты қорғаудың құқықтық тетіктерін жетілдірумен және үкіметтің бақылауын күшейтумен қатар жүруі тиіс.

Заңнаманы одан әрі дамытудың маңызды бағыты — платформалық жұмыспен қамтуды реттеудің кешенді моделін әзірлеу. Қазіргі уақытта бұл саладағы құқықтық реттеу еңбек, азаматтық, салық және әлеуметтік заңнама элементтерін біріктіретін фрагменттелген күйінде қалып отыр. Платформа қызметкерінің мәртебесін анықтауға бірыңғай тәсілдің болмауы зейнетақы қатынастарын тиімді реттеуге және зейнетақы жинақтарын инвестициялауға кедергі келтіреді [9].

Осылайша жұмыспен қамтуды цифрландыру Қазақстан Республикасында зейнетақы инвестицияларын құқықтық реттеуге кешенді әсер етеді. *Бір жағынан*, цифрлық технологиялар халықтың жинақтаушы зейнетақы жүйесімен қамтылуын кеңейтуге, әлеуметтік төлемдерді автоматтандыруға және электрондық қызметтерді дамытуға ықпал етеді. *Екінші жағынан*, платформалық жұмыспен қамтудың тұрақсыздығы, тәуелсіз жұмысшылардың құқықтық мәртебесінің белгісіздігі және цифрлық экономиканың жоғары құбылмалылығы зейнетақы жүйесінің тұрақтылығы мен зейнетақы активтеріне инвестиция салудың тиімділігі үшін жаңа қиындықтар туғызады.

Осы жағдайда мемлекет цифрлық экономиканың ерекшеліктерін ескере отырып, заңнаманы жаңғыртуды жалғастыруы керек. Перспективалы бағыттарға платформа қызметкерлерінің зейнетақы құқықтарын қорғаудың мамандандырылған құқықтық тетіктерін әзірлеу, зейнетақы жарналарын цифрлық басқаруды жақсарту, халықтың қаржылық сауаттылығын арттыру және зейнетақы қорларына инвестициялық саясатты тұрақсыз жұмыспен қамту жағдайларына бейімдеу жатады. Тек кешенді тәсіл ғана жинақтаушы зейнетақы жүйесінің тұрақтылығын және Қазақстан Республикасы экономикасының цифрлық трансформациясы жағдайында азаматтардың әлеуметтік құқықтарын тиімді қорғауды қамтамасыз етеді.

Инвестициялық саясатты жаңғыртудың бір перспективалы бағыты индекстік инвестициялау өмірлік цикл қорларын пайдалана отырып, зейнетақы активтерін басқарудың әртараптандырылған моделіне көшу. Зейнетақы қорларының инвестициялық көрсеткіштері бойынша зерттеу авторлары инвестордың жасына және қолайлы тәуекел деңгейіне негізделген инвестициялық портфельдерді қалыптастыру қажеттілігін атап көрсетеді. Бұл модель жас жұмысшылар үшін тәуекелді, бірақ әлеуеті жоғары активтердің үлесін арттыруды және зейнетке шығуға жақындаған сайын инвестициялық тәуекелді біртіндеп азайтуды қамтиды [10].

Бұл тәсіл, әсіресе, жұмыспен қамтудың жоғары мобильділігімен және тұрақты әлеуметтік кепілдіктердің болмауымен сипатталатын платформа қызметкерлері мен өзін-өзі жұмыспен қамтығандар үшін өзекті. Тұрақсыз цифрлық жұмыспен қамту жағдайында зейнетақы жинақтары әлеуметтік қорғаудың бірнеше ұзақ мерзімді қаржылық құралдарының біріне айналуға. Сондықтан инвестициялық саясат тек қаражатты сақтауға ғана емес, сонымен қатар олардың ұзақ мерзімді тұрақты өсуін қамтамасыз етуге бағытталуы керек.

Зерттеудің маңызды нәтижесі — зейнетақы жүйесін басқарудағы цифрландырудың өсіп келе жатқан рөлін анықтау. БЗЖҚ деректерін талдау зейнетақы қызметтерін цифрландыру деңгейі 92 %-ға жеткенін, транзакциялардың көпшілігі жеке шоттар мен мобильді қосымшалар арқылы электронды түрде жүргізілгенін көрсетеді. Бұл зейнетақы жинақтарын басқарудың цифрлық моделіне көшуді көрсетеді, бұл өзін-өзі жұмыспен қамтығандар мен платформа қызметкерлері үшін қызметтерді қолжетімді етеді.

Зейнетақы жүйесін цифрландыру әкімшілік кедергілерді азайтады, зейнетақы жарналарын есепке алу процедураларын автоматтандырады және инвестициялық басқарудың ашықтығын арттырады. Сонымен қатар зерттеу цифрлық қызметтердің дамуы киберқауіпсіздікке, жеке деректерді қорғауға және алаяқтық схемалардың таралуына байланысты жаңа тәуекелдермен қатар жүретінін көрсетеді. Сондықтан зейнетақымен қамтамасыз ету тетіктерін жаңғырту салымшылардың цифрлық құқықтарын қорғау үшін күштірек құқықтық кепілдіктермен қатар жүруі керек.

Зейнетақы жүйесін трансформациялаудың қосымша бағыты зейнетақы жинақтарын басқару нұсқаларын кеңейту болды. Қазақстан Республикасының Әлеуметтік кодексі салымшыларға зейнетақы жинақтарының бір бөлігін ең төменгі жеткіліктілік шегіне қарамастан, инвестициялық портфельді басқару үшін инвестициялық портфельді басқарушыларға сенімгерлік басқару құқығын береді. Бұл цифрлық экономикамен және жұмысты жекешелендірумен үйлесетін икемді және жекелендірілген зейнетақы активтерін басқару моделіне біртіндеп көшуді көрсетеді [5].

Зерттеуде жұмыспен қамтуды цифрландыру өзін-өзі жұмыспен қамтығандар тәуелсіз жұмысшылардың зейнетақы құқықтарын қорғау тетіктерін жаңғыртуды қажет ететінін анықтады. Дәстүрлі зейнетақы жүйесі негізінен тұрақты жұмыспен қамтылған және тұрақты табысы бар жұмысшыларға бағытталған. Платформа экономикасы тұрақсыздықтың жоғары деңгейімен, ұзақ мерзімді еңбек қатынастарының болмауымен және әлеуметтік жарналардың біркелкі еместігімен сипатталады. Нәтижесінде халықтың айтарлықтай бөлігі үшін зейнетақымен қамтудың жеткіліксіз болу қаупі артады.

Осыған байланысты, 2024 жылдан бастап көзделген жұмыс берушінің міндетті зейнетақы жарналарын (МЗЖЖ) енгізу ерекше маңызды. Жаңа модель зейнетақы жинақтары үшін жауапкершілікті мемлекет, жұмыс беруші және қызметкер арасында бөледі, бұл көп бағаналы зейнетақы жүйелерінің халықаралық тәжірибесіне сәйкес келеді [11]. Өйткені платформа жұмысына қатысты, МЗЖ-ға кім төлейді деген мәселе шешілмеген күйінде қалып отыр, себебі платформа қызметкерлері әрқашан ресми түрде жұмысшы ретінде танылмайды.

1 - кесте

Жұмыспен қамту және зейнетақымен қамсыздандыру саласындағы құқықтық реттеудің негізгі мәселелері

Мәселе	Көрінісі	Құқықтық салдары
Платформа қызметкерлері табысының тұрақсыздығы	Зейнетақы жарналарының ретсіздігі	Болашақ зейнетақы төлемдерінің төмен деңгейі
Жұмысшылардың мәртебесіне қатысты заңды түсініктің жеткіліксіздігі	Еңбек және азаматтық-құқықтық қатынастардың араласуы	Еңбек кепілдіктерін қолданудағы қиындықтар
Зейнетақы активтерінің инвестициялық тиімділігінің шектеулілігі	Консервативті құралдардың басым болуы	Жинақтардың нақты кірістілігінің төмендігі
Халықтың бір бөлігінің қаржылық сауаттылығының төмендігі	Зейнетақы жүйесінің механизмдерін жеткіліксіз түсіну	Ерікті жинақтарға пассивті қатысу

2 - кесте

Зейнетақыны реттеуді цифрландырудың оң әсерлері

Бағыты	Нәтижесі
Жарна төлемдерін автоматтандыру	Жасырын жұмыспен қамтудың азаюы
Цифрлық платформалар	Зейнетақы жүйесінің қамтуын кеңейту
БЖЗҚ онлайн қызметтері	Зейнетақы жинақтарының ашықтығын арттыру
Салық қызметтерімен интеграциялануы	Әкімшілікті жеңілдету

Осылайша зерттеу нәтижелері жұмыспен қамтуды цифрландырудың Қазақстанның зейнетақы жүйесін трансформациялаудағы негізгі факторға айналып келе жатқанын растайды. Платформалық жұмыспен қамту тетіктерін енгізу және зейнетақы жарналарын цифрлық басқару әлеуметтік қамсыздандырудың инклюзивті моделін дамытуға ықпал етеді, бірақ сонымен бірге зейнетақы жинақтарына инвестиция салу саясатын құқықтық реттеуді одан әрі жетілдіруді, платформа

қызметкерлерінің құқықтарын қорғауды және зейнетақы активтерін басқару тиімділігін арттыруды талап етеді.

Талқылау

Қазақстан Республикасында жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын инвестициялауды құқықтық реттеу белсенді түрде трансформациялануда екенін көрсетті. Зерттеу нәтижелері платформа экономикасының әлеуметтік және зейнетақымен қамсыздандыру жүйесіне әсерін зерттейтін отандық және халықаралық зерттеушілердің қорытындыларымен жалпы сәйкес келеді. Атап айтқанда, зерттеу нәтижелері С.К. Ыдрышева мен Э.М. Мұратованың қорытындысымен өзара байланысты, олар платформалық жұмыспен қамту еңбек немесе азаматтық құқық шеңберіне толық сәйкес келмейтін жаңа еңбек қатынастарын қалыптастырады деген тұжырымдама жасалды. Авторлар сонымен қатар платформа қызметкерлерінің мәртебесін және оларды әлеуметтік қорғау механизмдерін анықтаудағы құқықтық олқылықтардың бар екенін атап өтеді [8; 86].

Ұқсас қорытынды Д. Закировтың басылымында бар, онда цифрлық платформалар салық агенті мен әлеуметтік төлемдерді әкімшілеу функцияларын атқара отырып, мемлекет пен жұмысшылар арасындағы делдалға айналып жатқаны атап өтілген. Біздің зерттеуіміз бұл тезисті растайды және бұл модельдің, әсіресе өзін-өзі жұмыспен қамтығандар мен платформа экономикасы қызметкерлері арасында жинақтаушы зейнетақы жүйесінің қамтуын кеңейтуге ықпал ететінін көрсетеді [10].

Платформадағы жұмыспен қамтуды реттейтін қолданыстағы құқықтық тетіктердің жеткіліктілігіне қатысты ұстаныммен толық келісу мүмкін емес. Оң өзгерістерге қарамастан, заңнаманы талдау және оны қолдану айтарлықтай мәселелерді анықтайды. Атап айтқанда, платформа мен мердігер арасындағы қарым-қатынастарды жіктеуге қатысты құқықтық белгісіздік сақталуда. Формальды түрде мұндай қатынастар азаматтық құқықпен реттеледі; дегенмен, іс жүзінде платформалар көбінесе еңбекті бақылау элементтерін жүзеге асырады: олар тапсырыстарды бөлу алгоритмдерін, рейтинг жүйелерін, шоттарды бұғаттау шарттарын және қызмет көрсету өнімділігі стандарттарын белгілейді. Бұл заңнаманы одан әрі жетілдіруді қажет ететін жасырын еңбек қатынастарының бар екенін көрсетеді.

Бұл нәтижелер зейнетақы активтеріне инвестиция салудың тиімділігін зерттеумен де салыстыруға болады. Мысалы, Туманьянц, Тимофеева және басқа зерттеушілер Қазақстанда да, Ресейде де зейнетақы жинақтарының нақты кірістілігінің төмен екенін атап өтеді [6; 92].

Зейнетақы активтері көлемінің өсуіне және басқарылатын инвестициялық портфельдер арқылы инвестициялық мүмкіндіктердің кеңеюіне қарамастан, инвестициялық құрылым негізінен консервативті болып қала береді. Активтердің айтарлықтай бөлігі мемлекеттік бағалы қағаздар банк құралдарына инвестицияланған, бұл зейнетақы жинақтарының кірістілігінің өсу әлеуетін шектейді.

Өйткені бұрынғы зерттеулерден айырмашылығы, экономиканы цифрландырудың қазіргі кезеңі платформалық жұмыспен қамтуды тек тәуекел көзі ретінде ғана емес, сонымен қатар зейнетақы жүйесінің тұрақтылығын арттыру құралы ретінде қарастыруға мүмкіндік береді.

БЖЗҚ жүргізген әлеуметтік зерттеу нәтижелері азаматтардың зейнетақымен қамсыздандыру тетіктері туралы хабардарлығының біртіндеп артып келе жатқанын көрсетеді. Әйтсе де зейнетақы жүйесінің инвестициялық құрамдас бөлігін, әсіресе өзін-өзі жұмыспен қамтығандар платформа қызметкерлері арасында түсінбеушілік сақталуда. Бұл цифрландыру тек технологиялық ғана емес, сонымен қатар білім беру шараларымен де қатар жүруі керек дегенді білдіреді.

Бұл нәтижелерді мемлекет әлеуметтік кепілдіктерді қамтамасыз ету және әлеуметтік тәуекелдерді қайта бөлуді бақылау үшін цифрлық технологияларды пайдаланатын «цифрлық мемлекет» тұжырымдамасы аясында түсіндіруге болады. Осы модельде онлайн платформалар әлеуметтік және зейнетақы міндеттемелерін басқаруда делдал ретінде әрекет ететін мемлекеттік реттеу жүйесінің бөлігі болады. Осы тұжырымдама зейнетақы жинақтарын қалыптастыруда және дәстүрлі еңбек қатынастарын өзгертуде цифрлық қызметтердің рөлінің артуын түсіндіреді.

Қорытынды

Қорыта келгенде, зерттеудің негізгі тұжырымы платформалық жұмыспен қамтуды ең алдымен өзін-өзі жұмыспен қамтыған және тәуелсіз жұмысшыларды қосу арқылы цифрлық қызметтерді енгізу міндетті зейнетақы жүйесінің қамтуын кеңейтті.

Онлайн платформалар мобильді қосымшаларды пайдалану тіркеу процесін, салықтар мен зейнетақы жарналарын төлеуді жеңілдетті және әлеуметтік төлемдерді автоматтандыруды

камтамасыз етті. Қазіргі құқықтық базада платформа қызметкерлерінің құқықтық мәртебесінің белгісіздігіне, тұрақты табыс кепілдемелерінің болмауына және еңбек заңнамасының цифрлық экономикаға жеткіліксіз бейімделуіне байланысты елеулі олқылықтар әлі бар екені анықталды.

Зейнетақы жинақтарының өсуіне және инвестициялық құралдардың кенеюіне қарамастан, консервативті қаржы құралдарының басым болуына және зейнетақы қорларының экономиканың нақты секторын қаржыландыруға шектеулі қатысуына байланысты зейнетақы активтерінің нақты кірістілігінің төмендігі сақталуда.

Зерттеудің негізгі қорытындысы зейнетақы жинақтарын инвестициялаудың тиімділігі тек инвестициялық саясаттың сапасымен ғана емес, сонымен қатар зейнетақы жинақтары жүйесінің халықты қамту деңгейімен анықталады. Платформа қызметкерлерінің тұрақсыз табысы, олардың заңды мәртебесінің белгісіздігі және жасырын жұмыспен қамту элементтерінің сақталуы зейнетақы жүйесіне қаражат ағынын айтарлықтай шектейді және зейнетақы активтерін тиімді әртараптандыру әлеуетін төмендетеді.

Қазіргі мемлекеттік реттеу шаралары көбінесе фрагменттелген және цифрлық экономикаға қатысушыларды құқықтық және әлеуметтік қорғаудың үйлесімді механизмін әлі камтамасыз етпейтіндігі анықталды. Бұл еңбек, әлеуметтік, қаржылық және цифрлық аспектілер арасындағы өзара байланысты ескеретін және мемлекеттің, жұмысшылардың, цифрлық платформалардың, зейнетақы және қаржы институттарының мүдделерін теңестіретін кешенді реттеу моделіне көшу қажеттілігін көрсетеді.

Жоғарыда қозғалған мәселелерді талдай келе төмендегі бағыттарға ерекше назар аудару қажет:

1) Қазақстан Республикасының Еңбек және Әлеуметтік кодекстерінде платформа қызметкерлеріне арналған арнайы құқықтық мәртебені бекіту арқылы платформа жұмыспен қамтылудың құқықтық реттелуін жетілдіру.

Жүргізілген талдау негізінде Қазақстан Республикасының қолданыстағы заңнамасы цифрлық жұмыспен қамтудың ерекшеліктерін және онлайн платформа мен мердігер арасындағы қарым-қатынасты толық ескермейтіні анықталды. Сондықтан Қазақстан Республикасының Еңбек кодексіне және Қазақстан Республикасының Әлеуметтік кодексіне келесілерді көздеу үшін түзетулер енгізу ұсынылады:

- платформа жұмысындағы еңбек және азаматтық-құқықтық қатынастарды ажырату критерийлерін белгілеу;
- платформа қызметкерлері үшін келісімшарт нысанына қарамастан ең төменгі әлеуметтік кепілдіктерді белгілеу;
- міндетті зейнетақы жарналары мен әлеуметтік төлемдерді цифрлық платформалар арқылы автоматтандырылған түрде аударудың міндетті механизмін енгізу;
- платформалардан шоттарды бұғаттау және тапсырыстарды бөлу алгоритмдерінде ашықтықты камтамасыз етуді талап ету.

Бұл шара платформа қызметкерлерінің әлеуметтік қорғау деңгейін арттырады, жасырын жұмыспен қамтылуды азайтады және цифрлық экономикадағы зейнетақы жинақтарының тұрақтылығын камтамасыз етеді.

2) БЖЗҚ қызметтерін, цифрлық платформаларды және үкіметтік ақпараттық жүйелерді біріктіру арқылы зейнетақы жинақтарын бақылау және инвестициялаудың цифрлық жүйесін әзірлеу.

Зерттеу көрсеткендей, цифрландыру зейнетақы жарналарын басқару тиімділігін арттыруға ықпал етеді, дегенмен, қаржылық сауаттылық зейнетақы активтерін инвестициялау тетіктері туралы халықтың хабардарлығы деңгейі жеткіліксіз болып қала береді. Сондықтан Қазақстан Республикасының Әлеуметтік кодексіне және Мемлекеттік басқаруды цифрландыру тұжырымдамасына сүйене отырып, мыналар ұсынылады:

- платформа қызметкерлері үшін зейнетақы жинақтарын бақылау үшін бірыңғай цифрлық платформа құру;
- зейнетақы жинақтарының жай-күйі, инвестициялық кіріс және болашақ зейнетақы төлемдерінің мөлшері туралы жекелендірілген цифрлық хабарландыруларды енгізу;
- әлеуметтік және зейнетақы төлемдерін автоматты түрде есептеу үшін мобильді қызметтерді (E-Salyq Business, БЖЗҚ жеке шоты, eGov) пайдалануды кенейту;
- азаматтарға ерікті зейнетақы жарналары және жинақтарды инвестициялық басқару бойынша кеңес берудің цифрлық механизмдерін камтамасыз ету.

Бұл ұсынысты енгізу зейнетақы жүйесінің ашықтығын арттырады, Бірыңғай жинақтаушы зейнетақы қорына деген қоғамдық сенімді нығайтады және жұмыспен қамтуды цифрландыру аясында зейнетақы жинақтарын мемлекеттік реттеудің тиімділігін арттырады.

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Правовые аспекты регулирования инвестирования пенсионных накоплений в контексте цифровизации занятости в Республике Казахстан

Статья посвящена исследованию правовых аспектов регулирования инвестирования пенсионных накоплений в контексте цифровизации занятости в Республике Казахстан. Целью исследования является анализ влияния платформенной занятости и цифровой трансформации рынка труда на механизмы формирования, администрирования и инвестирования пенсионных накоплений, а также выявление правовых проблем и перспектив совершенствования законодательства в данной сфере. В ходе исследования использованы общенаучные и специальные юридические методы, включая формально-юридический, сравнительно-правовой, системный, аналитический и статистический методы. Эмпирическую основу исследования составили положения Социального и Трудового кодексов Республики Казахстан, официальные материалы ЕНПФ, результаты социологических исследований, данные пилотных проектов платформенной занятости, а также научные публикации по вопросам цифровой экономики и пенсионного обеспечения. В результате исследования установлено, что цифровизация занятости способствует расширению охвата населения накопительной пенсионной системой за счёт вовлечения платформенных работников и самозанятых граждан. Выявлено, что внедрение цифровых платформ и автоматизированных механизмов уплаты обязательных пенсионных взносов упрощает администрирование социальных платежей и снижает уровень теневой занятости. Вместе с тем определены проблемы правовой неопределённости статуса платформенных работников, недостаточной эффективности инвестирования пенсионных активов и низкой финансовой грамотности отдельных категорий населения. Сделан вывод о необходимости дальнейшего совершенствования трудового, социального и цифрового законодательства Республики Казахстан,

разработки комплексных механизмов защиты прав платформенных работников и повышения эффективности управления пенсионными накоплениями в условиях цифровизации экономики.

Ключевые слова: цифровизация, ЕНПФ, инвестирование пенсионных активов, диверсификация, теневая экономика, социальная защита, финансовая грамотность

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Legal aspects of regulating the investment of pension savings in the context of the digitalization of employment in the Republic of Kazakhstan

This article examines the legal aspects of regulating pension savings investment in the context of the digitalization of employment in the Republic of Kazakhstan. The aim of the study is to analyze the impact of platform employment and the digital transformation of the labor market on the mechanisms for the formation, administration, and investment of pension savings, as well as to identify legal challenges and prospects for improving legislation in this area. The study employs general scientific and specialized legal methods, including formal legal, comparative legal, systemic, analytical, and statistical methods. The empirical basis of the study comprises the provisions of the Social Code and Labor Code of the Republic of Kazakhstan, official materials of the Unified Accumulative Pension Fund (UAPF), the results of sociological research, data from pilot projects on platform employment, and scientific publications on the digital economy and pension provision. The study found that the digitalization of employment contributes to expanding coverage of the funded pension system by engaging platform workers and self-employed individuals. It also found that the introduction of digital platforms and automated mechanisms for the payment of mandatory pension contributions simplifies the administration of social payments and reduces the level of informal employment. At the same time, legal uncertainty surrounding the status of platform workers, the ineffectiveness of pension asset investment, and low levels of financial literacy among certain population groups were identified as significant challenges. The authors conclude that further improvements to the labor, social, and digital legislation of the Republic of Kazakhstan are necessary, as is the development of comprehensive mechanisms to protect the rights of platform workers and improve the efficiency of pension savings management in the context of the digitalization of the economy.

Keywords: digitalization, UAPF, pension asset investment, diversification, shadow economy, social protection, financial literacy.

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Main Sources of Legal Norms in the Field of Physical Education and Sports of the Republic of Kazakhstan

The purpose of this article is to identify and systematically analyse the key normative legal acts of the Republic of Kazakhstan governing legal relations in the field of physical education and sports, as well as to compare them with foreign legislation. The study employs comparative-legal, formal-legal and systematic research methods in combination with bibliometric analysis of the Scopus, Google Scholar, and National Scientific Portal of the Republic of Kazakhstan databases; the legislation of Brazil, France, Greece, Italy, Japan and the United States was examined with direct reference to national legal databases. The following results were obtained: four constitutional provisions of the Republic of Kazakhstan were identified as the indirect legal basis for sports legal relations; a conflict was demonstrated between labour and sectoral legislation, whereby bonus schemes are treated as a discretionary right of the employer, while mandatory financial incentives for members of national teams are simultaneously prescribed; and the absence of codification of sports legislation in Kazakhstan is confirmed. The findings contribute to the scholarly debate between the *lex sportiva* concept and the inter-branch approach. It is concluded that sports law in Kazakhstan constitutes a state-conditioned inter-branch legal institution; a classification of its sources by subject-matter areas is proposed.

Keywords: sports law, constitution, labour relations, athlete, coach, source of law, legal regulation, codification, inter-branch institution.

Introduction

The *relevance* of studying the sources of legal norms in the field of physical education and sports in the Republic of Kazakhstan is determined by the need to improve the scientific research and regulatory legal framework envisaged by the Concept for the Development of Physical Education and Sports for 2023–2029 [1], as well as by the increasing number of international multi-sport competitions hosted by the country [2]. The expansion of international cooperation objectively necessitates the further development of the national legal system. An examination of national electronic databases of academic research demonstrates the limited scope of studies devoted to the legal regulation of physical education and sports or sports law in general: scholarly publications and monographs are virtually absent, while publications remain limited [3].

This study pursues a dual aim: to conduct a systematic examination of the principal normative legal acts of the Republic of Kazakhstan regulating sports-related legal relations, and to situate these acts within a broader comparative perspective through analysis of selected foreign legal frameworks. To accomplish this aim, the following interrelated research tasks have been identified: (a) review of those constitutional provisions of the Republic of Kazakhstan that establish the rights and guarantees of citizens with respect to sporting activity [4]; (b) examination of the Civil Code of the Republic of Kazakhstan [5] (hereinafter — the CC RK) alongside other legislative instruments bearing directly or indirectly on sports-related legal relations; (c) determination of the foundational principles underpinning the labour law framework applicable to athletes and coaches under the legislation of the Republic of Kazakhstan [6] (hereinafter — the LC RK); (d) in-depth analysis of the sector-specific Law of the Republic of Kazakhstan On Physical Education and Sports [7] (hereinafter — the Sports Law); and (e) comparative assessment of domestic and foreign approaches to sports regulation with a view to determining the prospects for further legislative development.

Discussion approaches to defining the legal nature and system of the sources of sports law. Contemporary legal scholarship lacks a unified approach to the legal nature of sports law. The advancement of globalisation gives rise to legal phenomena that transcend the boundaries of individual national legal orders, and the regulation of sports-related relations stands as one of the most characteristic examples of this tendency. A prominent place in academic legal discourse is occupied by the concept of *lex sportiva* proposed by A. Duval [8], according to which international sports law represents a transnational legal order shaped pri-

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marily by the regulatory acts of international sports organizations and the arbitral jurisprudence of the Court of Arbitration for Sport (CAS). Expanding upon this approach, Casini L. emphasizes the special role of CAS, which jurisprudence forms a precedential basis for the resolution of international sports disputes [9]. At the same time, a number of scholars draw attention to the necessity of state and supranational influence on sports-related legal relations. Thus, S. Weatherill argues that notwithstanding the proclaimed autonomy of sports organizations, their activities objectively fall within the scope of European Union law [10]. J.A.R. Nafziger characterizes international sports law as a highly complex legal system incorporating norms of international public law, domestic law, and private law [11]. Academic opinion likewise remains divided regarding the branch classification of sports law. Some scholars regard sports law as an independent branch of law possessing its own subject matter and methods of legal regulation [12]. Other authors maintain that sports law does not constitute an autonomous branch of law but rather represents a combination of legal norms derived from various branches of law and applied within the sphere of sports [13]. This theoretical controversy remains highly relevant for Kazakhstan legal scholarship, since its resolution is directly connected with the development of an appropriate methodology for sports law research, the determination of an optimal model for legal systematization, and the prospects for the codification of sports legislation in the Republic of Kazakhstan. From the perspective of comparative law, the debate likewise remains unresolved: the question of whether sports legislation should be codified continues to be open. The experience of France [14], Italy [15], and Brazil [16], which have adopted specialized sports codes, contrasts with the approaches of the United States [17] and Japan [18], where sports-related activities are regulated primarily under general legislation.

Insufficient development of the issue in domestic legal scholarship. The conducted analysis of the Scopus bibliometric database [19] and the National Scientific Portal of the Republic of Kazakhstan [3] allows one to conclude that Kazakhstan legal scholarship, at the level of scholarly publications and monographs, has not addressed the problem of the sources of norms of sports law. The identified publications are devoted to separate aspects, including issues of labour dispute resolution in the field of physical education and sports [20], problems of legal regulation of employment relations involving athletes and employees of the sports sector [21], issues of sports corporate governance modelling [22], as well as the legal regulation of sports teams in the Republic of Kazakhstan and foreign experience in this area [23]. A comparative legal analysis of the sources of sports law covering both common law and civil law jurisdictions from the perspective of the Kazakhstan legal system has not been conducted previously. The most productive researchers in this field—scholars from Australia, the United Kingdom, and the United States—develop their theoretical frameworks on the basis of their respective national legal systems [24], which limit the direct applicability of their findings to the conditions of the Republic of Kazakhstan.

Author's concept. Based on the conducted research, the author maintains that sports law in Kazakhstan currently constitutes an intersectoral legal institution. This conclusion is grounded in the analysis of the existing regulatory legal framework, within which legal norms governing sports-related legal relations are dispersed across various branches of legislation, including constitutional, civil, labour, and sector-specific law. At the same time, the author does not exclude the possibility of sports law evolving into an independent branch of law within the Kazakhstan legal system, since the development of legislation and law enforcement practice, as well as the growing regulatory needs of stakeholders in the sports sector, create objective conditions for such transformation.

Methods and Materials

The study employs comparative legal, formal legal, systemic, and bibliometric methods. A comparative legal approach was employed to examine the sports legislation of Brazil, France, Greece, Italy, Japan, and the United States, with particular attention to national codification models and the extent to which constitutional instruments incorporate sports-specific provisions. The formal legal method was applied to scrutinise the Constitution of the Republic of Kazakhstan, the CC RK, the LC RK, and the Sports Law, with a view to establishing the normative foundations of sports-related legal relations, exposing the regulatory tension between Article 107 of the LC RK and Article 7 of the Sports Law, and elucidating the distinctive features of the legal framework governing the professional activity of athletes and coaches. The systemic method is used to determine the interrelation between sources of sports law and to develop the author's classification of the sources of sports law norms in Kazakhstan. A bibliometric analysis of the Scopus, Google Scholar, and National Scientific Portal of the Republic of Kazakhstan databases was conducted to assess the state of research in the field of sports law. Searches were conducted using the keywords "sports law Kazakhstan," "legal regu-

lation of physical education and sports,” and “employment of athletes,” along with their Russian-language equivalents. The search identified four scholarly publications on particular issues of sports law within the legal system of Kazakhstan, which are used in the present study.

The normative and documentary basis of the study consists of the legislation of Kazakhstan and six foreign states, subordinate regulatory legal acts, official documents of the National Olympic Committee of the Republic of Kazakhstan (hereinafter — the NOC RK) [25] and the National Paralympic Committee of the Republic of Kazakhstan (hereinafter — the NPC RK) [26], as well as the statutes of sports federations. Regulatory acts were examined using official legal databases and the official websites of the relevant organizations.

Results

The study identifies a set of specific findings corresponding to the stated objectives, as well as an additional result concerning the theoretical positioning of sports law in the Republic of Kazakhstan.

1. Constitutional foundations. The analysis of constitutional provisions demonstrates that the Constitution of the Republic of Kazakhstan [4] does not explicitly enshrine the right to engage in sports as an independent constitutional right. At the same time, four constitutional provisions collectively form a comprehensive legal basis for sports-related legal relations: freedom of association (Article 23), freedom of labour and occupational choice (Article 24), the right to healthcare (Article 29), and the right to education (Article 30). A cross-jurisdictional review shows that Brazil [27] and Greece [28] include direct constitutional provisions on state duties in sport, while the constitutions of the United States [17] and Japan [18] make no mention of sport. Nevertheless, both countries occupy leading positions in the Olympic medal standings. The novelty of this finding lies in the fact that a comparative constitutional study of the legal foundations of sport has been carried out in Kazakhstani scholarship for the first time, showing no clear link between constitutional sport provisions and a state’s performance in international competition.

2. Civil law regulation. The analysis of the Civil Code of the Republic of Kazakhstan [5] demonstrates that civil legislation constitutes one of the key sources of legal regulation in the field of sports. The provisions of the Civil Code govern contractual relations in sport. The subject matter of such contracts—property, results of work and services, and intellectual property objects—is regulated under the general provisions of the RK Civil Code. The novelty of this finding lies in the first systematic analysis of the provisions of the civil legislation of the Republic of Kazakhstan as applied to sports-related legal relations. This analysis identifies a coherent set of civil law instruments governing contractual and property relations in sport, including sports services agreements, marketing service contracts, broadcasting rights agreements, sponsorship contracts, as well as mechanisms for the protection of intellectual property rights.

3. Labour law regulation. The analysis of the LC RK [6] reveals a significant gap: the absence of legal differentiation of athletes and coaches as a distinct category of employees, despite the specific nature of their professional activity. Labour guarantees for athletes and coaches are regulated only fragmentarily within the LC RK, namely in Article 18 (list of positions of sports specialists in rural areas), Article 26 (prohibition on employment of persons with a criminal record), and Article 139 (salary supplements for employees of state sports education organisations). The principal novel finding is the identification and substantiation of a specific regulatory conflict previously unaddressed in Kazakhstan legal scholarship: Article 107 of the LC RK classifies bonus schemes as a right, rather than an obligation, of the employer, whereas Article 7 of the Sports Law and establishes a mandatory framework of financial incentives for winners of international competitions among members of national teams [29]. This inconsistency implies that athletes and coaches cannot rely exclusively on labour legislation when asserting their entitlement to remuneration, thereby creating a structural gap in their legal protection.

4. A systemic examination of the Sports Law [7] establishes this act as the principal sectoral source of sports law in Kazakhstan. It regulates training and competition processes, the awarding of sports titles and ranks, the formation and state funding of national teams, anti-doping policy, the operation of sports facilities, social guarantees for athletes and coaches, and the activities of sports federations. It is established that since its adoption in 2014, the Law has been amended and supplemented 23 times, while a significant portion of regulatory provisions has been transferred to subordinate legislation. This development increases the fragmentation of legal regulation and creates conditions for inconsistency in law enforcement practice in the sports sector. The anti-doping norms of the Sports Law reflect Kazakhstan’s obligations under the UNESCO International Convention against Doping in Sport (Paris, 2005) (hereinafter—the Anti-Doping Convention) [30], ratified by Kazakhstan in 2009. The World Anti-Doping Code (hereinafter—the WADA

Code) [31], incorporated into the Convention by reference, forms part of a multi-level system of legal regulation in which international obligations are implemented through national sports legislation and further specified in the Anti-Doping Rules of the Republic of Kazakhstan [32].

5. On the basis of the conducted comparative legal analysis, it is established that France [14], Italy [15], and Brazil [16] have adopted a codification approach to sports legislation. In Kazakhstan, the adoption of a separate sports code appears premature, taking into account the requirement of the homogeneity of regulated social relations enshrined in Article 8 of the Law on Legal Acts [33]. In the absence of codification, this study proposes a subject-based classification of the sources of sports law norms—the first systematic classification specifically developed for and adapted to the legal system of the Republic of Kazakhstan: (a) employment of athletes and coaches; (b) health care and sports medicine; (c) education in the field of physical education and sports; (d) sports governance; and (e) financing, property, and taxation relations. The proposed classification is developed with regard to the hierarchy of legal sources in Kazakhstan. Ratified international treaties prevail over domestic legislation pursuant to the Constitution of the Republic of Kazakhstan [4]. The Anti-Doping Convention [30] illustrates this approach: as a ratified treaty, it establishes the international legal basis for anti-doping regulation, which is further developed within category (d)—governance of sports activity. The proposed classification constitutes the main conceptual contribution of the study, providing a structured framework applicable in legislative practice for the systematisation of regulatory material in the absence of codification.

6. Theoretical positioning—*lex sportiva* and the intersectoral approach. The *lex sportiva* doctrine, developed by A. Duval [8] and further specified by L. Casini [9] via the award practice of the Court of Arbitration for Sport, argues that international sport has produced a self-contained normative order where sports bodies, rather than states, set the normative agenda. The intersectoral approach, advanced in the works of Weatherill S. [10], J.A.R. Nafziger [11], and T.A. Davis [13], conceptualises sports law as a set of legal norms derived from general legislation and applied within the sports sector without constituting an independent branch of law. The analysis of the regulatory framework of the Republic of Kazakhstan indicates a hybrid nature of the national model of sports regulation, which does not fully correspond to any of the established theoretical models in their classical form. While a state-centred regulatory model continues to prevail, the statutes of sports federations, the National Olympic Committee, and the National Paralympic Committee are granted legal standing [7]. On this basis, sports law in Kazakhstan at its current stage of development may be characterised as a state-conditioned intersectoral legal institution. According to the results of the bibliometric analysis, this theoretical category has not yet been distinctly conceptualised in comparative sports law literature.

Discussion

Comparison with existing scholarly research. The bibliometric analysis conducted within the framework of this study broadly confirms the findings of Kamenecka-Usova et al. [24], who identified Australia, the United Kingdom, and the United States as the leading contributors to scholarly publications on sports law indexed in the Scopus database. While agreeing with this observation, it must nevertheless be noted that Kazakhstani legal scholarship in the field of sports law is not only weakly represented in international databases, but also lacks a systematic analysis of the sources of sports law norms from the perspective of a Central Asian continental legal system. This circumstance indicates the existence of a structural gap in the academic literature on sports law, the filling of which constitutes the objective of the present study. At the same time, the methodological approaches developed in foreign scholarship, which are largely based on decentralised corporate models of sports governance [22], cannot be directly transposed into the legal system of Kazakhstan without appropriate adaptation.

Constitutional foundations: similarities, differences, and reconsideration. Four constitutional provisions of the Republic of Kazakhstan (Articles 23, 24, 29, and 30) form an indirect legal basis for sports-related legal relations, which allows for comparison with constitutional models of other states. While sharing the general premise of comparative constitutional law that most states regulate sports indirectly—through general human rights provisions rather than specific constitutional clauses—the author does not accept the view that the absence of an explicit constitutional right to sport necessarily indicates a deficiency in a legal system. This position is consistent with S. Weatherill [10], who argues that the effectiveness of sports governance is determined not by its constitutional form, but by the functional coherence of the overall regulatory framework. The Kazakhstan model, where constitutional rights serve as indirect foundations for sector-specific

legislation, may therefore be assessed as structurally coherent, however in need of greater legislative consolidation.

Labour law regulation: clarification and assessment of the identified conflict. The regulatory conflict between Article 107 of the LC RK, which classifies bonus schemes as a discretionary right of the employer, and Article 7 of the Sports Law, which establishes a mandatory framework of financial incentives for members of national teams [29], does not represent a mere legislative oversight. Rather, it is a direct consequence of the intersectoral nature of sports law: universal employment law, constructed to regulate the workforce at large, is ill-suited to the occupational realities of elite athletes and coaches, whose remuneration is by its very nature tied to sporting results. This study aligns with Khasenov and Bukenov [21], who identified gaps and inconsistencies in the regulation of employment relations in the field of physical education and sports in Kazakhstan, and further substantiates their conclusions through a concrete documented example not previously addressed in the literature. At the same time, the study does not support the view of a fundamental incompatibility between the RK framework and the specificities of sport. The identified conflict is considered resolvable through targeted legislative amendments, including the introduction of a dedicated section in the LC RK governing the legal status of athletes and coaches.

Codification: alignment with comparative experience and rejection of mechanical transposition. A comparative analysis of codification practices in France, Italy, and Brazil confirms the observation of Athayde et al. [34] that legislative models significantly shape national sports law systems. The study agrees that codification, where feasible, contributes to a more coherent and accessible regulatory environment. At the same time, it does not endorse a mechanical call for the adoption of a sports code in Kazakhstan at the current stage of legal development. Article 8 of the Law on Legal Acts [33] requires that codes regulate homogeneous social relations. The intersectoral nature of sports law—encompassing labour, health protection, education, governance, and financing—renders it structurally incompatible with this requirement under the current doctrinal framework of Kazakhstani legislation. The consolidating effect identified by Fahlen and Stenling [35] may, however, be partially achieved in Kazakhstan through the classification proposed in this study, which functions as a functional analogue of codification by organising dispersed normative material into a coherent system without requiring formal legislative consolidation.

Classification of sources by subject matter of legal regulation. The proposed classification of the sources of sports law norms by regulatory subject matter extends beyond prior Kazakhstani contributions [20; 21] by covering the full range of sports-related legal relations rather than isolated dimensions thereof. In keeping with the cross-sectoral architecture of sports law outlined by J.A.R. Nafziger [11] and S. Weatherill [10], it has been specifically designed with the sources and hierarchy of Kazakhstan legislation in mind, which is reflected in the two-level normative justification of each of the five identified domains.

Theoretical positioning. The *lex sportiva* doctrine, developed by A. Duval [8] and further elaborated by L. Casini [9] drawing on CAS award practice, advances the premise that international sport has produced an autonomous normative order whose content is shaped predominantly by non-governmental actors. While recognising the significance of this concept for the analysis of international sports disputes, this study does not consider it to be an appropriate primary explanatory model for the national sports law system of Kazakhstan. The regulatory framework under examination is predominantly state-centred: the hierarchy of legal sources is constitutionally and statutorily defined [33], competent public authorities are vested with normative powers in areas such as incentive schemes and anti-doping regulation [29], and sports federations acquire their legal status through state accreditation rather than through autonomous self-regulation [7]. At the same time, the study aligns with S. Weatherill [10] and J.A.R. Nafziger [11] in acknowledging that national sports law cannot be described as a monolithic system: elements of corporate self-regulation by the National Olympic Committee of the Republic of Kazakhstan, National Paralympic Committee of the Republic of Kazakhstan, and national federations are legally recognised [7]. The *concept of a state-conditioned intersectoral legal institution*—introduced in this study as a novel theoretical category—more accurately captures this complex legal structure than either the *lex sportiva* model or the “set of legal norms” approach proposed by T.A. Davis [13]. It accounts for the specific combination of constitutional foundations, intersectoral dispersion of norms, and partial private ordering that characterises Kazakhstan sports law at its current stage of development.

Reliability and limitations of the study. The reliability of the results is ensured by the use of official legal databases and institutional websites in the analysis of regulatory legal acts, which enabled the accuracy of the comparative legal examination. The bibliometric analysis was undertaken using the Scopus, Web of Science, Google Scholar, and National Scientific Portal of the Republic of Kazakhstan databases, thereby ensur-

ing comprehensive coverage of both international and domestic scholarly literature on sports law. The proposed classification of the sources of legal norms in the field of sports demonstrates internal normative coherence, as each of the identified domains is substantiated by constitutional provisions and statutory instruments of the Republic of Kazakhstan. The principal limitation of this research resides in its normative-doctrinal orientation: the analysis is confined to the existing legal framework and does not encompass law enforcement practice, judicial interpretation, or the practical experiences of athletes and coaches. The six states chosen for comparative purposes—Brazil, France, Greece, Italy, Japan, and the United States—were identified on the basis of substantive legal criteria reflecting the degree of institutionalisation of sports regulation within the national legal system: each possesses either a dedicated sports code or constitutional provisions expressly addressing sport, rather than being selected on geographic grounds.

Conclusions

The comprehensive analysis of the constitutional, civil, labour, and sector-specific legislation of the Republic of Kazakhstan, combined with a comparative legal study of the legislation of six foreign states, enabled the achievement of the study's principal aim and the articulation of the following conclusions.

1. The Constitution of the Republic of Kazakhstan does not enshrine the right to engage in sports as an independent constitutional right; however, four of its provisions—Articles 23, 24, 29, and 30—collectively form an indirect legal basis for sports-related legal relations. The comparative analysis confirms the absence of a direct correlation between constitutional recognition of the right to sport and a state's sporting achievements.

2. Civil legislation constitutes one of the key sources of legal regulation in the field of sports. The provisions of the Civil Code of the Republic of Kazakhstan [5] govern sports-related contracts, including sponsorship and charitable agreements, marketing services contracts, broadcasting rights agreements for sporting events, as well as the protection of intellectual property rights.

3. Examination of the LC RK [6] reveals the absence of a normative differentiation of the legal status of athletes and coaches as a distinct category of employees. This study is the first in Kazakhstani legal scholarship to document a regulatory conflict: Article 107 of the LC RK classifies bonus schemes as a discretionary right of the employer, whereas Article 7 of the Sports Law [7] establishes a mandatory framework of financial incentives for members of national teams [29]. Until this inconsistency is resolved at the legislative level, entities financed from the state budget are required to regulate the right to financial incentives contractually.

4. The Sports Law constitutes the central sectoral source of sports law in Kazakhstan. Its 23 amendments since 2014 and its significant reliance on subordinate legislation create a risk of fragmentation in law enforcement practice.

5. In the absence of codification—deemed premature in view of the homogeneity requirement set out in Article 8 of the Law on Legal Acts [33]—the present study advances a classification of sports law sources by subject matter. The proposed classification is based on the subject matter of legal regulation within the sphere of sports. Each group combines legal norms governing a relatively autonomous group of sports legal relations within the legal system of the Republic of Kazakhstan: (a) labour relations of athletes and coaches; (b) healthcare and sports medicine; (c) education in the domain of sport; (d) governance of sports activity; and (e) financing, property, and taxation relations. Anti-doping regulation occupies a cross-sectoral position within this classification, combining elements of sports governance, healthcare regulation, and international legal obligations. This represents the first systematic classification developed specifically for the legal system of the Republic of Kazakhstan.

6. Kazakhstan sports law is characterised as a state-conditioned intersectoral legal institution—a theoretical category not previously identified in comparative legal literature. It reflects a combination of constitutional foundations, intersectoral dispersion of norms, and legally recognised elements of corporate self-regulation by sports federations, the National Olympic Committee, and the National Paralympic Committee of the Republic of Kazakhstan [7].

The scientific value of the study lies in the following three components: an inaugural systematic examination of sports law sources within Kazakhstan's legal order; the development of two novel theoretical constructs—a subject-matter classification and the notion of a state-conditioned intersectoral legal institution; and the identification and documented substantiation of a specific regulatory conflict in labour legislation concerning athletes and coaches.

The practical significance of the findings is reflected in their applicability in legislative activity (in preparing targeted revisions to the LC RK and consolidating sports legislation), in the contractual work of sports organisations (in designing employment arrangements with athletes and coaches), in academic instruction (for teaching sports law), and as a foundation for further empirical and comparative legal research.

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Қазақстан Республикасындағы дене шынықтыру және спорт саласындағы құқық нормаларының негізгі дереккөздері

Мақаланың мақсаты — дене шынықтыру және спорт саласындағы қоғамдық қатынастарды реттейтін Қазақстан Республикасының негізгі нормативтік-құқықтық актілерін анықтап, оларды жүйелі түрде талдау, сондай-ақ шетел мемлекеттерінің заңнамаларымен салыстырмалы түрде зерделеу. Зерттеу барысында салыстырмалы-құқықтық, формальды-заңдық және жүйелік талдау әдістері қолданылып, Scopus деректер базасы мен Қазақстанның Ұлттық ғылыми порталындағы материалдарға библиометриялық сараптама жүргізілді. Сонымен қатар Бразилия, Франция, Грекия, Италия, Жапония және АҚШ-тың спорт саласындағы заңнамалары ұлттық құқықтық дереккөздер негізінде қарастырылды. Зерттеу нәтижесінде Қазақстан Республикасы Конституциясының спорттық құқықтық қатынастардың жанама құқықтық негізін құрайтын төрт нормасы айқындалды. Еңбек заңнамасында сыйақы беру жұмыс берушінің құқығы ретінде қарастырылса, салалық заңнамада ұлттық құрама мүшелерін міндетті түрде көтермелеу нормасының бекітілуі құқықтық коллизия туындататыны анықталды. Сондай-ақ Қазақстанда спорт заңнамасының кодификацияланбағаны дәлелденді. Алынған нәтижелер *lex sportiva* тұжырымдамасы мен салааралық құқықтық тәсіл арасындағы ғылыми пікірталастың дамуына үлес қосады. Зерттеу қорытындысы бойынша Қазақстанның спорт құқығы мемлекет айқындайтын салааралық құқықтық институт ретінде бағаланып, оның қайнар көздерін пәндік бағыттар бойынша жіктеу ұсынылды.

Кілт сөздер: спорт құқығы, конституция, еңбек қатынастары, спортшы, жаттықтырушы, құқық нормаларының қайнар көзі, құқықтық реттеу, кодификация, салааралық құқықтық институт.

Основные источники норм права в области физической культуры и спорта Республики Казахстан

Цель настоящей статьи состоит в выявлении и систематическом анализе ключевых нормативных правовых актов Республики Казахстан, регулирующих правоотношения в сфере физической культуры и спорта, а также в их сопоставлении с зарубежным законодательством. Применены сравнительно-правовой, формально-юридический и системный методы исследования в сочетании с библиометрическим анализом базы данных Scopus и Национального научного портала Казахстана; законодательство Бразилии, Франции, Греции, Италии, Японии и США изучено с непосредственным обращением к национальным правовым базам данных. Получены следующие результаты: выявлены четыре конституционные нормы Республики Казахстан как косвенная правовая основа спортивных правоотношений; установлена коллизия между трудовым и отраслевым законодательством, трактующими премирование как право работодателя и закрепляющим обязательный порядок поощрения членов национальных сборных команд; подтверждено отсутствие кодификации спортивного законодательства в Казахстане. Полученные результаты вносят вклад в научную дискуссию между концепцией *lex sportiva* и межотраслевым подходом. Сделан вывод о том, что спортивное право Казахстана является государственно обусловленным межотраслевым правовым институтом; предложена классификация его источников по предметным направлениям.

Ключевые слова: спортивное право, конституция, трудовые отношения, спортсмен, тренер, источник норм права, правовое регулирование, кодификация, межотраслевой институт, сравнительное право.

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An international legal analysis of trends and barriers in the realization of inclusive education for persons with disabilities

The purpose of this article is to identify persistent structural barriers to the implementation of the right to inclusive education and to assess the degree of States' compliance with the international standards established under Article 24 of the Convention on the Rights of Persons with Disabilities. The primary method employed is a structural and thematic analysis of the Concluding Observations of the Committee on the Rights of Persons with Disabilities for the period 2019–2025. Doctrinal legal analysis and the comparative legal method were used as supplementary research methods. The empirical basis comprises the Committee's observations addressed to 75 States Parties from various regions of the world. The study identified six persistent barriers: the continuation of segregated systems, limited environmental accessibility, insufficient teacher training, the exclusion of learners with severe forms of disability, the continued existence of special schools, and underfunding. The findings indicate a persistent gap between formal legal obligations and their practical implementation. Based on the analysis, the study proposes the legislative consolidation of the least restrictive environment principle, the reform of financing mechanisms, the introduction of mandatory teacher training in inclusive education, and the establishment of independent monitoring mechanisms. The transition from declarative norms to systemic practical measures is a necessary condition for the realization of the right to education.

Keywords: inclusive education, segregation, special schools, accessibility, teacher training, barriers to education, human rights.

Introduction

Children with disabilities remain among the most systematically marginalized groups within education systems worldwide. Despite the recognition of education as a fundamental human right and the growing international commitment to equity and inclusion, significant disparities in access to education persist. The 2030 Agenda for Sustainable Development identifies inclusive and equitable quality education for all as a central objective (SDG 4). However, recent data indicate that approximately 251 million children and adolescents remain out of school globally, including 71 million of primary school age [1]. These numbers have declined minimally since 2015. Structural barriers remain deeply entrenched. Poverty restricts access to education. Discrimination excludes children with disabilities from mainstream systems. Physical accessibility is insufficient in many contexts. Institutional capacity remains inadequate across numerous states. Indicators measuring parity across gender, disability, and socio-economic status also reveal substantial regional inequalities, demonstrating the ongoing relevance of strengthening inclusive education systems worldwide [2]. A significant milestone in the development of the international legal framework for inclusive education was the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006. Article 24 of the Convention obliges States Parties to establish inclusive education systems at all levels and to ensure access to quality education without discrimination [3]. The CRPD introduced a new normative paradigm by recognizing education as a substantive and enforceable human right grounded in equality, accessibility, and participation. Despite the widespread ratification of the Convention, the existence of a strong legal framework has not guaranteed effective implementation. Many education systems continue to rely on segregated models in which children with disabilities are educated in specialized institutions rather than supported in mainstream schools.

The case of Kazakhstan illustrates these global trends. The number of children with disabilities in the country has steadily increased from 175,082 in 2021 to 203,717 in 2023. A significant proportion continues to study in specialized institutions. According to the national report of the Republic of Kazakhstan for 2023, 16,898 children were enrolled in special schools, which is 1,082 more than in 2022 [4]. More than 60 percent

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of these schools serve children with intellectual disabilities, indicating the persistence of an institutional model based on separation rather than inclusion.

In academic literature, inclusive education has increasingly been examined within an interdisciplinary framework that integrates law, education policy, sociology, and human rights studies. Core international instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Salamanca Statement established the normative foundations of equality and non-discrimination in education [5]. These developments culminated in the CRPD, which elevated inclusive education to a binding obligation under international law [6]. Nevertheless, significant theoretical and methodological debates remain. Some scholars argue that inclusive education should completely replace segregated schooling because separation contradicts the principle of non-discrimination [7]. Others recognize the possibility of coexistence between inclusive and specialized educational settings within a flexible continuum designed to address diverse learning needs [8]. These discussions reflect broader tensions regarding how educational systems should balance equality, individualization, and reasonable accommodation [9].

Despite extensive normative development, several research gaps remain. There is limited comparative legal analysis of how states interpret and implement Article 24 of the CRPD in practice, particularly regarding the distinction between immediate obligations, such as the prohibition of discrimination, and progressively realizable obligations under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights [10]. This ambiguity often allows states to delay reforms by invoking financial or institutional constraints.

Nearly two decades after the adoption of the CRPD, the existence of a strong normative framework has not guaranteed its effective implementation. Many States still face systemic challenges. Financial resources remain limited. Teacher training is insufficient. Clear accountability mechanisms are absent. Monitoring systems are inadequately developed. These issues demonstrate that inclusive education cannot be reduced to pedagogical reform alone but requires deep structural and legal transformation supported by coordinated policy measures. Considering these challenges, the present article aims to conduct a comprehensive international legal and empirical analysis of how States interpret and implement Article 24 of the CRPD. To achieve this aim, the following research objectives were formulated: to conduct a structural-thematic analysis of the Concluding Observations issued by the Committee on the Rights of Persons with Disabilities (hereafter—Committee) between 2019 and 2025, encompassing 75 States Parties, to identify persistent barriers and global trends in the realization of the right to inclusive education across diverse geographic regions and socio-economic contexts, to examine the experience of Kazakhstan as an illustrative case of systemic implementation challenges, and to assess legal tensions arising in the realization of inclusive education, particularly the relationship between the child's right to education and the role of parents in educational decision-making.

Methods and Materials

The methodological foundation of this study combines three approaches. The first is doctrinal legal analysis. The second is comparative legal methodology. The third is structural-thematic analysis of official documents issued by the Committee. This combination connects normative and empirical dimensions. It enables a comprehensive understanding of the legal framework. It also reveals the practical mechanisms through which States Parties implement their obligations under Article 24 of the CRPD. The chosen methodology treats inclusive education as both a legal norm and a policy phenomenon. It examines the interaction between international human rights standards and national implementation practices. Article 35 of the CRPD establishes specific reporting obligations for States Parties. Each State must submit a comprehensive report to the Committee through the UN Secretary-General. This report must detail measures taken to implement the CRPD. It must also document progress achieved. The first report is due within two years of the Convention's entry into force. Subsequent reports are required at least every four years. State reports and the Committee's Concluding Observations together form a unique empirical corpus. These materials document the degree of state compliance with international standards. They also reflect the dynamics of implementation. They identify systemic challenges that hinder the full realization of inclusive education. Consequently, the analysis of these materials allows the Convention to be interpreted not only as a normative document but also as a living instrument of international monitoring and legal evolution. The primary objective of this research is to provide a comprehensive legal and empirical assessment of the extent to which States Parties fulfill their international obligations to implement the right to inclusive education, while identifying the normative, institutional, and resource-related barriers that impede this process. The guiding research question is formulated

as follows: to what extent are the international obligations enshrined in Article 24 of the CRPD reflected in national legislation, strategies, and education policies, and what global patterns characterize the post-ratification implementation of inclusive education. The methodological framework builds upon previous academic work that conducted the first large-scale analysis of the Committee's Concluding Observations for the 2011–2018 period [11]. Those studies demonstrated that the Concluding Observations constitute not merely descriptive assessments, but rather a reflection of the evolving international legal discourse on inclusive education. The present study advances this approach by extending the temporal scope to encompass the subsequent reporting cycle from 2019 to 2025, thereby capturing recent developments and shifts in the thematic focus, content, and legal orientation of the Committee's recommendations. This periodization reflects the renewed international context, including the implementation of Sustainable Development Goal 4 ("Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all") and the Committee's evolving methodology for assessing States' compliance with the Convention. Comparative analysis across these two reporting cycles makes it possible to identify institutional shifts, normative transformations, and the consolidation of emerging international standards. The empirical dataset comprises official Concluding Observations addressed to States Parties and published on the Committee's webpage within the website of the Office of the United Nations High Commissioner for Human Rights [12]. All texts were retrieved from the OHCHR open-access archive, which systematizes documents by year and country. Each document was reviewed manually, and sections referring to Article 24 (Education), including the Committee's concerns, evaluations, and recommendations, were systematically extracted for further analysis. To ensure interpretative accuracy, the analysis was conducted using the original versions of the texts in English. The sample includes 75 States Parties that received Concluding Observations during the reporting period under review (Table 1).

Table 1

75 States Parties that received Concluding Observations during the reporting period under review.

Turkey	Australia	Albania	Algeria	Vanuatu
Greece	India	Iraq	Spain	Cuba
Kuwait	Myanmar	Niger	Norway	Rwanda
El Salvador	Saudi Arabia	Senegal	Ecuador	France
Estonia	Bolivarian Republic of Venezuela	China	Japan	Indonesia
Bangladesh	Macao, China	Republic of Korea	Singapore	Lao People's Democratic Republic
New Zealand	China (Hong Kong)	Hungary	Jamaica	Mexico
Switzerland	Austria	Angola	Andorra	Argentina
Germany	Georgia	Israel	Mauritania	Malawi
Mongolia	Paraguay	Peru	Togo	Tunisia
Azerbaijan	Bahrain	Belarus	Belgium	Benin
Burkina Faso	Ghana	Denmark	Zambia	Kazakhstan
Costa Rica	Mauritius	Kingdom of the Netherlands	Ukraine	Sweden
European Union	Viet Nam	Tuvalu	Palau	Canada
Korea	Maldives	Kiribati	Finland	Dominican Republic

These States represent all major geographic regions and levels of socio-economic development, encompassing European Union member states, countries of North and South America, African nations, Asia-Pacific countries, and post-Soviet States. This distribution ensured the representativeness of the dataset and enabled a comparative analysis of both global trends and regional specificities in the implementation of the right to inclusive education. An analytical framework was developed to structure the empirical material, encompassing six key thematic domains corresponding to the Committee's recurring areas of concern (Table 2).

Table 2

Thematic domains of the Committee's concerns reflected in the analytical framework.

1	Segregation	persistence of segregated education systems.
2	Special schools	the institutional role and transformation of special schools.

3	Accessibility	physical and digital accessibility of educational environments and materials.
4	Funding	adequacy of financing and resource redistribution.
5	Teacher training	professional preparation and continuous development of educators.
6	Complex needs	education of learners with multiple and severe disabilities. In addition, relevant paragraphs and citations were examined to capture the Committee's specific concerns and recommendations directed toward individual States.

The structural-thematic analysis revealed a series of recurring normative and practical challenges in the implementation of the right to education. The dominant issues included the persistence of segregated education systems, limited physical and digital accessibility, inadequate financial and human resources, insufficient teacher preparation, and the marginalization of learners with complex and severe disabilities. These findings highlight enduring institutional barriers and regional asymmetries in the realization of inclusive education. Thus, this study contributes not only to the description of global patterns but also to the analytical interpretation of how international and national legal frameworks interact in the domain of inclusive education. It elucidates the ongoing evolution of the right to inclusive education as a legally binding human rights standard, viewed through the lenses of accountability, equality, and sustainable development.

Results

An analysis of the Concluding Observations issued by the Committee between 2019 and 2025 reveals a persistent and systemic set of barriers to the implementation of Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD), which guarantees the right to inclusive education. Despite the formal international commitments made by States Parties, the practical realization of this right remains uneven and structurally constrained. A review of data from 75 countries highlights a stable cluster of interrelated obstacles, including the persistence of segregated education (72 mentions), lack of physical and digital accessibility (72 mentions), inadequate teacher training (70 mentions), exclusion of learners with complex disabilities (62 mentions), the continued reliance on special schools (61 mentions), and chronic underfunding (60 mentions).

Segregation remains one of the most entrenched violations of the right to education. The Committee consistently documents the ongoing operation of separate educational institutions or segregated classes for learners with disabilities, reflecting an outdated paradigm that isolates them from their non-disabled peers. References such as “segregated classes in legislation”, “segregation of students with intellectual disabilities” and “increasing segregation” indicate the continued dominance of a medical model and structural exclusion. Even in countries formally committed to inclusion, the Committee notes limited or absent measures to transition toward inclusive systems (e.g., Georgia, Albania, Turkey, South Africa, Mongolia). It urges States to transform specialized institutions into inclusive resource centers and to enshrine the right to inclusive education at all levels of the legal and policy framework.

Accessibility (both physical and digital) emerges as a frequently recurring concern across the examined reports. In low-income contexts, the lack of accessible infrastructure, transportation, and ICT is especially severe. The Committee refers to the “absence of accessible schools and transportation” and the “lack of learning materials in accessible formats and assistive communication”. It further notes that “a significant proportion of children with disabilities do not attend school” due to environmental and infrastructural barriers (e.g., Kiribati, Laos, Tuvalu, Vanuatu, Bangladesh). These findings underscore a deep spatial inequality in education systems and indicate that the principles of universal design and reasonable accommodation remain largely unrealized in many regions.

Underfunding further exacerbates all other barriers. The Committee highlights the absence of sustainable domestic funding mechanisms, overreliance on donor support, fragmented budget allocations, and insufficient redistribution of resources from segregated to inclusive systems. Reports mention “closure of inclusive programs due to budget cuts”, “lack of funding for individual support”, and “failure to reallocate resources from segregated structures” (e.g., Canada, Kiribati, Jamaica, Lithuania, Vietnam, Zambia). These examples demonstrate the financial fragility of inclusive reforms, especially in economically vulnerable states.

International evidence shows that effective financing of inclusive education depends on how resources are distributed. OECD, UNESCO, UNICEF, and the European Agency identify a shared principle: sustaina-

ble models combine baseline funding for all schools with targeted resources oriented toward each child's educational needs [13]. Three financing models are identified in the literature. The per-capita model (United States, Canada, Australia) provides transparency but generates incentives for over-identification of learners with special educational needs [14]. Resources are frequently directed toward home-based instruction rather than classroom support. The resource-based model (Italy, Ireland) finances staffing, infrastructure, and assistive technologies [15]. It provides institutional stability. Where resources remain concentrated in special institutions, segregation persists. The throughput model (Finland, Netherlands, Germany) allocates funding on condition that schools independently organise inclusive services [16]. It reduces diagnostic labelling incentives. Its effectiveness depends on school leadership capacity. In Kazakhstan, the financing system operates on two levels. The republican budget covers the development of textbooks and adapted curricula. Operational expenditures are borne by local budgets [17]. The volume of inclusive infrastructure varies according to the fiscal capacity of each region. At school level, a per-capita model is applied. Funding is linked to the number of pupils with officially confirmed special educational needs. Each such pupil receives a double coefficient without differentiation by type or severity of impairment [18]. Research involving urban school directors identified several constraints of the current model [19]. The type of funding alone does not determine whether a child with special educational needs is enrolled. Schools where pupils receive home-based instruction are less likely to include them in mainstream classrooms. The coefficient effectively subsidises home-based instruction. The principal determinants of genuine inclusion are school-level policy, the hiring of additional support staff, and the decision-making autonomy of the director. Rural schools operate under line-item budgeting. This deepens territorial inequality in the resourcing of inclusive education.

The lack of teacher preparedness is identified as one of the most systemic and widespread challenges. Numerous Concluding Observations point to the “insufficient training on inclusive education”, “shortage of professionals fluent in sign language and Braille” and “lack of reasonable accommodation in the classroom”. In some countries, inclusive education is entirely absent from pre-service teacher training curricula (e.g., Norway, Sri Lanka, Bosnia and Herzegovina, Zimbabwe, Papua New Guinea). The Committee emphasizes the need for mandatory incorporation of inclusive pedagogy in university-level training, the development of continuous professional development programs, and the meaningful inclusion of teachers with disabilities as agents of change in transforming educational cultures.

Concern is raised regarding the exclusion of learners with multiple, mental, and sensory disabilities. The Committee consistently identifies the “absence of individual support mechanisms”, “failure to provide assistive technologies” and the “systematic exclusion of children with intellectual and psychosocial disabilities” even in countries that publicly endorse inclusion (e.g., Vietnam, Lithuania, Ghana, South Africa, Dominican Republic). Such patterns are interpreted as forms of structural discrimination, revealing that inclusion is often implemented selectively and fails to reach the most marginalized groups.

Another critical gap concerns the absence of strategic frameworks and monitoring mechanisms. The Committee's findings include references to the “lack of comprehensive strategies with specific timelines, indicators, and budgets”, “insufficient intersectoral coordination” and “unjustified refusals to admit children with disabilities into mainstream schools” (e.g., Switzerland, Kazakhstan, India, Cambodia, Zambia). The Committee stresses that without robust institutional and legal mechanisms, national strategies remain declarative and ineffective in producing tangible change.

A comparative review of Concluding Observations reveals that these barriers form an interdependent cluster of constraints. Countries that maintain segregated systems tend also to experience underfunding, insufficient teacher training, and weak governance frameworks (e.g., Laos, Zambia, India, Vanuatu). In contrast, in high-income countries (e.g., Finland, Canada, the Netherlands, Switzerland), the Committee's recommendations focus on structural transformation, the establishment of monitoring systems, and quality assurance standards. These differences reflect varying degrees of institutional capacity and highlight global inequalities in the pace and depth of inclusive education reform. Therefore, the formal recognition of the right to inclusive education does not guarantee its realization. Effective implementation requires sustainable financial frameworks, adequate professional capacity, physical and digital accessibility, legal enforceability, and transparent accountability mechanisms. The findings of the CRPD Committee provide an empirical and normative foundation for comparative legal analysis. They also serve as a resource for advancing educational justice in the context of Central Asia. The identified barriers are persistent. This confirms the need to move beyond declarative commitments. A coherent, well-resourced, and rights-based strategy is required. Such a strategy must ensure equitable and inclusive education for all children with disabilities.

The Concluding Observations on Kazakhstan's initial state report address the issue of segregated education. The Committee emphasizes the need to transition away from this model. Special schools continue to operate as separate institutions. This practice remains a central concern. In paragraph §51(a), the Committee explicitly raises concerns that “special schools continue to operate in parallel with the general education system, thereby contributing to the segregation of persons with disabilities”. Accordingly, paragraph §52(d) urges the State to develop a national strategy aimed at transforming these special institutions into resource centers capable of supporting inclusive learning within mainstream schools [20]. This recommendation reflects a paradigmatic shift from an integrationist to a rights-based model of education, whereby the system is adapted to the diverse needs of all learners rather than expecting the learner to conform to the existing system. Despite Kazakhstan's formal commitment to inclusive education, statistical trends from 2019 to 2023 suggest a disconnect between policy discourse and actual practice. Data comparing enrolment figures in special preschool institutions and special general education schools reveal a consistent increase in the number of students placed in the latter, rising from 14,895 in 2019 to 16,044 in 2023. Enrolment in special preschool settings followed a different pattern. These figures remained largely stable. The lowest recorded value was 4,229. The highest was 4,796 (Fig. 1). This disparity reflects sustained institutional investment in segregated education at the school level. Kazakhstan faces persistent challenges in aligning its education system with international human rights standards. Article 24 of the CRPD establishes the relevant obligations in this regard. An additional systemic constraint is the role of parental decision-making, which is often shaped by perceptions of special schools as safer or more appropriate environments for children with disabilities. In the absence of sufficient individualized support, qualified inclusion specialists, adapted curricula, and inclusive pedagogical practices in general education schools, parental choice is frequently constrained. Rather than exercising free and informed choice, many families are compelled to opt for special schools out of necessity, due to the lack of viable inclusive alternatives [21].

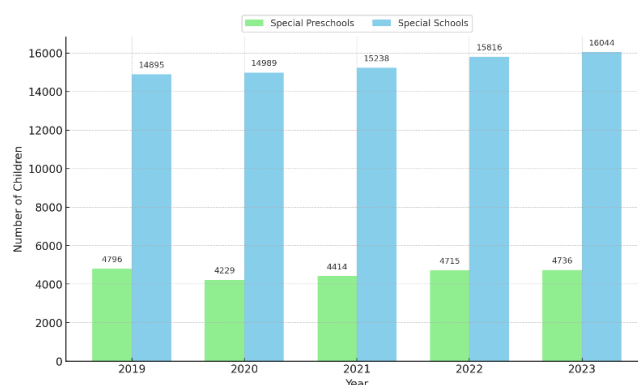


Figure 1. Number of children enrolled in special preschools and special schools in Kazakhstan (2019–2023)

As recent research indicates, the number of children with disabilities receiving home-based education in Kazakhstan has demonstrated a generally increasing trend over the past decade (Fig. 2). According to official data from the Bureau of National Statistics under the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan the number of such students rose from 8,629 in 2014 to a peak of 9,823 in 2018. Several factors may account for this decline. Education policy may have changed during this period. Statistical reporting procedures may have been modified. Inclusive education practices may also have expanded temporarily. From 2020 onward, the number grew steadily. By 2023, it reached 11,529. This is the highest figure recorded in the ten-year period. Two explanations are possible. Access to individualized education may have improved. Diagnostic and registration procedures may have become more comprehensive. The increase may also indicate persistent challenges in implementing inclusive education in mainstream schools. Specifically, the trend may be indicative of insufficient pedagogical and psychological support within schools, a critical shortage of qualified personnel such as tutors, special education teachers, and psychologists, as well as the limited readiness of educational institutions to create fully inclusive learning environments. In such conditions, home-based education is often not the result of parental preference, but rather a necessity driven by the lack of appropriate support mechanisms in the general education system.

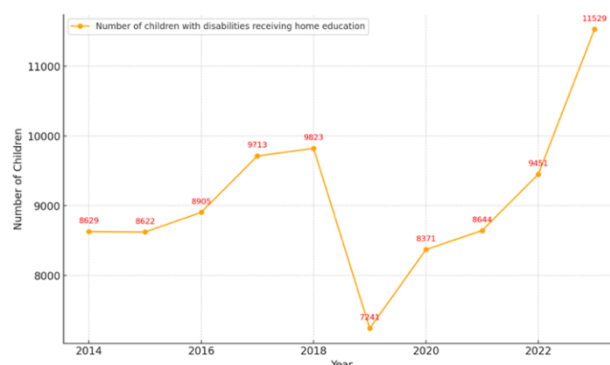


Figure 2. Dynamics of the number of children with disabilities receiving home education in Kazakhstan (2014–2023).

Discussion

The CRPD has consistently emphasized that the inclusion of learners with disabilities within mainstream education systems constitutes a core element of the realization of the right to education. Despite this normative clarity, both legal scholars and policymakers continue to debate the legitimacy and necessity of maintaining special schools as transitional or complementary mechanisms designed to meet diverse and complex learning needs. From a practical perspective, full inclusion is often constrained by objective factors, such as severe intellectual, physical, or multiple disabilities, as well as by systemic deficiencies in funding, teacher preparation, and institutional readiness. Some scholars challenge the notion that inclusive education should entirely replace special education, arguing instead that the coexistence of differentiated educational approaches ranging from mainstream to specialized settings may provide a more contextually appropriate model for realizing the right to education for all learners [22].

This pluralistic understanding is partially reflected in the Committee's own practice. In its Concluding Observations on Germany's initial report, the Committee recommended a proportional reduction in the number of special schools to facilitate the transition toward inclusive education. Crucially, it underscored that national legislation, and policy frameworks must support the immediate right of children with disabilities to enroll in mainstream schools "of their choice" [23]. The phrase "of their choice" carries legal significance. It affirms the agency of children with disabilities in determining their educational environment. Autonomy and equality of opportunity are thereby established as principles of inclusion.

Empirical data show a different picture. Many States Parties continue to allocate substantial resources to segregated education systems. In England, official statistics from 2017 recorded an increase in the number of students with education, health, and care plans. These students attended publicly funded special schools. Although a slight decline from 37.9 % to 35.8 % was observed in 2024, the figures suggest persistent structural barriers to the implementation of inclusive education [24]. In Germany, the proportion of students with disabilities enrolled in special schools remains significantly higher than in most other European countries [25]. The Committee has repeatedly expressed concern that Germany continues to maintain an education system in which most students with disabilities are educated in specialized settings. Such findings reveal an enduring gap between formal legal obligations and their practical realization. These realities raise a critical normative question: does the persistence of segregated education reflect the inherent unsuitability of the inclusive model for certain children, or does it instead expose systemic shortcomings such as inadequate resources, insufficient teacher training, or unadopted environments that hinder effective inclusion? Comparative studies suggest that inclusion can be successfully implemented even for learners with severe and complex disabilities, provided that sufficient pedagogical support, individualized assistance, and structural adaptation are ensured [26]. Therefore, the formulation of clear international guidelines addressing the education of children with the most complex disabilities is vital to translating the principle of inclusion into concrete and effective practice.

Another area of conceptual and legal contention concerns the relationship between the child's right to education and the parental duties associated with upbringing and development. The CRPD affirms the primacy of the best interests of the child and the right of children to participate in decisions that affect them. Article 7(2) of the CRPD stipulates that all actions concerning children with disabilities must be guided by their best interests, while Article 7(3) guarantees their right to express views freely on matters affecting them, with due consideration given to age and maturity. The Committee's General Comment No. 4 further

asserts that education is “the right of the individual learner, not of the parent or guardian”, implying that parental responsibilities are secondary to the child’s autonomous rights [27].

Although this formulation strengthens the agency of the child, it raises important concerns regarding the balance of rights under international law. The absolutization of the child’s right to education, detached from parental participation, risks contradicting provisions of the Convention on the Rights of the Child, particularly Article 18, which establishes that parents bear primary responsibility for the upbringing and development of their children. At present, the Convention on the Rights of the Child has been ratified by 196 States, making it the most widely endorsed international human rights treaty in history. Similarly, Article 5 of the Convention on the Rights of the Child obliges States to respect parental rights and responsibilities to provide guidance consistent with the child’s evolving capacities [28]. General Comment No. 1 of the Committee on the Rights of the Child also highlights the central role of parents in realizing children’s rights, including their right to education [29]. Excluding parents from educational decision-making would therefore contravene the cooperative and participatory model envisaged by international law.

A further tension arises in relation to the principle of the best interests of the child, enshrined in Article 3 of the Convention on the Rights of the Child and Article 7 of the CRPD. While inclusive education represents the preferred model under international human rights law, it may not always constitute the most beneficial environment for every learner. For children with profound sensory or multiple disabilities, mainstream settings may lack the necessary level of adaptation, assistive technology, or professional expertise. In such cases, the views of parents who possess intimate knowledge of their child’s needs should be given due weight. Furthermore, Article 41 of the Convention on the Rights of the Child codifies the principle of more favorable norms, requiring States to apply higher standards of protection when national or international law provides them. This principle is particularly relevant in interpreting the child’s right to education in a manner that maximizes individual benefit rather than formal compliance.

Some national legal frameworks recognize both child and parental agency. This recognition reflects a balanced approach to educational decision-making. For example, Kazakhstan’s education legislation allows parents or legal guardians to choose an educational institution that aligns with the child’s abilities, preferences, and learning needs. This approach reflects the dual principles of the best interests of the child and the priority of more favorable norms, promoting adaptability and contextual flexibility within inclusive education systems. Empirical research further demonstrates that parental participation is a critical determinant of successful inclusion. Parents frequently act as advocates for the rights of children with disabilities, fostering collaboration between families and schools and contributing to the creation of inclusive institutional cultures. International practice shows that parental involvement occurs at multiple levels from representation on school boards to engagement in curriculum adaptation and quality monitoring thus enhancing both accountability and educational outcomes [30].

The most widely recommended approach in the international literature is a hybrid financing model. It combines stable baseline funding for all schools, supplementary allocations by level of support required, a guaranteed minimum resource standard in each inclusive school, and accountability mechanisms that monitor actual classroom inclusion. This model aligns with the rights-based logic of Article 24 of the CRPD. Reliance on short-term projects and fragmented grants does not produce sustainable systems. The Kazakhstan evidence points to a structural gap between declared policy commitments and the actual distribution of resources. The current per-capita model provides a foundation for equity-oriented financing. Several factors limit its reach. Rural schools fall outside the formula. The supplementary coefficient carries no requirement for classroom-based use. Outcomes depend on local administrative capacity rather than systemic guarantees. Redirecting resources toward individual support and the gradual transformation of special schools into resource centres serving the inclusive sector represents a priority direction for system development.

Ultimately, the right to education cannot be divorced from the material and institutional conditions necessary for its fulfillment. Public policy must therefore strike a balance between the ideal of full inclusion and the practical imperative of ensuring accessible and high-quality education for all learners. During the transition toward full inclusion, States Parties to the CRPD bear a heightened responsibility to reform educational systems so that all children, regardless of disability, can enjoy equal access to learning opportunities. Achieving this balance between normative ambition and practical realization remains one of the most complex challenges in the global implementation of the right to inclusive education.

Conclusions

This study has demonstrated that, nearly two decades after the Convention on the Rights of Persons with Disabilities entered into force, the implementation of Article 24 remains uneven, fragmented, and constrained by systemic legal, institutional, and socio-economic barriers. The Convention establishes inclusive education as a legally binding human right. This is a significant normative advancement in international law. Segregated educational models persist. Accessibility remains insufficient. Qualified teaching staff are in short supply. Funding levels are inadequate. These factors continue to hinder full realization of the right. The analysis of 75 States Parties drew on Concluding Observations of the Committee on the Rights of Persons with Disabilities. Structural exclusion emerged as a recurring pattern. Learners with severe and multiple disabilities face the greatest barriers.

The findings point to several specific proposals for legislative and policy reform.

First, in the area of legislative regulation, Kazakhstan may wish to consider establishing the principle of the least restrictive environment in education legislation. Under this principle, enrolment in a mainstream school is the default option. Placement in a special institution is permissible only on the basis of an individual assessment of the child's educational needs. Combining this principle with an individual right to reasonable accommodation in mainstream schools would provide a clearer legal framework for educational decision-making.

Second, in the area of financing, extending the per-capita model to rural schools currently operating under line-item budgeting merits consideration. This would reduce regional inequality in the resourcing of inclusive education. Introducing a requirement for the targeted use of the supplementary coefficient for classroom-based support also warrants attention. Research involving directors of urban schools in Kazakhstan found that the coefficient is frequently directed toward home-based instruction.

Third, in the area of teacher preparation, establishing inclusive pedagogy as a compulsory subject in teacher training programmes would support the development of foundational professional competencies. Setting a normative frequency for the in-service training of practising teachers in this area represents an equally significant step. The Committee has consistently identified the absence of such requirements as a systemic barrier across the majority of States reviewed.

Fourth, in the area of accountability in Kazakhstan, establishing an independent monitoring mechanism with a mandate to collect separate data on educational outcomes for learners with different types of disability would strengthen the assessment of inclusion in practice. Reorienting state programme indicators from formal enrolment figures toward actual classroom participation would strengthen system-level accountability.

Equal educational opportunities for all learners must remain a strategic priority. Inclusive education forms part of rights-based approaches to sustainable development. Future progress depends on States implementing systemic reforms. These reforms must uphold equality, dignity and universal participation.

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Н. Сайранқызы

Мүгедектігі бар адамдардың инклюзивті білім алуын жүзеге асырудағы үрдістер мен кедергілерді халықаралық-құқықтық талдау

Мақаланың мақсаты — инклюзивті білім алу құқығын іске асырудағы тұрақты құрылымдық кедергілерді анықтау және мүгедектігі бар адамдардың құқықтары туралы конвенцияның 24-бабында бекітілген халықаралық стандарттарды мемлекеттердің сақтау дәрежесін бағалау. Негізгі әдіс ретінде 2019–2025 жылдар аралығындағы Мүгедектігі бар адамдардың құқықтары жөніндегі комитеттің қорытынды ескертулеріне құрылымдық-тақырыптық талдау қолданылды. Доктриналдық құқықтық талдау және салыстырмалы-құқықтық әдіс қосымша құралдар ретінде пайдаланылды. Эмпирикалық базаны әлемнің әртүрлі өңірлерінен 75 қатысушы мемлекетке арналған ескертулер құрайды. Зерттеу барысында алты тұрақты кедергі анықталды: сегрегацияланған жүйелердің сақталуы, ортаның шектеулі қолжетімділігі, мұғалімдерді даярлаудың жеткіліксіздігі, мүгедектігі ауыр оқушылардың шеттетілуі, арнайы мектептердің сақталуы және қаржыландырудың жеткіліксіздігі. Нәтижелер ресми құқықтық міндеттемелер мен олардың практикалық іске асырылуы арасындағы тұрақты алшақтықты көрсетеді. Жүргізілген талдау негізінде ең аз шектеулі орта қағидатын заңнамалық бекіту, қаржыландыру механизмдерін реформалау, инклюзивті білім беру саласында мұғалімдерді міндетті даярлауды енгізу және тәуелсіз мониторинг механизмдерін құру бойынша ұсыныстар тұжырымдалды. Декларативті нормалардан жүйелі практикалық шараларға көшу білім алу құқығын іске асырудың қажетті шарты.

Кілт сөздер: инклюзивті білім беру, сегрегация, арнайы мектептер, қолжетімділік, педагогтарды даярлау, білім алудағы кедергілер, адам құқықтары.

Н. Сайранқызы

Международно-правовой анализ тенденций и барьеров в осуществлении инклюзивного образования лиц с инвалидностью

Целью настоящей статьи является выявление устойчивых структурных барьеров в реализации права на инклюзивное образование и оценка степени соблюдения государствами международных стандартов, закреплённых в статье 24 Конвенции о правах инвалидов. Основным методом выступает структурно-тематический анализ Заключительных замечаний Комитета по правам инвалидов за период 2019–2025 годов. Доктринальный правовой анализ и сравнительно-правовой метод применялись в качестве дополнительных инструментов. Эмпирическую базу составляют замечания, адресованные 75 государствам-участникам из различных регионов мира. В ходе исследования выявлено шесть устойчивых барьеров: сохранение сегрегированных систем, ограниченная доступность среды, недостаточная подготовка учителей, исключение обучающихся с тяжёлыми формами инвалидности, сохранение специальных школ и недофинансирование. Полученные результаты свидетельствуют об устойчивом разрыве между формальными правовыми обязательствами и их практической реализацией. На основе проведённого анализа сформулированы предложения по законодательному закреплению принципа наименее ограничительной среды, реформированию механизмов финансирования, введению обязательной подготовки педагогов в области инклюзивного образования и созданию независимых механизмов мониторинга. Переход от декларативных норм к системным практическим мерам является необходимым условием реализации права на образование.

Ключевые слова: инклюзивное образование, сегрегация, специальные школы, доступность, подготовка учителей, барьеры в образовании, права человека.

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Problems of pension provision for persons with disabilities in the Republic of Kazakhstan: comparative legal analysis

This article examines the problems of pension provision for persons with disabilities in the Republic of Kazakhstan within a comparative legal framework. The aim of the study is to identify the key legal and institutional challenges of the national disability pension system and to develop directions for its improvement based on a comparative analysis of the legislation of Germany and South Korea. The research employs formal legal, comparative legal, systemic, and normative methods of analysis, which make it possible to examine pension provision as a complex legal institution encompassing elements of social security, insurance protection, and labour-market integration. The findings indicate that the current pension provision model in the Republic of Kazakhstan is predominantly compensatory in nature and insufficiently linked to mechanisms of vocational rehabilitation and employment for persons with disabilities. At the same time, international experience demonstrates the effectiveness of integrated systems that combine pension payments with active employment policies and insurance-based protection mechanisms. In conclusion, the study emphasizes the need to transition toward a comprehensive legal model of pension provision for persons with disabilities in Kazakhstan, based on strengthening insurance principles, developing rehabilitation programmes, and expanding measures to promote labour-market integration.

Keywords: pension provision, disabilities, legal regulation, social guarantees, legislation, disability pensions, inclusive society, international experience.

Introduction

The provision of social protection for persons with disabilities within pension systems is a crucial component of any country's social policy. It serves as a key indicator of the level of social justice and inclusiveness in society. Disability often leads to a loss of working capacity, which significantly limits an individual's ability to participate in economic activities and generate personal income. In this context, the state faces the important task of developing effective mechanisms of social support. Accordingly, pension provision for persons with disabilities performs not only a compensatory function—ensuring a basic level of material well-being—but also plays an important role in promoting social inclusion. It helps integrate vulnerable groups into society and supports their dignity and independence.

The relevance of this study is determined by the need to improve the legal regulation of disability pension provision in the context of ongoing transformations of national social security systems and the increasing influence of comparative international experience in this field. Demographic changes, reflected in the growing number of persons with disabilities, further highlight the importance of ensuring the effective realization of their constitutional right to social protection, as guaranteed by national legislation.

Despite considerable scholarly attention devoted to disability pension provision, significant debates remain within legal scholarship regarding the content and limits of legal regulation in this area. One group of scholars views disability pensions primarily as an institution of social security law aimed at implementing constitutional guarantees of social protection and ensuring a minimum standard of state-provided material support. This position is reflected in the works of G.A. Kuanaliyeva, S. Adilgazy, and M.N. Abisheva, who emphasize the normative and guarantee-based nature of pension provision as part of the system of state social obligations. A similar approach is presented by G.G. Pashkova, who interprets pension payments as a legally established mechanism for implementing the state's social function and ensuring basic living standards for persons with disabilities. In contrast, other scholars adopt a broader, interdisciplinary understanding of pension regulation, viewing it as a complex legal institution encompassing not only social

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security law but also elements of labour, administrative, and international law. In this regard, O.V. Arlashkina and L.N. Natsun highlight the importance of legally embedding mechanisms of labour integration and supported employment for persons with disabilities as part of the realization of the right to work. A.N. Batalova further argues for the development of legal mechanisms of labour market adaptation, emphasizing the limitations of a purely compensatory approach in the current regulatory framework.

According to the author, the further development of disability pension legislation in the Republic of Kazakhstan should be based on an integrated legal approach, ensuring interconnection between pension provision, social protection, medical and vocational rehabilitation, and employment promotion mechanisms. In this context, a comparative legal analysis of the legislation of Kazakhstan, Germany, and South Korea becomes particularly relevant, as it allows the identification of effective legal mechanisms for protecting the rights of persons with disabilities.

The aim of this study is to conduct a comparative legal analysis of disability pension legislation in the Republic of Kazakhstan and selected foreign jurisdictions, to identify existing legal regulation problems, and to develop proposals for improving national legislation.

To achieve this aim, the following objectives are set: to analyze the legal norms governing disability pension provision and social protection of persons with disabilities in Kazakhstan; to conduct a comparative legal study of disability pension systems in Germany and South Korea; to identify problems in legal regulation and law enforcement practice in Kazakhstan; and to develop recommendations for improving national legislation in line with international standards and foreign experience.

Methods and Materials

The methodological framework of this study is based on a combination of general scientific and specialized approaches to legal and socio-economic analysis. In the course of the research, several methods were applied, including comparative legal analysis, systems analysis, statistical evaluation, and an institutional approach.

The comparative legal method made it possible to examine Kazakhstan's pension provision system for persons with disabilities in relation to similar social protection mechanisms in other countries, particularly the experiences of Germany and South Korea. The systems approach was used to explore the multi-level structure of social protection for persons with disabilities in Kazakhstan. This structure encompasses state social benefits, the compulsory social insurance system, and the funded pension scheme. Statistical methods were employed to analyze official data reflecting trends in the number of persons with disabilities and to assess their socio-economic conditions. The empirical foundation of the study includes several key sources: national legal and regulatory acts governing pension provision and social protection for persons with disabilities in the Republic of Kazakhstan; international legal instruments and standards in the field of social protection; official statistical data published by government bodies; as well as academic publications and analytical reports produced by international organizations and research institutions.

During the preparation of this article, AI-based tools were used solely for translation, grammar checking, and stylistic editing of the manuscript (ChatGPT, DeepSeek).

Results

Pension systems represent one of the key pillars of social policy in any country. In Kazakhstan, the current pension model has been in place since 1997, when a major reform concept was adopted, marking the beginning of a comprehensive modernization process. The reform was largely inspired by the Chilean model, which is based on mandatory contributions to individual pension accounts and their long-term accumulation. Starting from January 1, 1998, all employed citizens have been required to transfer 10 % of their monthly income to personal accounts within the funded pension system [1; 2]. At present, Kazakhstan operates a three-tier system of social protection for persons with disabilities. The first level consists of state social benefits financed from the national budget and differentiated according to the degree of disability [2]. The second level includes payments from the compulsory social insurance system [3], while the third level is formed by the funded pension scheme [4]. However, despite this formally diversified structure, pension payments in practice rely predominantly on state budget resources and the Unified Accumulative Pension Fund, largely due to the limited development of voluntary contributions.

The novelty of this research lies in its integrated analysis of the relationship between employment levels among persons with disabilities and the effectiveness of the funded pension system. The study demonstrates that low labor market participation is not merely a social concern but a systemic factor that directly

undermines pension system performance. It further argues that pension provision for persons with disabilities should not be treated in isolation, but rather as part of a broader framework that includes rehabilitation, employment, and social inclusion mechanisms.

The results of the conducted research indicate that the tasks set in the work were fully implemented and made it possible to identify key legal problems and areas for improving pension provision for persons with disabilities in the Republic of Kazakhstan.

As part of the solution of the first task related that the current legal model is predominantly compensatory in nature and is focused on providing state social benefits, while mechanisms aimed at integrating people with disabilities into the employment system and forming pension savings are insufficiently developed.

The solution of the second task, which is to identify problems of legal regulation and law enforcement practice, has shown the existence of systemic limitations of the pension system. These include the dependence of the amount of pension payments on the length of service and the amount of savings, insufficient involvement of persons with disabilities in the funded pension system, as well as the weak relationship between pension provision and institutions of vocational rehabilitation and labor integration.

As part of the third task, which provides for a comparative legal analysis of the legislation of Germany and South Korea, it was found that foreign models are characterized by a more comprehensive approach. In particular, in Germany, pension provision is closely linked to the compulsory pension insurance system and the principle of prioritizing rehabilitation before retirement. In South Korea, the pension system is integrated with social and labor policy measures, including employment quotas, tax incentives for employers, and a comprehensive assessment of the needs of people with disabilities.

The solution of the fourth task, aimed at developing proposals for improving the legislation of the Republic of Kazakhstan, allowed us to formulate the following main areas of reform: strengthening pension insurance principles, developing regulatory support for vocational rehabilitation programs, expanding state support for the employment of persons with disabilities, as well as introducing an integrated approach to assessing their needs, taking into account international experience.

Thus, the results obtained confirm that the further development of pension provision for persons with disabilities in the Republic of Kazakhstan requires a transition from a predominantly compensatory model to an integrated legal system combining pension, rehabilitation and labor mechanisms of social protection.

The practical significance of the findings lies in the applicability of the proposed model to the improvement of social policy. Its implementation can contribute to increasing the economic independence of persons with disabilities, while simultaneously reducing the financial burden on the state budget.

Discussion

Despite the formation of a multi-level social security system in the Republic of Kazakhstan, enshrined in the Social Code and other regulatory legal acts, the current model of pension provision for persons with disabilities continues to face a number of legal and institutional problems. These problems are expressed not only in the insufficient effectiveness of mechanisms for the implementation of social rights, but also in the limited effectiveness of existing legal guarantees of social protection and social integration of this category of citizens. International experience shows that personal pension savings play a decisive role in ensuring a decent standard of living in old age, whereas state transfers are primarily designed to provide a minimum guaranteed income for vulnerable groups [1; 2].

From a legal perspective, disability pension provision in the Republic of Kazakhstan is primarily regulated by the Social Code of the Republic of Kazakhstan dated 20 April 2023 No. 224—VII. According to Article 181 of the Social Code of the Republic of Kazakhstan, persons with disabilities are guaranteed the provision of a state social benefit regardless of their employment history or participation in the funded pension system. At the same time, the pension system for this category of citizens is structured on a multi-level basis, including basic pension payments, pension benefits financed through mandatory pension contributions, as well as other payments provided for by national legislation [2]. However, an analysis of the current legislation shows that there are a number of legal problems. One of them is the dependence of the amount of pension payments from the accumulative system on the duration of work and the amount of pension savings. Since the employment rate of people with disabilities remains relatively low, a significant part of citizens are unable to form sufficient pension savings, which further leads to dependence on state social benefits.

In foreign countries, two main policy approaches have emerged to promote the employment of persons with disabilities in the labor market.

The first approach is based on the idea that individuals with limited work capacity can be effectively employed only under specially adapted working conditions. Within this framework, governments provide financial incentives to employers who hire persons with disabilities. These measures typically include subsidies, compensation for workplace adaptation costs, and the introduction of employment quotas aimed at increasing workforce participation among people with disabilities.

The second approach focuses on ensuring equality and non-discrimination. It establishes a strict prohibition of discrimination against persons with disabilities across all public authorities, institutions, and organizations, thereby promoting equal access to employment opportunities [5].

Germany offers a clear example of an effectively organized system of social protection in cases of reduced working capacity. The legal basis for pension provision for persons with disabilities in Germany is Book VI of the German Social Code. According to section 43 of this regulatory act, the right to a disability pension arises if there is a medically confirmed disability and the requirements for insurance experience are met. German legislation distinguishes between total and partial disability, and the amount of pension payments is determined based on insurance experience and previously earned earnings [6]. In this country, disability-related benefits are financed through the mandatory pension insurance system, and the amount of payments is directly linked to an individual's insurance record and previous earnings. A person is considered fully incapable of work if they are able to work no more than three hours per day, in which case they are entitled to a full disability pension. Those who are able to work less than six hours per day are classified as partially incapacitated and receive a corresponding partial disability pension. In both cases, the benefit level is calculated based on pre-disability income and the length of the insurance period. The primary objective of disability pensions in Germany is to ensure a stable level of income that allows beneficiaries to maintain an independent lifestyle. However, eligibility for such benefits is subject to specific conditions. In particular, the individual must demonstrate a significant reduction in work capacity, have at least five years of insurance coverage, and must have paid mandatory pension contributions for at least three years prior to the onset of disability. An important feature of the German system is the principle of "rehabilitation before pension". Under this approach, priority is given to restoring an individual's ability to work through medical or vocational rehabilitation measures. If the applicant is deemed capable of retraining, they are offered access to specialized training programs. Employment and integration services then provide comprehensive support to facilitate their return to the labor market [7].

In South Korea, the system of social protection for persons with disabilities is comprehensive and multifaceted. It combines state social benefits, insurance-based mechanisms, and targeted employment programs into a coordinated framework. A distinctive feature of the Korean approach is its strong emphasis on active labor market participation for persons with disabilities. This is reflected in policies such as employment quotas, financial incentives for employers, and the development of adapted workplaces designed to meet specific needs.

In South Korea, the legal framework governing disability pension provision is primarily based on two key statutes: the National Pension Act and the Welfare of Persons with Disabilities Act. Together, these laws establish the institutional and legal foundation for the protection of persons with disabilities within the pension system. Under the National Pension Act, entitlement to a disability pension arises when an insured individual becomes disabled due to illness or injury during the period of participation in the compulsory pension insurance scheme. In this context, disability benefits are granted as part of the social insurance system, provided that the statutory conditions for coverage and eligibility are met [8]. Their primary purpose is to ensure a stable standard of living for individuals who have lost their capacity to work due to illness or injury. In this way, financial support is provided to those who are recognized as physically or mentally unable to engage in employment, thereby reinforcing their social protection. Disability pensions are regulated by several laws and regulations, which in principle allow individuals to claim benefits under several schemes. However, in practice, this is difficult to achieve due to inconsistencies in the criteria used to assess the degree of disability across different legal frameworks. For example, the amputation of a limb may be classified as a third-degree disability under the national pension law, thereby entitling an individual to disability pension benefits. At the same time, under the law on social support for persons with disabilities, the same condition may not fall within the first to third disability categories, as it is instead classified as a sixth-degree disability. This discrepancy complicates access to benefits.

In addition, there are significant differences in benefit levels depending on the degree of disability when compared to the base pension amount. Payments typically amount to 100 % of the base pension for individuals with first-degree disabilities, 80 % for second-degree disabilities, and 60 % for third-degree disabilities.

It is also important to note that for individuals who have contributed to the pension system for more than 20 years, disability pensions are calculated based on their earnings history and the length of contributions at the time the disability occurred. For those with less than 20 years of contributions, a “projected contribution period” rule is applied, whereby their contribution history is calculated as if it were 20 years.

The contribution period itself serves as a key factor in determining the base pension amount. If an individual has contributed for less than 20 years, they are still treated as having participated in the pension system for a full 20-year period. As a result, for individuals with shorter contribution histories, the income replacement rates under disability pensions are relatively low: approximately 12 % for third-degree disabilities, 16 % for second-degree disabilities, and 20 % for first-degree disabilities [9].

The national disability assessment system in South Korea was first introduced in 1989. It enabled authorities to take into account the condition of individuals when assigning social support measures, as well as to classify disabilities based on type and severity. However, over time, limitations of this approach became evident, leading to a major reform in 2019. The updated model moves beyond a purely medical perspective and adopts a more holistic approach. In addition to clinical indicators, the assessment now incorporates social and environmental factors, individual needs and preferences, as well as a person’s functional capacity. These changes were introduced to better tailor services to the actual circumstances of each individual. Several key features characterize the reformed system. First, disability categories were simplified into two broad groups: “severe” and “mild”. Currently, categories 1–3 are considered severe, while categories 4–6 are classified as mild disabilities. Second, a new comprehensive assessment tool was implemented. This tool evaluates not only physical condition but also socio-economic status and the individual’s level of daily functioning.

Socio-economic factors include income, property, place of residence, family situation, and other living conditions. Meanwhile, functional capacity is assessed based on a person’s ability to perform both basic daily activities and more complex instrumental tasks. As a result, social services are no longer determined solely by medical conclusions but are increasingly aligned with an individual’s quality of life and level of independence. This approach allows for a more precise identification of needs and more effective support delivery.

In addition, the reliability of disability-related data is ensured through strict medical evaluation and registration procedures. The collected information is integrated into the national healthcare database and serves as an important resource for analyzing the situation of persons with disabilities and for further improving social policy [10]. Thus, one of the key challenges in the legal regulation of disability pensions in Kazakhstan lies in its predominantly compensatory nature. The current model focuses mainly on the provision of monetary social benefits, while legal mechanisms aimed at rehabilitation and labour market integration remain insufficiently developed. In contrast, the pension systems of Germany and South Korea demonstrate a more integrated legal approach, where pension provision is closely linked to rehabilitation policies and active employment support measures. These systems emphasize not only income replacement but also the restoration and preservation of working capacity through coordinated legal and institutional frameworks. This comparative analysis highlights the need for further improvement of Kazakhstan’s legal framework. This highlights the need for further improvement of the legal framework through strengthening insurance-based mechanisms for protection against the risk of loss of working capacity, expanding vocational rehabilitation programmes, and legislatively enshrining the principle of prioritizing the labour market integration of persons with disabilities.

According to data provided by the National Bureau of Statistics of the Republic of Kazakhstan and the Ministry of Labor and Social Protection of the Population, the number of persons with disabilities in the country has been steadily increasing each year. As of 2025, approximately 743.9 thousand individuals with disabilities have been officially registered, accounting for around 3.7 % of the total population. Notably, about 375.2 thousand of them are of working age, which highlights the importance of improving both employment opportunities and social support measures for this group [11].

One of the key indicators of social policy effectiveness is the level of public expenditure allocated to supporting persons with disabilities. This reflects both the scale and the efficiency of state-provided assistance. At present, a significant proportion of persons with disabilities depend on state benefits, largely due to their limited access to the labor market. Low employment rates, in turn, negatively affect the accumulation of pension savings within the mandatory pension system.

Another important issue is the limited participation of persons with disabilities in pension schemes based on labor contributions and savings principles. Due to restricted employment opportunities, many

individuals in this category are unable to build sufficient pension assets. As a result, they remain reliant on state social transfers, which are relatively modest in size.

This problem is complex and influenced by a combination of social, legal, and psychological factors. For instance, there is often a lack of awareness among human resource professionals, while employers may be psychologically unprepared to engage in labor relations with persons with disabilities [12]. As noted by L.N. Natsun, one of the main barriers to employment lies in employers' reluctance to assume responsibility for creating specialized workplaces, adapting them to the needs of persons with disabilities, and investing in the necessary equipment. This reluctance is frequently justified by references to limited financial and production resources [13; 674].

In the countries of the European Union, promoting the employment of persons with disabilities is recognized as a key priority of social policy. To encourage employers, a wide range of financial support instruments is used, including subsidies, dedicated funds, and tax incentives. These measures are primarily aimed at adapting workplaces and creating accessible infrastructure. For example, in the Czech Republic, the Labor Office provides one-time financial support to employers who create jobs specifically for persons with disabilities. Such assistance is particularly relevant for protected workshops or specially adapted workplaces. In addition, employers may receive subsidies to cover ongoing operational costs, along with various tax benefits offered by the state. In Slovenia, organizations that hire persons with disabilities or provide them with internship opportunities are eligible for additional tax incentives. These benefits are granted under certain conditions and may cover between 50 % and 70 % of employees' wages. However, the total amount of such benefits cannot exceed the taxable base [14; 15]. Overall, the experience of European countries demonstrates that effective integration of persons with disabilities into the labor market largely depends on strong cooperation between the state and employers.

Evidence from developed economies shows that investing in rehabilitation and employment opportunities for persons with disabilities is more beneficial for the national economy in the long term than relying solely on social transfers such as allowances, benefits, or subsidies. Facilitating their participation in the labor market not only reduces dependency but also generates broader economic returns [15]. In this regard, A.N. Batalova notes that there is a growing demand for adaptation programs and technologies designed to support the successful integration of persons with disabilities into the workforce.

At the same time, ongoing economic and social transformations require the development of new and innovative approaches to address these challenges. It is also important to emphasize that employment for persons with disabilities is not solely constrained by employer-related factors. Personal and social barriers often make the process complex and time-consuming. In response, many developed countries have widely adopted the concept of "supported employment". This approach provides targeted assistance during the adaptation period in a new workplace and helps address practical challenges that may arise, thereby improving long-term employment outcomes [16; 175].

Comparative analysis shows that Kazakhstan's disability pension system differs significantly in effectiveness from those found in more developed countries. For instance, in Germany, the system is largely based on insurance mechanisms and supported by well-developed vocational rehabilitation programs. In contrast, Kazakhstan's model remains heavily reliant on state-funded social benefits.

The experiences of Germany and South Korea highlight several key directions for improving pension provision for persons with disabilities. These include expanding the role of insurance-based mechanisms within the pension system, developing comprehensive vocational rehabilitation programs, creating better conditions for employment, and ensuring closer integration between pension schemes and social as well as medical support services.

Adapting these approaches, where feasible, to the Kazakhstan context could strengthen the sustainability of the national social protection system and promote a higher level of social inclusion for persons with disabilities. At the same time, as noted by G.A. Kuanalieva, S. Adilgazy, and M.N. Abisheva, pension provision constitutes an integral and inseparable component of social protection in any state, as it addresses the interests of all members of society. In this regard, one of the most important tasks in developing an effective pension system is the establishment of high-quality and consistent legal regulation [17].

Conclusions

The findings of this study demonstrate that the effectiveness of the disability pension system in the Republic of Kazakhstan is constrained by a combination of socio-economic and legal factors. Despite recent

reforms in the social sphere and the adoption of the Social Code of the Republic of Kazakhstan, the current model remains primarily focused on providing state—funded social benefits. At the same time, legal and institutional mechanisms aimed at promoting employment, ensuring professional rehabilitation, and supporting the accumulation of pension savings by persons with disabilities remain underdeveloped. As a result, the long-term financial security and social protection of this group remain limited.

A comparative legal analysis of the German and South Korean systems shows that more effective models of disability protection are based on an integrated legal approach. Such models combine pension provision with rehabilitation policies and active labour market measures, including vocational training and employment support. This confirms that the improvement of the national system should not be limited to expanding social benefits but must also involve comprehensive legal reform aimed at strengthening institutional coordination between pension, labour, and social protection legislation. In this regard, it is advisable to consider amendments to the Social Code of the Republic of Kazakhstan to explicitly introduce the principle of rehabilitation and labour reintegration priority before the assignment of long-term disability—related social benefits, following the German “rehabilitation before pension” principle. Furthermore, the Law on Pension Provision of the Republic of Kazakhstan requires enhancement through the development of additional legal mechanisms that would facilitate the formation of pension savings for persons with disabilities who face limited employment opportunities. At the same time, legislation on employment should be improved by expanding state support measures for employers who create adapted workplaces for persons with disabilities. Such measures may include tax incentives, subsidies for workplace adaptation, and the development of supported employment schemes. In addition, the introduction of a comprehensive legal framework for assessing the needs of persons with disabilities-taking into account not only medical but also social factors-would align national regulation with modern approaches applied in countries such as South Korea.

Overall, the future development of the disability pension system in Kazakhstan should be directed not only toward increasing the level of social payments but also toward modernizing the legal framework. This includes strengthening insurance-based principles of pension provision, enhancing rehabilitation mechanisms, and creating legal conditions that facilitate greater inclusion of persons with disabilities in economic and social life.

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С.С. Суркова, А.Б. Абдуалиева

Қазақстан Республикасындағы мүгедектігі бар адамдарды зейнетақымен қамтамасыз ету мәселелері: салыстырмалы құқықтық талдау

Мақала Қазақстан Республикасындағы мүгедектігі бар адамдарды зейнетақымен қамтамасыз ету мәселелерін салыстырмалы-құқықтық тұрғыда зерттеуге арналған. Зерттеудің мақсаты — ұлттық мүгедектікке байланысты зейнетақымен қамсыздандыру жүйесінің негізгі құқықтық және институционалдық проблемаларын анықтау, сондай-ақ Германия мен Оңтүстік Корея заңнамасын салыстырмалы талдау негізінде оны жетілдіру бағыттарын әзірлеу. Зерттеу барысында формальды-құқықтық, салыстырмалы-құқықтық, жүйелік және нормативтік талдау әдістері қолданылды, бұл зейнетақымен қамтамасыз етуді әлеуметтік қамсыздандыру, сақтандыру қорғанысы және еңбекке интеграция элементтерін қамтитын кешенді құқықтық институт ретінде қарастыруға мүмкіндік берді. Зерттеу нәтижелері Қазақстан Республикасындағы қолданыстағы зейнетақымен қамсыздандыру моделінің негізінен өтемақылық сипатта екенін және мүгедектігі бар адамдарды кәсіптік оңалту мен жұмыспен қамту тетіктерімен жеткілікті түрде байланыспағанын көрсетті. Сонымен қатар халықаралық тәжірибе зейнетақы төлемдерін белсенді жұмыспен қамту саясаты және сақтандыруға негізделген қорғау тетіктерімен ұштастырған интеграцияланған жүйелердің тиімділігін дәлелдейді. Қорытындыда Қазақстанда мүгедектігі бар адамдарды зейнетақымен қамтамасыз етудің кешенді құқықтық моделіне көшу қажеттілігі, оны сақтандыру қағидаттарын күшейту, оңалту бағдарламаларын дамыту және еңбекке интеграцияны ынталандыру шараларын кеңейту арқылы жүзеге асыру керектігі атап өтілді.

Кілт сөздер: зейнетақымен қамсыздандыру, мүгедектік, құқықтық реттеу, әлеуметтік кепілдіктер, заңнама, мүгедектік бойынша зейнетақы, инклюзивті қоғам, халықаралық тәжірибе.

С.С. Суркова, А.Б. Абдуалиева

Проблемы пенсионного обеспечения лиц с инвалидностью в Республике Казахстан: сравнительно-правовой анализ

Данная статья посвящена анализу проблем пенсионного обеспечения лиц с инвалидностью в Республике Казахстан в сравнительно-правовом контексте. Цель работы заключается в выявлении ключевых правовых и институциональных проблем национальной системы пенсионного обеспечения инвалидов, а также в разработке направлений ее совершенствования на основе сравнительного анализа законодательства Германии и Южной Кореи. В процессе исследования применялись формально-юридический, сравнительно-правовой, системный и нормативно-правовой методы

анализа, что позволило рассмотреть пенсионное обеспечение как комплексный правовой институт, включающий элементы социального обеспечения, страховой защиты и трудовой интеграции. Результаты исследования показали, что действующая модель пенсионного обеспечения в Республике Казахстан носит преимущественно компенсационный характер и в недостаточной степени связана с механизмами профессиональной реабилитации и занятости лиц с инвалидностью. В то же время зарубежный опыт демонстрирует эффективность интегрированных систем, сочетающих пенсионные выплаты с активной политикой занятости и страховыми механизмами защиты. В заключение сделан вывод о необходимости перехода к комплексной правовой модели пенсионного обеспечения инвалидов в Республике Казахстан, основанной на усилении страховых принципов, развитии реабилитационных программ и расширении мер содействия трудовой интеграции.

Ключевые слова: пенсионное обеспечение, инвалидность, правовое регулирование, социальные гарантии, законодательство, пенсии по инвалидности, инклюзивное общество, международный опыт.

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International legal regulation of telemedicine services in the context of digital healthcare transformation

The purpose of this study is to provide a comprehensive analysis of international legal mechanisms regulating telemedicine services in the context of the digital transformation of healthcare systems. In recent years, the rapid development of digital technologies, artificial intelligence, cross-border exchange of medical data, and remote healthcare platforms has significantly expanded access to medical services. At the same time, these processes have generated complex legal challenges related to jurisdiction, licensing, liability, cybersecurity, personal data protection, and digital sovereignty. The study employs doctrinal legal analysis, comparative legal analysis, document analysis, and content analysis. International and regional legal frameworks governing telemedicine are examined, including the activities and recommendations of the World Health Organization, international human rights instruments, the legal frameworks of the World Trade Organization, the European Union's General Data Protection Regulation (GDPR), and Convention 108+. The findings demonstrate the fragmented and inconsistent nature of the international legal regulation of telemedicine, significant regulatory asymmetries among states, and legal gaps related to cross-border healthcare services and the protection of medical data. The study concludes that there is a need to establish a coordinated international legal framework for telemedicine regulation capable of ensuring a balance between technological innovation, the protection of patients' rights, and the preservation of states' digital sovereignty.

Keywords: telemedicine, international health law, digital healthcare transformation, cross-border medical services, right to health.

Introduction

The integration of digital technologies into healthcare systems is increasingly reflected in major universal and regional international legal instruments aimed at ensuring and protecting fundamental human rights. The right to health, as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), obliges States to ensure access to quality medical care and to take necessary steps for the development of healthcare systems, including the use of modern health technologies.

The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (2000), further clarified that the right to health comprises several interrelated and essential elements, including availability, accessibility, acceptability, and quality of healthcare services. Importantly, accessibility encompasses the right of individuals to seek, receive, and impart information concerning health issues, including through information technologies [1]. At the same time, the Committee emphasized that the exercise of this right must respect the confidentiality of personal health information, thereby linking the right to health with the right to privacy and data protection.

In the era of globalization, the rapid expansion of information and telecommunication technologies has prompted the development and ratification of numerous international instruments regulating their use across various sectors, including healthcare. The World Health Organization (WHO) has repeatedly underlined the importance of establishing an appropriate legal framework for telemedicine, recognizing legal regulation as one of the key factors for its sustainable development. Scholars such as Marinelli, Basile, and Zaami note that WHO consistently stresses that effective normative regulation is essential for the safe and responsible implementation of telemedicine services [2].

At the doctrinal level, legal scholars also emphasize the challenges associated with digital transformation in healthcare. According to N.E. Gafurova, digitalization of medicine implies the systematic introduction of modern information technologies into all areas of healthcare. However, this process is accompanied by significant legal risks, including unlawful dissemination of patients' personal data, violations of fundamental human rights, and insufficient legislative safeguards ensuring confidentiality of medical infor-

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mation. These challenges highlight the necessity of strengthening and modernizing the legal framework governing digital health.

The international recognition of health technologies as a component of human development and security has evolved over decades. The 1986 UN Declaration on the Right to Development emphasized the obligation of states to promote social progress, including the development of healthcare systems, through the effective use of available resources. Subsequently, the 1994 United Nations Development Programme report on New Dimensions of Human Security identified health technologies as an essential element of health and human security. The Millennium Development Goals adopted in 2000 further reinforced the importance of technological advancement in achieving global health objectives [3].

Historically, international cooperation in health regulation predates the establishment of WHO. In 1923, the Health Organization of the League of Nations was created, laying the institutional foundation for modern international health governance. This organization contributed to the development of statistical methods for disease monitoring and advanced international public health practices, thereby influencing subsequent global health institutions.

Today, alongside WHO, numerous international non-governmental organizations play a significant role in shaping medical law and digital health governance. Among them are the World Medical Association (1947), the World Association of Medical Law (1967), and the International Association of Bioethics (1992). These organizations facilitate international congresses and conferences addressing legislative development, ethical standards, digitalization of healthcare, and the regulation of emerging medical technologies [4].

At the normative level, the World Health Assembly adopted Resolution WHA58.28 (2005) on eHealth, calling upon Member States to develop long-term strategies for the digitalization of healthcare systems and the implementation of e-medicine. Later, Resolution WHA66.24 (2013) emphasized the need for interoperability standards, technical harmonization, and the establishment of legislative and regulatory mechanisms to ensure effective governance of eHealth systems [5].

The purpose of this research is to analyze the international legal regulation of telemedicine services in the context of digital healthcare transformation and to identify the main legal challenges associated with cross-border digital medical services.

The objectives of the research are:

- to examine international legal instruments regulating telemedicine services;
- to analyze the role of international organizations and regional legal frameworks in digital health governance;
- to identify legal problems related to jurisdiction, liability, data protection and cybersecurity in telemedicine;
- to conduct a comparative legal analysis of foreign approaches to telemedicine regulation;
- to develop proposals aimed at improving international legal mechanisms governing telemedicine services.

Methods and Materials

The research is based on a comprehensive methodological approach that integrates doctrinal legal analysis, comparative legal analysis, document analysis, and content analysis. The doctrinal analysis focuses on examining international legal instruments regulating the right to health, digital healthcare, and telemedicine services. In particular, the study analyzes the provisions of the International Covenant on Economic, Social and Cultural Rights, relevant General Comments of the UN Committee on Economic, Social and Cultural Rights, World Health Organization (WHO) resolutions on eHealth, and other universal and regional normative documents governing digital health and cross-border medical services. Special attention is given to international data protection frameworks, including regional legal regimes such as the European Union's GDPR and Convention 108+. Comparative legal analysis is conducted to evaluate different regulatory approaches to telemedicine in selected jurisdictions, including the European Union, the United States, and other states with advanced digital healthcare systems [6]. This method allows for the identification of regulatory divergences, best practices, and mechanisms of harmonization in cross-border telemedicine governance. Document analysis includes the examination of academic publications, reports of international organizations (WHO, UN bodies, OECD), policy documents, strategic digital health programs, and materials from international conferences addressing telemedicine and digital health transformation. Content analysis is applied to study expert discussions, policy statements, and analytical materials concerning digital healthcare transformation, telemedicine regulation, and cross-border medical data protection. This approach enables the identification of prevailing trends, legal gaps, and emerging regulatory challenges. The research materials consist

of international legal acts, regional regulations, national legislation, academic literature, institutional reports, and analytical publications. The integrated use of these methods ensures an objective and systematic assessment of the international legal regulation of telemedicine services and allows for the formulation of evidence-based recommendations aimed at improving regulatory coherence, strengthening patient rights protection, and enhancing legal mechanisms in the context of digital healthcare transformation.

Results

The analysis of international legal instruments, institutional mechanisms, and strategic policy documents demonstrates that the digital transformation of healthcare and the expansion of telemedicine services have been consistently recognized at the international level as essential components of sustainable development, human security, and the realization of the right to health. However, the research reveals a significant fragmentation of regulatory approaches and the absence of a unified international legal mechanism governing telemedicine.

The study confirms that the World Health Organization (WHO) has played a leading normative and strategic role in promoting digital health governance. Through a series of resolutions adopted by the World Health Assembly (WHA58.28 (2005), WHA66.24 (2013), WHA71.7 (2018), WHA73.28 (2020)), as well as the Global Strategy on Digital Health 2020–2025, WHO has established strategic priorities for digital health transformation, emphasizing interoperability, data protection, patient safety, and national legislative development. Nevertheless, these instruments remain primarily programmatic and recommendatory in nature, lacking binding legal force [7].

Empirical findings from the WHO Global Observatory on eHealth indicate substantial disparities among states in terms of telemedicine infrastructure, regulatory capacity, and institutional support. Only approximately 30 % of countries have established dedicated telemedicine development agencies, while half of the surveyed states lack formal structures in this field. Major obstacles include insufficient infrastructure, limited financial and technical resources, shortage of qualified personnel, and inadequate legal regulation of data privacy and cross-border medical liability.

The research further establishes that, although telemedicine-related provisions appear in various international documents—such as the International Covenant on Economic, Social and Cultural Rights (Article 12), the Universal Declaration of Human Rights (Articles 19 and 25), International Labour Organization conventions, and EU Directive 2011/24/EU on cross-border healthcare—these norms regulate specific aspects of health rights and information access rather than telemedicine as an autonomous legal phenomenon [8].

Regional developments, particularly within the European Union, demonstrate a more structured regulatory approach. Directive 2011/24/EU establishes patient rights in cross-border healthcare, including telemedicine services, and outlines obligations related to information transparency, compensation mechanisms, and cooperation among member states. Similarly, the WHO European Regional Digital Health Action Plans (2023–2030) promote human rights-based digital governance and regulatory harmonization. However, these mechanisms remain regionally limited and do not provide universal applicability [9].

The analysis of ITU initiatives confirms the growing technical dimension of digital health governance. Through multiple resolutions and strategic plans, ITU has promoted the development of telecommunications infrastructure and standards necessary for telemedicine. Yet, coordination between technical standardization and legal regulation remains insufficiently institutionalized at the global level.

Overall, the results indicate that while strategic frameworks and policy initiatives supporting telemedicine development are widely established, a comprehensive and binding international legal mechanism regulating cross-border telemedicine services does not currently exist within the United Nations system. This regulatory gap creates potential risks related to jurisdictional conflicts, professional liability, digital sovereignty, patient data protection, and unequal access to digital health technologies.

The findings substantiate the need for the development of an institutionalized international mechanism within the UN framework, potentially under the supervision of the Committee on Economic, Social and Cultural Rights, aimed at harmonizing telemedicine regulation, consolidating existing WHO and ITU standards, and ensuring effective protection of patients' rights in the digital healthcare environment.

Discussion

The findings of this study demonstrate that the international legal regulation of telemedicine remains structurally fragmented despite the growing global recognition of digital health as a strategic priority. While numerous international and regional instruments acknowledge the importance of digital technologies in

healthcare, they primarily address telemedicine indirectly through broader frameworks related to the right to health, digital governance, data protection, or telecommunications development. This normative dispersion creates legal uncertainty, particularly in cross-border contexts.

One of the key issues identified is the absence of a binding universal legal instrument specifically regulating telemedicine services. Although WHO resolutions, ITU strategic initiatives, and UN human rights documents provide important policy guidance, their largely recommendatory nature limits enforceability and uniform implementation. As a result, states have developed telemedicine regulation at different speeds and with varying degrees of legal sophistication, leading to regulatory asymmetry [10].

The comparative analysis of national approaches reveals both convergence and divergence in regulatory models. Countries such as France demonstrate a structured legal framework that clearly defines telemedicine services, establishes professional responsibilities, integrates financing mechanisms through health insurance systems, and ensures quality control through accreditation procedures. In contrast, other jurisdictions focus primarily on technological deployment without sufficiently addressing liability standards, professional certification, or cross-border data governance. This disparity illustrates the tension between technological innovation and normative preparedness.

Another critical aspect concerns data protection and digital sovereignty. Telemedicine inherently involves the cross-border transfer and processing of sensitive health data, raising concerns related to privacy, cybersecurity, and jurisdictional competence. While regional regimes such as the GDPR provide advanced standards for personal data protection, their extraterritorial application does not resolve global fragmentation. The absence of harmonized international standards may create conflicts of laws and undermine trust in digital health systems.

Furthermore, the discussion highlights that telemedicine should not be viewed merely as a technological tool but as a transformation of healthcare delivery models. Its effective implementation requires not only infrastructure and legal frameworks but also institutional capacity, professional training, ethical regulation, and sustainable financing mechanisms. The experience of the COVID-19 pandemic demonstrated the potential of telemedicine to ensure continuity of care; however, emergency-driven expansion often preceded comprehensive legal regulation, exposing systemic vulnerabilities.

The study also confirms that telemedicine governance intersects with fundamental human rights, particularly the right to health and the right to privacy. Balancing accessibility of digital medical services with confidentiality of personal health information remains a central normative challenge. In this regard, the development of a coordinated international mechanism could strengthen coherence among existing WHO, ITU, and human rights standards.

Overall, the discussion supports the argument that the future of telemedicine regulation requires a multi-level approach: strengthening national legislation, enhancing regional harmonization, and advancing institutional coordination at the universal level. Establishing a specialized international platform or auxiliary body within the UN system dedicated to digital health governance could contribute to consolidating standards, promoting best practices, and reducing regulatory fragmentation.

Modern information technologies today are primarily aimed at ensuring the integration of digital solutions across all sectors, increasing the speed of processes, and improving the efficiency of management systems. Healthcare is no exception: modern medicine is gradually transforming into a leading economic and social sector, driven by the growing demand for qualified specialists, the increasing volume of patient health information exchange, and the necessity of continuous professional development of medical personnel. In this context, digitalization and the use of information and telecommunication technologies (ICT) are viewed not merely as technical modernization, but as a structural transformation that affects the entire healthcare governance system.

In many countries, the application of ICT in healthcare initially emerged in general digitalization policy documents, where the main goals and tasks of modernization were defined. Subsequently, these approaches developed into national strategies and sectoral programs specifically aimed at digital health and telemedicine. For instance, Australia's national digital health strategy envisaged the creation of secure interaction channels between doctors and patients by 2022, while the United States developed a dedicated information technology strategy in 2014 through the Department of Health and Human Services. Scholarly research also supports this trend, emphasizing that states typically begin with broad digital transformation frameworks and later establish specialized strategic directions for digital healthcare and telemedicine development.

At the beginning of the 21st century, multiple foreign states initiated large-scale projects for introducing digital solutions into healthcare to enhance service accessibility and system efficiency. In the United Kingdom, for example, projects aimed at electronic health infrastructure were launched, reflecting the policy-

driven nature of digital health reforms. However, researchers and practitioners consistently point out that the implementation of e-health projects often faces systemic barriers. One of the most frequently cited issues is the complexity of creating standardized, interoperable solutions across medical organizations. This challenge has been particularly highlighted in the Russian Federation, where experts identify the difficulty of building unified medical digital standards as a persistent structural problem.

From a broader analytical perspective, the effective implementation of telemedicine is often limited by several interconnected factors: insufficient Internet coverage or poor network quality, inadequate digital competencies among medical personnel, and the lack of sufficiently developed international and national regulatory frameworks. In this regard, telemedicine is not only a technological innovation but also a phenomenon that requires coherent legal and institutional support.

Historically, the earliest telemedicine initiatives can be traced back to the United States, where attention was directed toward digital healthcare modernization as early as the 1970s. At that stage, two major practical needs dominated: first, the systematization and secure storage of patient information through data management systems in medical institutions; second, the delivery of medical support to individuals in situations where traditional access to healthcare was difficult—such as military personnel, sailors, astronauts, or residents of remote regions. Although these foundational objectives shaped telemedicine development, regulatory issues regarding legal responsibility, quality control, and patient rights remain open in many jurisdictions to this day [11].

Among foreign models, France is frequently cited as one of the most institutionally developed examples of telemedicine regulation. Telemedicine was introduced into the French healthcare system in 2009, and for the first time its legal definition was established in Law No. 2009-879 of 21 July 2009 (loi HPST). Under Article 6316, telemedicine is defined as the provision of remote medical care through information technologies, covering remote medical services conducted either between medical professionals or between a medical professional and a patient. French regulation also emphasizes that telemedicine, as a medical service, must comply with professional ethics and is provided under the supervision and legal responsibility of a doctor [12].

Nevertheless, France's experience demonstrates that the existence of legal definitions alone does not guarantee immediate implementation. For nearly a decade, telemedicine expansion faced practical delays, largely due to insufficient regulation of social security mechanisms and financing models. This gap was partially addressed in 2017 through the Social Security Financing Law, which introduced coverage of telemedicine and teleconsultation costs under the Assurance Maladie health insurance system. Later amendments broadened the scope to include telemonitoring services. In 2019, the French Public Health Code introduced additional concepts such as *télésanté* and *télésoin*, integrating telemedicine into broader telehealth governance. French law also established key operational requirements, including the principle that the first medical examination should generally occur in person, while follow-up monitoring and consultations may be conducted remotely—subject to exceptions such as emergencies or vulnerable patient categories.

An important structural aspect of the French model is the differentiation of healthcare professionals and the determination of which categories may provide telehealth services. Moreover, French law outlines multiple telemedicine service forms, including teleconsultation, telemonitoring, teleexpertise, telemedical assistance, and emergency telecare. Special procedural guarantees are imposed on telemedicine providers, such as compliance with national health authority guidance, periodic certification, accurate recordkeeping in electronic medical files, and patient instruction on technology use. A notable regulatory mechanism introduced in 2023 requires annual accreditation of private institutions providing teleconsultation services by the Haute Autorité de Santé (HAS), with the objective of ensuring quality standards and compliance [13].

The Russian Federation represents another significant case of telemedicine development, where the concept was initially formulated in 2001 and incorporated into broader healthcare digitalization approaches, including teleconsultations, telemonitoring, internet-based medical platforms, and remote professional training [14]. In 2017, legislative amendments formally introduced “telemedicine technologies” into healthcare regulation and distinguished two main digitalization tracks: remote medical assistance (teleconsultation and monitoring) and electronic medical documentation (electronic records and e-prescriptions). The Russian model generally permits doctor-to-doctor and doctor-to-patient interactions; however, restrictions remain in place regarding remote diagnosis without an initial in-person examination. During the COVID-19 pandemic, Russia expanded telemedicine through specific ministerial orders, enabling outpatient support for patients via audio/video communication and smartphone applications, relying heavily on electronic patient records [15].

Despite the progress, several obstacles continue to hinder telemedicine development in Russia and similar jurisdictions: insufficient funding for medical equipment, gaps in training and digital education for medi-

cal staff, limited Internet access in remote areas, and unclear legal status and liability frameworks for telemedicine consultants. These challenges confirm that telemedicine legal regulation is an evolving process requiring continuous improvement and institutional capacity-building [16].

Beyond these examples, many other states have also adopted telemedicine-related norms. Armenia recognized telemedicine as a form of medical care in legislation, Belarus implemented digital health reforms through national digital programs and presidential decrees, and Kazakhstan established a more structured approach through its 2020 Code on Public Health and the Healthcare System.

The experience of the Republic of Kazakhstan is of particular scholarly interest, as the legal regulation of telemedicine and digital healthcare in Kazakhstan has evolved in close connection with reforms of legislation governing public health, medical services, and personal data protection. Within Kazakh legal doctrine, medical services are regarded not only as an element of the healthcare system but also as an independent civil-law category that is significant for determining patients' rights, the obligations of medical organizations, and the scope of liability of healthcare providers. In particular, M.Yu. Prudnikova examines medical services as a civil-law category, which makes it possible to analyze telemedicine services through the prism of contractual obligations, quality of services, informed patient consent, and the civil liability of medical institutions [17].

Furthermore demonstrate that the digital transformation of law requires careful consideration of the risks associated with algorithmic transparency, personal data protection, cybersecurity, and the preservation of meaningful human control over digital technologies [18]. These findings are directly relevant to telemedicine, as the remote provision of healthcare services involves the processing of sensitive medical data, the use of digital platforms and artificial intelligence, as well as the cross-border exchange of information. In this regard, the Kazakh scholarly approach confirms the necessity of developing a comprehensive legal framework for telemedicine that integrates the norms of medical, civil, information, and international law.

Overall, the comparative analysis of foreign regulatory models demonstrates that effective telemedicine governance depends on several essential components: strategic planning through national digital health strategies, legal formalization of key concepts and definitions, protection of patient personal data, establishment of interaction models (doctor–patient and doctor–doctor), implementation of secure electronic medical records, financing mechanisms (especially through insurance systems), continuous training of medical personnel, and the development of infrastructure, particularly Internet coverage and reliable digital platforms [19].

In light of the above, and considering the social significance of telemedicine, the Republic of Uzbekistan should intensify the development of telemedicine legal regulation by systematically incorporating international and comparative experience. Based on this approach, an authorial definition of telemedicine can be proposed as follows: telemedicine is a type of remote medical service that includes diagnosing patients, providing consultations, and monitoring their health condition remotely, while relying on information and communication technology systems that support disease prevention, health strengthening, protection of public health, medical education, and scientific and medical research.

Conclusions

The conducted research confirms that the digital transformation of healthcare systems and the rapid expansion of telemedicine services represent a structural and irreversible stage in the evolution of global health governance. Telemedicine has evolved from an auxiliary technological instrument into a strategic component of national healthcare systems, enhancing accessibility, continuity of care, and operational efficiency. At the same time, its cross-border and data-driven nature generates complex legal challenges that require coordinated and harmonized international regulation.

The analysis demonstrates that, despite the strong normative foundation of the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights and related interpretative instruments, a comprehensive and binding universal legal framework specifically regulating telemedicine services has not yet been established. Existing international mechanisms—primarily within the framework of the WHO, ITU, and regional regimes such as the European Union—provide valuable strategic guidance but remain fragmented and predominantly recommendatory. This regulatory asymmetry creates risks related to jurisdictional uncertainty, professional liability, digital sovereignty, and protection of patients' personal data.

Comparative legal experience shows that effective telemedicine governance depends on a combination of clearly defined legal concepts, standardized professional responsibility rules, data protection guarantees, financing mechanisms (especially insurance-based models), interoperability standards, and institutional supervision. The integration of telemedicine into national healthcare systems must therefore be accompanied

by comprehensive legislative modernization, capacity-building, and technological infrastructure development.

From the perspective of the Republic of Uzbekistan, digital transformation of the healthcare sector has been recognized as a strategic priority within broader state programs on digital development and public service modernization. The gradual implementation of electronic medical records, teleconsultation mechanisms, and digital public service platforms demonstrates Uzbekistan's commitment to advancing digital healthcare infrastructure. However, the legal framework regulating telemedicine remains in the formative stage and requires further systematic development. In particular, it is necessary to:

- legally define telemedicine and its categories in sectoral legislation;
- establish clear rules concerning professional liability in remote medical services;
- strengthen mechanisms for protection of medical data and cross-border data transfer;
- introduce accreditation and quality-control procedures for telemedicine providers;
- ensure interoperability of digital health systems and integration with public e-governance platforms.

To implement these objectives in the Republic of Uzbekistan, it is advisable to introduce a separate chapter on telemedicine into the Law of the Republic of Uzbekistan “On Public Health Protection” or adopt a special law regulating telemedicine services. Such legislation should define the legal status of telemedicine providers, establish the classification of telemedicine services, determine accreditation requirements, and regulate professional liability issues.

Accreditation of telemedicine providers could be entrusted to the Ministry of Health of the Republic of Uzbekistan, while quality control and compliance monitoring could be carried out by the State Inspectorate for Quality Control in Healthcare. Such an approach would ensure uniform standards of medical care, cybersecurity and personal data protection.

Particular attention should be paid to the allocation of liability among participants in telemedicine relations. Professional liability for diagnostic and treatment errors should primarily rest with the healthcare professional and the medical institution providing medical services. At the same time, digital platforms should bear responsibility for technical failures, unauthorized disclosure of medical data, cybersecurity breaches, and interruptions in the functioning of telemedicine systems.

Comparative analysis demonstrates that the French model of telemedicine regulation appears to be the most suitable for adaptation in Uzbekistan. France has established a comprehensive framework combining legal definitions, accreditation procedures, quality-control mechanisms, integration with the health insurance system, and clear rules of professional responsibility. These elements could be gradually incorporated into the Uzbek healthcare system while taking into account national legal and institutional particularities.

Taking into account international best practices and Uzbekistan's ongoing digital reforms, the development of a coherent national telemedicine framework should be aligned with international standards while reflecting domestic legal and institutional realities. In this regard, Uzbekistan may benefit from adopting human rights-based approach to digital health governance, ensuring that the right to health, privacy, and data protection are balanced with technological innovation and public interest considerations.

At the universal level, the establishment of a coordinated international mechanism under the UN system—potentially through enhanced cooperation between WHO, ITU, and human rights bodies—would contribute to reducing regulatory fragmentation and promoting harmonized standards for cross-border telemedicine services. Uzbekistan, as an active participant in international legal cooperation, could contribute to and benefit from such initiatives by aligning national reforms with emerging global standards.

Ultimately, the future of telemedicine regulation lies in balancing innovation with legal certainty, accessibility with data security, and technological progress with the protection of fundamental human rights. The creation of an integrated, multilevel regulatory framework—combining national legislative reform, regional harmonization, and strengthened international coordination—will ensure that telemedicine serves as a sustainable and rights-oriented instrument of global digital healthcare transformation.

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Ф. Юсупова

Денсаулық сақтау жүйесін цифрлық трансформациялау жағдайындағы телемедициналық қызметтерді халықаралық-құқықтық реттеу

Зерттеудің мақсаты — денсаулық сақтау жүйесінің цифрлық трансформациясы жағдайында телемедициналық қызметтерді халықаралық-құқықтық реттеу тетіктерін кешенді талдау. Соңғы жылдары цифрлық технологиялардың, жасанды интеллект пен медициналық деректердің трансшекаралық алмасуының және қашықтықтан медициналық платформалардың қарқынды дамуы медициналық көмекке қолжетімділікті біршама кеңейтті. Сонымен қатар бұл салада юрисдикция, лицензиялау, кәсіби жауапкершілік, киберқауіпсіздік, дербес деректерді қорғау және цифрлық егемендік мәселелеріне қатысты күрделі құқықтық тәуекелдер қалыптасты. Зерттеуде доктриналық

және салыстырмалы-құқықтық талдау, құжаттарды зерттеу және контент-талдау әдістері қолданылды. Телемедицинаны реттейтін халықаралық және өңірлік құқықтық құралдар, соның ішінде Дүниежүзілік денсаулық сақтау ұйымының ұсынымдары, адам құқықтары жөніндегі халықаралық актілер, Дүниежүзілік сауда ұйымының нормалары, Еуропалық одақтың GDPR ережесі және 108+ Конвенциясы қарастырылды. Зерттеу нәтижелері телемедицинаны халықаралық деңгейде құқықтық реттеудің фрагментарлығын, мемлекеттер арасындағы реттеушілік асимметрияны және медициналық деректерді қорғауға қатысты құқықтық олқылықтарды анықтады. Қорытындыда телемедицинаны реттеудің халықаралық деңгейде үйлестірілген құқықтық жүйесін қалыптастыру қажеттілігі негізделді. Мұндай жүйе технологиялық инновациялар, пациенттердің құқықтарын қорғау және мемлекеттің цифрлық егемендігі арасындағы тепе-теңдікті қамтамасыз етуге бағытталуы тиіс.

Кілт сөздер: телемедицина, халықаралық медициналық құқық, денсаулық сақтауды цифрлық трансформациялау, трансшекаралық медициналық қызметтер, денсаулық сақтау құқығы.

Ф. Юсупова

Международно-правовое регулирование телемедицинских услуг в условиях цифровой трансформации системы здравоохранения

Цель исследования заключается в комплексном анализе международно-правовых механизмов регулирования телемедицинских услуг в условиях цифровой трансформации здравоохранения. В последние годы стремительное развитие цифровых технологий, искусственного интеллекта и трансграничного обмена медицинскими данными и дистанционных медицинских платформ существенно расширило доступность медицинской помощи. Одновременно возникли сложные правовые вопросы, связанные с юрисдикцией, лицензированием, профессиональной ответственностью, кибербезопасностью, защитой персональных данных и цифровым суверенитетом государств. В исследовании применялись методы доктринального правового анализа, сравнительно-правового анализа, анализа документов и контент-анализа. Были рассмотрены международные и региональные механизмы регулирования телемедицины, включая рекомендации Всемирной организации здравоохранения, международные акты в области прав человека, нормы Всемирной торговой организации, регламент Европейского союза GDPR и Конвенцию 108+. Результаты исследования выявили фрагментарность международно-правового регулирования телемедицины, значительную регуляторную асимметрию между государствами, а также правовые пробелы в сфере трансграничного оказания медицинских услуг и защиты медицинских данных. В заключение автором обоснована необходимость формирования согласованной международно-правовой системы регулирования телемедицины, обеспечивающей баланс между защитой прав пациентов, технологическими инновациями и цифровым суверенитетом государств.

Ключевые слова: телемедицина, международное медицинское право, цифровая трансформация здравоохранения, трансграничные медицинские услуги, право на здоровье.

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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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Cross-border telemedicine in Kazakhstan and foreign jurisdictions: a comparative legal analysis and prospects for legislative modernization

The rapid development of telemedicine, particularly in the context of cross-border healthcare delivery, highlights the limitations of traditional legal frameworks based on the principle of territoriality. The aim of this study is to identify systemic gaps in the legal regulation of cross-border telemedicine in the Republic of Kazakhstan and to develop proposals for improving the relevant legislation, taking into account international experience. The methodological framework includes formal-legal, comparative-legal, and doctrinal research methods. The study analyzes the provisions of the Code of the Republic of Kazakhstan “On Public Health and the Healthcare System,” as well as relevant international legal instruments and foreign regulatory practices. The study identifies several systemic legal gaps in the regulation of cross-border telemedicine, including the absence of a statutory definition of cross-border telemedicine, insufficient regulation of foreign healthcare providers, fragmented legal protection of patients’ personal data, and the uncertain legal status of telemedicine platforms and artificial intelligence systems. The study substantiates priority directions for legal reform, including the institutionalization of telemedicine, the development of licensing mechanisms, and the creation of a comprehensive legal framework for integrating artificial intelligence into healthcare. The scientific novelty lies in the systematization of legal gaps and the development of proposals aimed at harmonizing national legislation with international standards.

Keywords: telemedicine, cross-border healthcare, artificial intelligence, legal regulation, legal liability, personal data protection.

Introduction

One of the most dynamic manifestations of the digital transformation of modern healthcare is telemedicine, which enables medical consultations, diagnostics, monitoring, and treatment through information and communication technologies [1, 2]. According to the World Health Organizations, digital technologies have become a key mechanism for increasing the accessibility, efficiency, and resilience of healthcare systems [3]. As a result, telemedicine has expanded beyond national healthcare systems and increasingly involves interactions among patients, healthcare organizations, and medical professionals located in different jurisdictions. Such interactions raise complex legal issues related to licensing, jurisdiction, professional liability, recogni-

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tion of electronic documents and signatures, cross-border transfer of medical data, protection of patient rights, and the use of artificial intelligence in clinical decision-making [4].

By enabling cross-border healthcare services without requiring the physical mobility of patients, telemedicine challenges traditional legal concepts based on the territorial nature of medical practice. Consequently, a new legal reality is emerging in which conflicts among national regulations governing licensing, medical confidentiality, personal data protection, and the recognition of electronic signatures become particularly acute [5].

The legal regulation of cross-border telemedicine has become an increasingly important issue across many jurisdictions. The European Union has established a comprehensive framework for cross-border healthcare through Directive 2011/24/EU on the application of patients' rights cross-border healthcare [6], while the United States, the United Kingdom, and several other countries have introduced specialized mechanisms for telemedicine licensing, medical confidentiality, data protection, and professional accountability [7, 8]. At the same time, international organizations, including the World Health Organization and the International Telecommunication Union, actively promote the development of legal and technical standards for digital health and telemedicine services [9].

In Kazakhstan, the digital transformation of healthcare has been identified as a strategic policy priority. Significant progress has been achieved through the implementation of digital health platforms, electronic health records, telemedicine networks, and remote medical services. The legal basis for these developments is provided by the Code of the Republic of Kazakhstan "On Public Health and the Healthcare System" of 7 July 2020 [10], the Law "On Personal Data and Their Protection" [11], the Law "On Electronic Document and Electronic Digital Signature" [12], and subordinate regulations governing remote medical services.

There are more than six thousand rural settlements in Kazakhstan, of which almost eight hundred lack even the most basic primary health care facilities. The national Telemedicine Network unites 233 healthcare institutions, and in 2021, 21,667 telemedicine consultations were conducted [13]. However, despite more than twenty years of development experience, telemedicine in Kazakhstan does not meet modern needs. This is due not so much to technological limitations as to legal barriers, including the lack of comprehensive regulatory framework, uniform standards, licensing mechanisms, and clear rules for the allocating responsibilities [14, 15].

Despite these developments, the current legal framework remains primarily focused on domestic healthcare relations and does not provide a comprehensive model for regulating cross-border telemedicine. National legislation lacks a legal definition of cross-border telemedicine and does not establish specific requirements for foreign healthcare providers participating in consultations with patients located in Kazakhstan. It also contains no dedicated mechanisms for recognizing foreign electronic signatures and medical documentation and provides only limited regulation of international transfers of medical information. Furthermore, the legal implications of artificial intelligence technologies used in telemedicine remain largely unregulated.

Although the academic literature increasingly telemedicine, digital health governance, artificial intelligence in healthcare, and cross-border data protection [16-17], a significant research gap remains regarding the comprehensive legal regulation of cross-border telemedicine in Kazakhstan [18]. Most studies focus on the technological, organizational, or medical dimensions of telemedicine. Legal analyses, by contrast, often examine individual issues separately and rarely provide an integrated assessment of regulatory challenges and legislative modernization.

Accordingly, the relevance of this study lies in the need to develop a coherent legal framework capable of ensuring the safe, effective, and legally certain provision of cross-border telemedicine services in Kazakhstan while remaining consistent with international standards and best practices.

The purpose of this study is to identify systemic legal gaps in the regulation of cross-border telemedicine in the Republic of Kazakhstan and to develop substantiated proposals for legislative modernization based on a comparative legal analysis of foreign jurisdictions and international regulatory approaches.

To achieve this objective, the study pursues four tasks: analyzing the current legal framework governing telemedicine in Kazakhstan; examining international legal instruments and foreign regulatory models applicable to cross-border telemedicine; identifying key legal challenges related to licensing, jurisdiction, professional liability, data protection, electronic identification, and artificial intelligence; and formulating recommendations aimed at improving national legislation and harmonizing it with international standards.

The scientific novelty of the research lies in a legal analysis of cross-border telemedicine as an emerging legal institution, identifying regulatory gaps in Kazakh legislation and proposing a model for legislative

modernization. This model incorporates international best practices in digital healthcare governance and patient data protection in the context of artificial intelligence development.

Methods and Materials

The methodological framework combines formal-legal, comparative legal, doctrinal, and systemic approaches. This allowed a comprehensive analysis of cross-border telemedicine regulation and identification of directions for healthcare legislation modernization in Kazakhstan.

The formal-legal method was applied to examine current legislation on telemedicine, digital healthcare, medical data protection, licensing, and health information technologies. Special attention was given to norms regulating remote services, medical secrecy, personal data processing, electronic document flow, and professional liability.

The comparative legal method served as the main research tool. It was used to identify similarities and differences in regulating cross-border telemedicine in Kazakhstan and selected foreign jurisdictions. The selection was based on functional criteria.

The comparative-legal method served as the main research tool. It was used to identify similarities and differences in regulating cross-border telemedicine in Kazakhstan and selected foreign jurisdictions. The selection was based on functional criteria.

The European Union was included due to its supranational framework under Directive 2011/24/EU on cross-border healthcare. The United Kingdom was selected for its advanced regulation of digital health and artificial intelligence. The United States was included due to extensive experience in telemedicine licensing and interstate healthcare delivery. Turkey was chosen as a comparable civil-law jurisdiction with rapid digitalization. Spain, Finland, and Israel were also analyzed regarding professional liability and digital health governance.

The doctrinal method was used to examine legal scholarship on telemedicine, cross-border healthcare, AI in medicine, medical liability, and health data protection. Priority was given to Scopus and Web of Science publications from 2022–2026.

The systemic approach allowed telemedicine to be considered as an integrated legal institution. It was analyzed at the intersection of healthcare law, information law, data protection, civil liability, and international private law.

The regulatory base included key national acts: the Code “On Public Health and Healthcare System” (2020), the Law “On Personal Data” (2013), the Law “On Electronic Document and Digital Signature” (2003), the Law “On Permits and Notifications” (2014), the Order on Remote Medical Services (2021), and the Healthcare Development Concept until 2026.

The international framework included Directive 2011/24/EU, GDPR Regulation 2016/679, European Health Data Space documents, WHO Global Strategy on Digital Health 2020–2025.

The empirical base consisted of WHO and European Commission reports, NHS analytical materials, scientific publications on digital health governance, and international studies on telemedicine, AI in healthcare, patient data protection, and professional liability.

The applied methodology and materials enabled identification of legal gaps in Kazakhstan’s cross-border telemedicine regulation, assessment of foreign models, and formulation of evidence-based proposals for improving national legislation in line with international standards.

Results

The comparative legal analysis conducted in this study demonstrates that the development of cross-border telemedicine creates a qualitatively new regulatory environment in which traditional territorial approaches to healthcare governance become increasingly insufficient. The results obtained allow the identification of several systemic legal deficiencies and provide a basis for proposing mechanisms for legislative modernization.

1. Absence of a legal definition of cross-border telemedicine and fragmentation of legal regulation. The analysis of the Code of the Republic of Kazakhstan “On Public Health and Healthcare System” and related subordinate legislation demonstrates that the current legal framework recognizes remote medical services but does not contain a legal definition of cross-border telemedicine. Existing regulation focuses primarily on domestic healthcare relationships and does not distinguish telemedicine involving foreign healthcare providers or international digital platforms.

Comparative analysis indicates that foreign jurisdictions increasingly treat cross-border healthcare as a separate legal phenomenon requiring special regulation. International organizations also emphasize the necessity of adapting healthcare legislation to the realities of digital medicine.

Therefore, the first scientific result of the study consists in establishing that the absence of a legal definition of cross-border telemedicine creates regulatory uncertainty regarding the scope of rights and obligations of participants and limits the effectiveness of existing healthcare legislation.

From the authors' perspective, cross-border telemedicine should be understood as the provision of medical services through information and communication technologies when at least one participant in the healthcare relationship is located outside the jurisdiction in which medical assistance is provided.

2. Lack of mechanisms regulating participation of foreign healthcare providers. The study demonstrates that Kazakhstan's legislation does not contain specific procedures governing the participation of foreign physicians and medical organizations in telemedicine consultations. Neither licensing rules nor existing healthcare legislation establish mechanisms for recognition of professional qualifications, registration procedures, or supervisory requirements applicable to foreign healthcare providers.

At the same time, comparative legal analysis shows that international practice increasingly relies on flexible regulatory mechanisms rather than the creation of separate telemedicine licenses. Interstate licensing models, registration procedures, and mutual recognition mechanisms allow states to maintain quality control while ensuring accessibility of digital healthcare services.

Consequently, the second scientific result of this study consists in substantiating that the principal regulatory problem lies not in the absence of a separate telemedicine license but in the absence of legal mechanisms governing access of foreign healthcare providers to the national healthcare system.

The findings indicate that Kazakhstan requires a registration-based model combined with procedures for recognition of professional qualifications rather than the establishment of an independent telemedicine licensing regime.

3. Inadequacy of traditional liability models in digital healthcare. The conducted analysis demonstrates that traditional approaches to medical liability are based on direct physician–patient relationships. However, cross-border telemedicine fundamentally changes the structure of healthcare decision-making. Medical consultations increasingly involve multiple participants, including attending physicians, foreign specialists, healthcare organizations, telemedicine platform operators and artificial intelligence systems.

As a result, existing liability mechanisms become fragmented and incapable of adequately distributing legal responsibility among all participants in digital healthcare relations.

This constitutes the third scientific result of the study. The findings demonstrate that traditional physician-centered liability models do not correspond to the realities of contemporary telemedicine.

Accordingly, the study substantiates the necessity of introducing a distributed responsibility model based on differentiation of obligations between healthcare professionals, medical institutions, digital platform operators and developers of artificial intelligence technologies.

4. Fragmentary regulation of cross-border transfer of medical data. The analysis revealed that Kazakhstan possesses a general legislative framework concerning personal data protection and medical confidentiality. However, these norms do not specifically regulate international transfer of health-related information.

The study demonstrates that medical information constitutes a particularly sensitive category of personal data, requiring enhanced legal safeguards. Comparative analysis further indicates that European regulation increasingly relies on sector-specific mechanisms aimed at ensuring security, transparency and accountability in processing health information.

Thus, the fourth scientific result consists in establishing that the existing legal framework of Kazakhstan provides only a general level of information protection and does not adequately address the risks associated with international exchange of medical data.

Consequently, legislative modernization should include the introduction of special legal safeguards governing cross-border transfer, storage and processing of electronic medical information.

5. Absence of a comprehensive legal framework for artificial intelligence in healthcare. The conducted analysis demonstrates that the rapid integration of artificial intelligence into healthcare significantly transforms traditional approaches to medical decision-making. International studies indicate that AI technologies increasingly influence diagnostics, treatment recommendations and risk assessment.

At the same time, the legal framework of Kazakhstan currently lacks specific provisions governing transparency requirements, algorithmic accountability, certification mechanisms and legal responsibility associated with AI systems.

This constitutes the fifth scientific result of the study. The findings establish that the absence of a comprehensive legal framework for artificial intelligence represents one of the most significant regulatory gaps affecting the future development of telemedicine.

Accordingly, the integration of artificial intelligence into healthcare requires the adoption of a risk-oriented regulatory approach based on transparency, explainability and protection of patient rights.

Model for Legislative Modernization of Cross-Border Telemedicine in Kazakhstan. An important result of the present study consists in the development of an integrated model for legislative modernization of cross-border telemedicine in Kazakhstan. Based on the identified legal deficiencies and comparative analysis of foreign jurisdictions, four interrelated directions of regulatory development have been substantiated.

The first direction involves the legal recognition of cross-border telemedicine through the introduction of its statutory definition into the Code of the Republic of Kazakhstan “On Public Health and Healthcare System” and its recognition as an independent form of healthcare delivery.

The second direction concerns the regulation of foreign healthcare providers through the establishment of registration procedures and mechanisms for recognition of professional qualifications applicable to foreign physicians participating in telemedicine consultations.

The third direction relates to strengthening legal safeguards for cross-border transfer and processing of medical information and harmonization of national legislation with internationally recognized standards of personal data protection.

The fourth direction consists in developing a comprehensive framework governing the use of artificial intelligence technologies in healthcare based on the principles of transparency, accountability and protection of patient rights.

Thus, the findings demonstrate that the principal barriers to the development of cross-border telemedicine in Kazakhstan are predominantly legal rather than technological. Therefore, legislative modernization should be based on an integrated approach combining healthcare law, digital governance mechanisms, information security standards and guarantees of patient rights.

Discussion

The results obtained in this study confirm that cross-border telemedicine represents not merely a technological extension of traditional healthcare but an emerging legal phenomenon that requires reconsideration of conventional regulatory approaches [3, 9, 18, 19]. The identified legal deficiencies are largely consistent with problems previously observed in other jurisdictions during the initial stages of digital healthcare development. Therefore, the findings of the present study should be considered within the broader context of contemporary scientific debates concerning the transformation of healthcare law in the digital era.

Cross-border telemedicine as an independent legal institution. One of the principal issues discussed in contemporary legal scholarship concerns the legal nature of telemedicine itself. At the same time, many states are allocating substantial financial resources to the development of digital medical technologies and equipment capable of transmitting medical data. Back in 2020, the UK Department of Health expected to save approximately £22 billion over five years through improvements in healthcare efficiency and the wider introduction of telemedicine technologies [20]. A relatively conservative approach regards telemedicine as merely a technological means of delivering conventional healthcare services, implying that existing legal mechanisms remain generally sufficient [21]. According to this perspective, telemedicine does not require the creation of new legal institutions but rather limited adaptation of traditional medical law.

However, a growing number of scholars advocate a broader understanding of digital healthcare. They emphasize that telemedicine fundamentally changes the structure of legal relations by involving multiple actors, crossing national borders and creating new forms of information exchange [5, 17]. Consequently, telemedicine should be viewed as an interdisciplinary legal phenomenon situated at the intersection of healthcare law, information law, international private law and data protection regulation.

The results of the present study support the latter approach. The absence of a legal definition of cross-border telemedicine in Kazakhstan demonstrates that existing legislation remains predominantly focused on territorial healthcare relations and does not adequately reflect the realities of digital medicine. Therefore, cross-border telemedicine should be recognized as an independent legal institution requiring specific regulatory mechanisms.

This conclusion appears reliable because similar developments can be observed in the regulatory evolution of European healthcare systems and international standards adopted by the World Health Organization [3, 9].

Regulatory approaches to licensing foreign healthcare providers. The issue of licensing represents another area characterized by competing theoretical approaches. Some scholars support the establishment of special telemedicine licenses as a means of ensuring state control over healthcare quality [22]. Such an approach is based on the assumption that digital healthcare creates sufficiently unique risks to justify independent licensing procedures [23].

In contrast, contemporary comparative legal studies increasingly support more flexible regulatory mechanisms [21, 24]. The experience of the United States demonstrates that regulatory coordination may be achieved through interstate licensing compacts and mutual recognition mechanisms. Similarly, several European jurisdictions rely on registration procedures and professional qualification recognition rather than creating separate telemedicine licenses.

The findings of this study do not support the necessity of establishing an independent telemedicine licensing regime in Kazakhstan. Such an approach could increase administrative burdens and create additional barriers to access to specialized medical services.

Instead, the results indicate that a registration-based model combined with mechanisms for recognition of foreign professional qualifications appears to be a more proportionate and legally efficient solution. This conclusion corresponds to contemporary international trends and therefore may be regarded as sufficiently substantiated [21–23].

Transformation of professional liability in digital healthcare. The issue of professional liability remains one of the most controversial areas in telemedicine regulation. Traditional healthcare law is largely based on a physician-centered model in which legal responsibility is concentrated primarily on the attending doctor [25]. Such an approach presupposes relatively simple bilateral relationships between physician and patient.

Nevertheless, recent studies increasingly demonstrate that digital healthcare environments involve multiple participants whose actions collectively influence medical outcomes [17, 26]. Healthcare organizations, digital platform operators, software developers and artificial intelligence systems increasingly participate in clinical decision-making processes.

Gerke, Minssen and Cohen [25] argue that conventional liability mechanisms become insufficient in the context of AI-assisted medicine. Similar conclusions are reached by other researchers who emphasize that responsibility should be distributed among all participants involved in digital healthcare delivery [26].

The results obtained in the present study support these positions. Cross-border telemedicine significantly complicates the attribution of legal responsibility because medical decisions may be produced collectively rather than individually.

Consequently, the traditional physician-centered model appears incapable of adequately addressing contemporary realities. A distributed responsibility framework based on differentiation of obligations between healthcare professionals, medical institutions and technological intermediaries represents a more balanced and legally sustainable approach.

The consistency between the findings of the present study and contemporary international scholarship enhances the reliability of the obtained results.

Protection of medical data: general versus sector-specific regulation. Another important issue concerns the extent to which general personal data legislation is capable of protecting health-related information. Existing legislation in Kazakhstan establishes fundamental guarantees concerning personal data protection and medical confidentiality [11, 27]. From a formal perspective, these provisions provide a necessary basis for information security.

However, a number of scholars argue that medical information possesses unique characteristics requiring special legal safeguards [28]. Unauthorized disclosure of health-related data may affect not only privacy but also employment opportunities, insurance coverage and social rights. Therefore, healthcare information should be regarded as a particularly sensitive category of personal data.

European legal development reflects this understanding. The General Data Protection Regulation and subsequent initiatives aimed at establishing the European Health Data Space demonstrate a gradual transition from general principles of personal data protection toward sector-specific regulation of health information [29].

The results of the present study confirm that Kazakhstan's legislation currently provides only a general framework and does not fully address the risks associated with cross-border transfer of medical data.

The European model appears particularly valuable because it combines the principles of information security, transparency and accountability while maintaining a high level of protection of patient rights. Such

an approach seems more suitable for Kazakhstan than less centralized regulatory models because it allows gradual modernization without requiring radical institutional reforms.

Artificial intelligence and emerging regulatory paradigms. The increasing integration of artificial intelligence into healthcare has generated substantial scientific debate. Early discussions focused primarily on technological efficiency and diagnostic accuracy [17]. More recent studies, however, emphasize that the principal legal challenges concern transparency, explainability, accountability and protection of fundamental rights [26, 27].

Kazakhstan scholars similarly underline the necessity of developing legal mechanisms governing digital technologies and artificial intelligence [14, 15, 19]. Nevertheless, the existing regulatory framework remains fragmented and does not establish comprehensive requirements concerning algorithmic accountability, certification procedures or allocation of legal responsibility.

International experience demonstrates that regulatory policy is gradually shifting toward risk-oriented approaches. The recommendations of the World Health Organization and emerging European standards increasingly emphasize proportional regulation based on the level of risk posed by AI technologies [4, 9].

The findings of the present study support this tendency. The adoption of rigid and excessively restrictive rules may impede technological development, whereas the absence of regulation may undermine legal certainty and public trust.

Therefore, a risk-based model grounded in transparency, explainability and accountability appears to provide the most balanced solution.

Applicability of the European regulatory model to Kazakhstan. The comparative analysis conducted in this study demonstrates that effective regulation of cross-border telemedicine cannot be achieved through isolated legislative amendments but requires an integrated regulatory framework combining healthcare law, digital governance mechanisms, data protection standards, and guarantees of patient rights [3, 9]. This conclusion becomes particularly important in light of the growing use of artificial intelligence in healthcare, which creates additional regulatory challenges. Unlike conventional telemedicine technologies, AI systems may directly influence clinical decision-making through diagnostic support, risk assessment, and treatment recommendations [30]. Contemporary studies emphasize that the principal legal concerns extend beyond technical accuracy and include transparency, explainability, accountability, and protection of patient rights [31, 32]. These issues have constitutional significance, since opacity of algorithmic decision-making may undermine the principles of legal certainty, equality, and effective judicial protection.

At the same time, the current legal framework of Kazakhstan does not recognize telemedicine as an independent type of medical care and treats it primarily as a form of information and communication interaction between physician and patient [32]. Such an approach considerably limits the regulatory potential of telemedicine and creates only an appearance of legal certainty. These deficiencies become even more evident in cross-border settings, where patients receiving consultations from foreign specialists may encounter difficulties in determining applicable law, identifying the competent jurisdiction, and obtaining effective legal remedies. Consequently, the existence of formal legal provisions alone is insufficient to address the complex legal relationships arising in digital healthcare.

Although the United States has developed relatively flexible mechanisms for telemedicine licensing, its regulatory system remains highly fragmented and characterized by significant variations among states [22–24]. Such a decentralized model appears difficult to reconcile with Kazakhstan's unitary legal system. In contrast, the European approach is based on harmonized standards and coordinated regulatory mechanisms. The GDPR framework, the European Health Data Space initiative, and emerging approaches to artificial intelligence regulation collectively illustrate a coherent model aimed at balancing technological innovation with the protection of fundamental rights [4, 29].

From the authors' perspective, the European approach appears more compatible with Kazakhstan's legal traditions and institutional structure. Its significance lies not in the direct transplantation of foreign legal norms but in providing methodological guidance for the gradual modernization of national legislation. Therefore, the results obtained in this study may be considered sufficiently reliable, as they are supported by both comparative legal analysis and contemporary scientific doctrine. The findings suggest that legislative modernization in Kazakhstan should be based on an integrated European-oriented model capable of ensuring legal certainty, protection of patient rights, and adaptability to technological innovation.

Conclusions

The conducted study demonstrates that the development of cross-border telemedicine represents one of the most significant challenges for contemporary healthcare law. The comparative legal analysis confirms that the existing regulatory framework of the Republic of Kazakhstan provides a legal basis for domestic telemedicine services but remains insufficient for governing transnational digital healthcare relations. The objective of the study, namely identifying systemic legal deficiencies and developing proposals for legislative modernization based on comparative analysis of foreign jurisdictions and international approaches, has therefore been achieved.

The findings of the study allow the formulation of several conclusions.

First, cross-border telemedicine should be recognized as an independent legal institution rather than merely a technological variation of traditional healthcare services. The absence of a statutory definition creates regulatory uncertainty and limits the effectiveness of existing healthcare legislation. Therefore, the Code of the Republic of Kazakhstan “On Public Health and Healthcare System” should be supplemented with a legal definition of cross-border telemedicine and provisions determining the scope of rights and obligations of participants in digital healthcare relations.

Second, the principal regulatory problem associated with participation of foreign healthcare providers does not consist in the absence of a separate telemedicine license but in the lack of legal mechanisms governing access to the national healthcare system. Consequently, legislative modernization should provide for procedures of registration and recognition of professional qualifications applicable to foreign physicians and healthcare organizations participating in telemedicine consultations.

Third, the traditional physician-centered model of professional liability no longer adequately reflects the realities of digital healthcare. Since medical decision-making increasingly involves healthcare institutions, foreign specialists, digital platforms and artificial intelligence systems, a distributed responsibility model should be introduced. Such a model should differentiate the legal obligations of healthcare professionals, medical organizations, telemedicine platform operators and developers of digital technologies.

Fourth, the existing legal framework concerning personal data protection and medical confidentiality provides only general safeguards and does not fully address the specific risks associated with international exchange of health information. Therefore, Kazakhstan’s legislation should establish special requirements governing cross-border transfer, storage and processing of medical data, taking into account internationally recognized standards of information security and protection of patient rights.

Fifth, the rapid integration of artificial intelligence into healthcare necessitates the development of a comprehensive regulatory framework. National legislation should establish principles of transparency, explainability, accountability and human oversight in the use of AI systems in medicine. A risk-oriented approach appears to be the most appropriate mechanism for balancing technological innovation with protection of patients’ rights.

Sixth, comparative legal analysis demonstrates that isolated legislative amendments are insufficient for effective regulation of cross-border telemedicine. Successful regulatory systems are based on integrated approaches combining healthcare law, digital governance mechanisms, data protection standards and guarantees of fundamental rights. Accordingly, legislative modernization in Kazakhstan should be implemented through a coherent and interconnected regulatory framework rather than fragmented amendments.

Seventh, among the foreign models examined, the European approach appears to be the most compatible with the legal system and institutional structure of the Republic of Kazakhstan. The European experience concerning the protection of health data, digital governance and regulation of artificial intelligence provides methodological guidance for the gradual modernization of national legislation while preserving legal certainty and a high level of protection of patient rights.

Eighth, the results of this study substantiate the necessity of establishing a comprehensive model for regulating cross-border telemedicine in Kazakhstan based on four interconnected directions: legal recognition of cross-border telemedicine, regulation of foreign healthcare providers, strengthening legal safeguards for international transfer of medical data and development of mechanisms governing the use of artificial intelligence in healthcare.

Therefore, the modernization of healthcare legislation should be regarded not merely as a response to technological changes but also as a strategic direction for ensuring access to healthcare, legal certainty, and the protection of patients’ rights in the context of the digital transformation of healthcare. In this regard, the present study substantiates the need for the modernization of healthcare legislation based on an integrated

approach that combines healthcare law, digital governance mechanisms, information security standards, and safeguards for patient rights.

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Қазақстандағы және шетелдік юрисдикциялардағы трансшекаралық телемедицина: салыстырмалы-құқықтық талдау және заңнаманы жаңғырту мүмкіндіктері

Телемедицинаның қарқынды дамуы, әсіресе трансшекаралық медициналық қызмет көрсету жағдайында, денсаулық сақтау саласындағы аумақтық қағидасына негізделген дәстүрлі құқықтық тетіктердің тиімділігі мәселесін айқындайды. Бұл үрдіс құқықтық реттеудің жаңа тәсілдерін талап етеді. Зерттеудің мақсаты — Қазақстан Республикасында трансшекаралық телемедицинаны құқықтық реттеудегі жүйелі олқылықтарды анықтау және халықаралық тәжірибені ескере отырып, заңнаманы жетілдіру бойынша ұсыныстар әзірлеу. Зерттеудің әдістемелік негізін формальды-заңдық, салыстырмалы-құқықтық және доктриналық әдістер құрайды. Зерттеу барысында Қазақстан Республикасының «Халық денсаулығы және денсаулық сақтау жүйесі туралы» кодексінің нормалары, сондай-ақ халықаралық құқықтық актілер мен телемедицинаны реттеудің шетелдік тәжірибесі талданды. Зерттеу нәтижесінде трансшекаралық телемедицинаны құқықтық реттеудегі бірқатар жүйелі құқықтық олқылықтар анықталды, оның ішінде трансшекаралық телемедицинаның заңнамалық анықтамасының болмауы, шетелдік медициналық қызмет көрсетушілер қызметінің жеткіліксіз реттелуі, пациенттердің дербес деректерін қорғауды құқықтық реттеудің фрагментарлығы, сондай-ақ телемедициналық платформалар мен жасанды интеллект жүйелерінің құқықтық мәртебесінің айқындалмауы. Осы негізде мақалада құқықтық реттеуді жетілдіру үшін телемедицинаны дербес медициналық көмек нысаны ретінде тану, лицензиялау тетіктерін жетілдіру және жасанды интеллект технологияларын денсаулық сақтау жүйесіне интеграциялаудың кешенді құқықтық негізін қалыптастыру ұсынылады. Зерттеудің ғылыми жаңалығы трансшекаралық телемедицинаның құқықтық олқылықтарын жүйелеу және ұлттық заңнаманы халықаралық стандарттармен үйлестіруге бағытталған ұсыныстар әзірлеу.

Кілт сөздер: телемедицина, трансшекаралық денсаулық сақтау, жасанды интеллект, құқықтық реттеу, заңи жауапкершілік, дербес деректерді қорғау.

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Трансграничная телемедицина в Казахстане и зарубежных юрисдикциях: сравнительно-правовой анализ и перспективы законодательной модернизации

Стремительное развитие телемедицины, особенно в условиях трансграничного оказания медицинских услуг, актуализирует проблему эффективности традиционных правовых механизмов, основанных на принципе территориальности в здравоохранении. Целью настоящего исследования является выявление системных пробелов правового регулирования трансграничной телемедицины в Республике Казахстан, а также разработка предложений по совершенствованию законодательства с учетом международного опыта. Методологическую основу исследования составляют формально-юридический, сравнительно-правовой и доктринальный метод. Проанализированы положения Кодекса Республики Казахстан «О здоровье народа и системе здравоохранения», а также международные правовые акты и зарубежная практика регулирования телемедицины. В результате исследования выявлены ключевые правовые проблемы, включая отсутствие законодательного определения трансграничной телемедицины, недостаточное регулирование деятельности иностранных поставщиков медицинских услуг, несовершенство правовых механизмов защиты персональных данных пациентов, а также неопределенность правового статуса телемедицинских платформ и систем искусственного интеллекта. Обоснованы основные направления совершенствования правового регулирования, включая институционализацию телемедицины как самостоятельной формы медицинской помощи, разработку механизмов лицензирования и формирование комплексной правовой базы для интеграции технологии искусственного интеллекта в сферу здравоохранения. Научная новизна исследования заключается в систематизации правовых пробелов трансграничной телемедицины и разработке комплексных предложений, направленных на гармонизацию национального законодательства с международными стандартами и лучшими зарубежными практиками.

Ключевые слова: телемедицина, трансграничное здравоохранение, правовое регулирование, искусственный интеллект, юридическая ответственность, защита персональных данных.

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Legal aspects of state support for the creative industries in the context of digitalization

The article examines the role of the creative industries in the economy of society and the country, as well as the need to establish a legal framework for state support of the sector. The aim of the article is to examine the legal framework for state support in the context of the digitalization of the creative industries in Kazakhstan and to identify ways to improve the regulatory framework. The study identifies the mechanisms of state support for the creative industries, the challenges involved, and areas for improvement. In the context of digital development, establishing an effective system of state support for the creative industries is of particular importance. Based on an analysis of the current legislative framework, the institutional foundations of legal regulation, the stages of its development, and existing gaps are examined. The main forms and mechanisms of state support are analyzed in detail. The study employs legal, systemic, and analytical methods. It focuses on current issues in the sector, the comprehensive development of mechanisms for state support of the creative industries in Kazakhstan, and the improvement of legislation. The findings can be used in the implementation of public policy and the drafting of legislation.

Keywords: creative industries, legislation, intellectual property, fund, economy, register, digitalization, legal regulation, state support.

Introduction

In the current context of the country's socio-economic and cultural development, effective legal regulation of the creative industries is one of the key instruments of public policy. Of particular importance is the establishment of an effective system of state support for the creative industries in the context of digital and innovative development that has become a global trend.

The regulation and development of the creative industries in Kazakhstan are becoming increasingly relevant, both in theory and in practice, in line with the directives of the Head of State, Kassym-Zhomart Tokayev, regarding widespread digitalization and the diversification of economic sectors.

In his Address to the People of Kazakhstan on 8 September 2025, entitled "Kazakhstan in the Era of Artificial Intelligence: Current Challenges and Solutions through Digital Transformation", the President noted that we are entering an era of widespread digitalization and artificial intelligence and have set ourselves the task of modernizing the economy through the maximum possible adoption of technology [1].

The Head of State consistently emphasizes the need to support the creative industries and to create the best possible conditions for supporting, developing and increasing the competitiveness of the sector.

The sustainable and efficient development of the creative industries requires the introduction of broad state support measures. The state support system comprises a range of legal, financial and organizational measures.

The creative industries sector, which is expected to experience dynamic growth, is directly linked to the creation, distribution and commercialization of creative products. Within these processes, the implementation of digital technologies has become a necessity of our time. In this regard, to ensure the effective development of the sector, it is essential to establish a robust legal framework and a system of state regulation.

At the same time, there is growing interest in the study of the creative industries from an academic perspective. The subject under investigation is also relevant in terms of theoretical considerations and academic debate within the field of law.

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In today's academic landscape, the creative industries are increasingly viewed not as economic entities but as subjects of legal regulation, requiring the development of their own regulatory and institutional framework.

The issue of the legal regulation of the creative industries has been addressed in the works of a number of scholars. For instance, Saraeva [2] argues for the need for a systematic approach to the development of legislation in the creative sector and highlights the fragmentation between different areas of law (*civil, administrative and tax*). The absence of a single regulatory act governing the creative industries leads to uncertainty among market participants and reduces the effectiveness of state support. Meanwhile, Kovalkova [3] considers the prospect of the "law of the creative industries" emerging as an independent legal institution.

According to authors such as Trohirova [4] and Rivchun, Vapniarska and Platonova [5], who have made a significant contribution to the analysis of the legal aspects of state support at the regional level, the mechanisms for supporting the creative industries are strategic in nature, although they are not always backed up by specific legal means of implementation.

Issues of state regulation are also discussed in Cepeleva's work, which clarifies the role of legally established mechanisms in the interaction between the state and entities within the creative industries [6].

Drawing on the work of Gumerova and Shaimieva, the authors examine the creative industries through the lens of intellectual capital. They emphasise the importance of legal protection for the results of intellectual activity. The authors justify the need for regulatory control of concepts such as "fashion", "new media", "museums and galleries" and "copyright", identifying high-potential sectors such as education, architecture and software [7].

Authors such as Turgel, Novokshonova and Chukavina [8] analyzed government policy and the institutional regulatory framework for the creative industries in the countries of the Eurasian Economic Union. They identified legislative gaps in this sector of the economy and put forward proposals for its promotion.

Although legal issues predominate, some studies continue to focus on economic aspects. For example, Dmitriev and Shakurov examine the creative industries as a factor in regional development. However, their findings are also relevant to legal scholarship, as they highlight the need to establish a regulatory framework that enables the sector to realize its economic potential [9].

Among the scholars who have contributed to the development of the legal understanding of the creative industries, it is worth highlighting those authors who have focused on intellectual property issues and examined the impact of transformations and digital technologies on legal regulation. For instance, Ellie Ruslina [10] analyzed the specific features of legal protection for intellectual property in the creative industries, using Indonesia as a case study. The author noted the persistence of problems in the practical application of the law, the low level of legal literacy among stakeholders, and the complexity of legal remedies.

A separate area of research concerns the commercialization of intellectual property. Mawardwita and Nasution present an integrative model for the commercialization of creative output in their work. The authors argue that legal regulation should ensure not only the protection of rights, but also effective mechanisms [11].

In the context of digitalization, it is particularly important to examine the legal status of outputs generated by artificial intelligence. Shumakova, J. Lloyd and Titova [12] analyze the legal gaps associated with the use of generative artificial intelligence in creative fields. The authors discuss the possibility of recognizing artificial intelligence as a subject or object of copyright and emphasize the need to develop new legal mechanisms to reduce the risk of intellectual property rights infringements.

Thus, the relevance of researching the legal framework for state support of the creative industries stems from the need for a more in-depth study of this relatively new and promising sector.

This article aims to examine the legal framework for state support in the context of the creative industries' digitalization in Kazakhstan and to identify ways of improving the regulatory system.

Methods and Materials

The study examined the legal aspects of state support for the creative industries, employing scientific and cognitive (*description, analysis, synthesis, induction, deduction*) and specific legal methods (*discussion of official legal provisions, legal norms, systematic approach, cross-sectoral method*), providing for a comprehensive analysis of the legal regulation of the creative industries.

The research data set comprises the laws, regulations and policy documents in force in the Republic of Kazakhstan that directly or indirectly govern the creative industries. In addition, the article draws on academic works by both international and domestic scholars on the subject under study.

The sources of data include official reports from government bodies, statistical data, analytical materials from international organizations, and official legal databases. Within the chronological scope of the study, particular attention will be paid to regulatory developments (the stage of establishing the legal and institutional framework for state support of the creative industries) during the period from 2021 to 2026.

Results

The development of a legislative framework for the creative industries in Kazakhstan should be viewed as a phased process, taking into account global trends in digital development. It is also necessary to consider the country's internal socio-economic factors.

The law, which was adopted on 18 February 2026, aimed at supporting and developing the creative industries, marked a significant step in this direction. This law will serve as a catalyst for the transformation of the creative industries into legal institutions [13].

This legislation establishes key concepts at the regulatory level. These include concepts such as "entity", "creative industries worker" and the "Unified Register". This has defined the scope of participants in the relevant legal relationships. It helps to lay the groundwork for their legal regulation.

This regulatory act complements the competence of the authorized state body in this field, the Ministry of Culture and Information, by monitoring the attraction of private investment in projects in the field of creative industries. Local executive bodies were also given the right to create conditions for self-realization and talent development through the development of entrepreneurship in creative fields. In addition, standards are provided for the protection of the rights of creative industry workers. The legislative recognition of the status of participants in public relations in the creative industry helped to determine their place in the legal system and eliminate the previous uncertainty.

At the same time, this law provides for the creation of a unified register (qazaq-creative) of creative industries in a digital format, which will begin operating in July 2026. This reflects the government's aim to integrate the legal regulation of this sector into the overall digital governance system. Also, the creation of the registry gives a formal character to the activities of the participants, which is the legal basis for confirming the status. Having this status allows you to apply for government support measures.

The online platform is designed to register and keep records of individuals and legal entities engaged in creative activities, a process which will be carried out by an authorized government body. The register enables the systematization of these entities, enhances the transparency of the sector, facilitates the effective provision of support measures, and allows for the monitoring of growth trends [14].

The state support competition must include the following requirements. The participant must be registered as a business entity in the territory of the Republic of Kazakhstan. The absence of outstanding tax debts and other outstanding mandatory payments to the budget at the time of application. At the same time, registration in the register of subjects of creative industries is a prerequisite. In case of non-compliance with the requirements, the applicant does not participate in the competition.

The announcement of the competition is published on the official Internet resource of the authorized body and/or the digital platform of the service organizer. Decisions are made by the commission, a collegial body formed by the authorized body in the field of culture.

The registry's activities are regulated by the sectoral laws on Culture, the Creative Industry and the Rules for Providing State Support to Creative Industries developed by the Ministry of Culture and Information of the Republic of Kazakhstan and adopted on December 29, 2025 [15].

It should also be noted that the legal regulation of the creative industries is cross-sectoral in nature. This can be explained by the fact that it encompasses provisions of civil, tax, administrative and budgetary law. In terms of its comprehensive nature, this can both ensure adaptability and give rise to difficulties associated with the need to reconcile different legal regimes.

In general, the legislation governing the creative sectors is based on the Constitution of the Republic of Kazakhstan and includes the laws "On Culture" and "On Cinematography", as well as other regulatory legal acts.

The Law "On Culture" is the primary piece of legislation governing culture and creative activities. The Law sets out the government's powers to formulate and implement state policy in the field of culture and the creative sectors, as well as to approve the criteria for classifying business entities as operating in the creative sectors and the list of related economic activities [16].

Moreover, the Concept for the Development of Creative Industries for 2021–2025 (*Decree of the Government of the Republic of Kazakhstan No. 860 of 30 November 2021*) was approved as an additional regulating and strategic tool in this field.

The legal framework can be broadly divided into three stages.

The first is the conceptual stage (2021–2023), during which, based on the Head of State's 2021 Address, a concept for supporting the creative industries was developed and the main institutions were established.

The second stage (2024) can be described as institutional, during which the launch of creative hubs began.

Phase three (2025–2026) — the adoption of regulatory measures, namely laws and regulations providing support.

Thus, the existing regulatory framework has not only established the status and specific characteristics of the entities' activities, but has also created a legal basis for the implementation of state support mechanisms designed to stimulate growth in the context of digital development.

When considering the forms of state support, it should be noted that they are implemented through legal instruments designed to stimulate entrepreneurial activity and create favorable conditions.

First and foremost, tax and legal measures providing tax incentives for entities in the creative industries play a significant role in the state support system.

Since 2024, Kazakhstan has introduced tax incentives for representatives of creative industries, which means that they can work under a special preferential tax regime. This includes exemption from corporate tax, personal income tax and VAT.

Depending on the type of activity, income level and compliance with the conditions established by the tax legislation, the following may be applied:

- special tax regime for the self-employed (Article 715 of the Tax Code of the Republic of Kazakhstan). The self-employed Social security Fund is intended for individuals without sole proprietors who work independently. Income is up to 300 MCI per month, income tax is not paid, there are social payments of 4 %.

- special tax regime based on a simplified declaration (Article 723 of the Tax Code of the Republic of Kazakhstan) the tax code applies to sole proprietors and legal entities, provides for a fixed base tax rate of 4 %, local representative bodies (maslikhats) have the right to lower or raise the base rate to 50 %, the rate in the range from 2 % to 6 %. The turnover limit is 600,000 MCI per year, the number of employees is not limited, and they are not VAT and social taxpayers.

However, activities in the fields of IT, design, advertising, the film industry, music, architecture, media, animation, computer game development, and other creative fields are not included in the list of activities for which the use of the special tax regime is prohibited based on a simplified declaration.

- the generally established taxation regime.

Thus, the subjects of the creative industry have the right to apply the applicable tax laws established by the Tax Code of the Republic of Kazakhstan [17].

Furthermore, the main instrument of state support is the establishment of a special fund. This enables resources to be pooled centrally and provides targeted, transparent support to priority sectors of the economy.

Meanwhile, in Kazakhstan, a special corporate fund for the development of the creative industries was established in 2025 on the instructions of the Head of State. Its activities are aimed at providing systematic support for creative entrepreneurship and expanding the scope of local projects.

For the initial support and early launch of the operation of this fund, the Decision of the Republican Budget Commission allocated funds from the republican budget in the amount of 4 billion tenge, which is only for the first three years. Then the state funding should be stopped, and the fund should switch to a self-sufficiency model. Further financing of the structure will be carried out through reinvestment of income and capital mobilization, which should confirm the economic viability of the creative sector [18].

The main mechanisms include grant funding, infrastructure development and the promotion of exports of products such as IT, design and crafts.

In this regard, the Rules on State Support for the Creative Industries in Kazakhstan were approved by an order of the Deputy Prime Minister—Minister of Culture and Information of the Republic of Kazakhstan dated 29 December 2025.

Broadly speaking, the financial support measures provided by the organization are structured as follows:

1. grant funding—the provision of non-repayable, interest-free, targeted subsidies for the implementation of projects;
2. co-financing mechanisms—co-investment instruments designed to share the financial burden and risks between the fund and external partners;
3. equity-based venture financing—direct investments in shares or the authorized capital of companies with the aim of receiving dividends and investment income in the form of share capitalization.

Non-financial measures include training, promotion, subsidized rental of premises and equipment, as well as legal and marketing support.

These measures will help to create new jobs in the creative industries. They will also lay the foundations for the sector to develop into a fully-fledged economic sector with significant export potential.

The government is also actively working to develop the supporting infrastructure. Examples include the activities of more than 20 creative hubs that are opening across the country.

The creation of platforms to promote creative products in domestic and international markets is also of great importance, which reflects the general trend towards the digitalization of public administration.

In this regard, it should be noted that a film monitoring system called “e-kino” has been developed in the field of cinematography. This system is designed to increase transparency in the film industry. In 2026, the rules governing the information system were updated by an order dated 11 March [19].

Overall, it is clear that digitalization is having a significant impact on the evolution of industries. Digital technologies are seen as a driving force for growth and a prerequisite for the development of the creative sector. Several studies highlight that the creative industries have been growing rapidly in recent years against the backdrop of digital transformation and are becoming an increasingly important trend in entrepreneurship.

Concerning this, the development of creative industries in the digital space, in conditions of rapid technological progress and continuous changes, cannot be achieved without the use of modern technological solutions. These solutions not only enhance operational efficiency but also foster new forms of interaction and lay the groundwork for the commercialization of creative works [20].

As a result, measures to support and stimulate creative industries in Kazakhstan can be presented systematically in accordance with the following table (Table 1).

Table 1

Key government support measures for the creative industries in Kazakhstan

Types of support	Specific measures	Regulatory framework / Key features
Financial measures	- funding; - partial funding; - direct support for creative projects.	Rules governing the provision of state support (29 December 2025, № 693-NQ)
	- joint implementation of projects with private investors; - mobilization of extra-budgetary funds; - a reduction in the state's share.	A mixed funding model
	- support for the export of creative products; - participation in international events; - marketing.	Prioritizing commercialization and entering the global market
	- grant support for start-ups and innovative projects; - awards and scholarships.	Competitive selection
Non-financial measures	- infrastructure support and provision of equipment.	Development of infrastructure facilities
	- marketing, legal and methodological support for projects.	Online services and artificial intelligence tools
	- participation in international platforms, festivals and competitions.	Promoting networking without funding
Institutional measures	- register of Creative Industries Entities	New law dated 18 February 2026
	- Corporate Fund for the Development of Creative Industries, Talent Search	Funding: 3 % from the lottery, the budget, sponsors

Furthermore, the protection of intellectual property has great importance in the digital environment. The issue of content is becoming increasingly pressing as the threat of its unlawful use grows. The state should

therefore continually improve copyright legislation, including the introduction of digital technologies for the registration of rights and the strengthening of penalties for violations.

Discussion

Despite a number of achievements in establishing the legal framework for the development of the creative industries, it is clear that there are problematic issues requiring a systematic and comprehensive solution.

Most importantly, it must be noted that legal regulation is fragmented and the relevant provisions are scattered across various sectors of law. This implies the need for independent sector-specific legislation within the industry.

Experience shows that such sector-specific laws were adopted in 2024 in Russia (*the Law on the Development of Creative Industries*) and Uzbekistan (*the Law on the Creative Economy*). The adoption of such a law by Kazakhstan would enable the creative sector to integrate various forms of regulation into a single ecosystem, providing access to a specific legal status and targeted funding.

In addition, the digital environment presents new challenges for protecting the rights of those working in the creative industries. Overall, many Kazakhstani creators are highly talented. However, they do not always know how to turn their ideas into a source of income. The lack of systematic support for developing business models and promoting and selling their products limits their earning potential within the country.

The problem is that digitalization in the sector remains at a low level. Whereas digital platforms and social media offer great opportunities for promoting and exporting creative products, many creators are unable to make full use of streaming platforms, online sales, digital marketing and freelance work. It reduces their competitiveness at an international level and limits their ability to enter new markets [21].

Moreover, the rapid development of technology, particularly artificial intelligence, is having a twofold impact on the industry. On the one hand, AI tools simplify the content creation process, but on the other hand, they reduce demand for traditional professions such as illustrators, copywriters and designers. This increases pressure on the labor market and prompts some professionals to seek opportunities abroad.

However, by article 23 of the Law “On Artificial Intelligence”, works created with the help of artificial intelligence are protected by copyright in the case of a person’s creative contribution. In addition, the article prohibits the use of works for teaching AI models without the permission of the author or copyright holder [22].

Overcoming these problems requires the implementation of an integrated approach based on the coordination of interaction between the government, the business sector and educational institutions, the development of effective financial instruments and the formation of a sustainable ecosystem that ensures the retention of talent, the intensification of innovation and the progressive development of the domestic market for creative products.

Currently, the creative industries, which play a significant role in the global economy, account for 3 % of global GDP and 6 % of employment [23].

In Kazakhstan, this sector accounts for 1.1 % of GDP. The total value added by the creative industries amounts to 1.5 trillion tenge (1.2 trillion tenge in 2023). The largest segment is IT and game development with a total value added of 638 billion tenge (41 %) (459 billion tenge in 2023) [24].

Furthermore, some improvements were also observed in international rankings. In 2024, Kazakhstan rose from 93rd to 65th place in the “Creative Goods and Services” category of the Global Innovation Index, and from 60th to 31st place in the “National Film Production” category. This positive momentum continued and even strengthened in 2025. The “creative goods and services” category improved to 61st place, whereas “national film production” rose to 29th place [25].

Consequently, the performance indicators for the creative industries are gradually improving. Looking ahead, the task is to adopt a new development strategy for the creative industries for the period 2026–2030. Additionally, as part of the initiative of the President of the country, it is planned to create an association of creative industries in the territory of the member states of the Commonwealth of Independent States. It is important to strike a balance between support and regulation and to ensure that the creative sector is truly competitive.

Conclusions

In recent years, Kazakhstan has introduced a new legal framework for the creative industries and systematic processes of state regulation are underway. One of the key steps in this direction is the adoption this year of a law on the support and development of the creative industries. This regulatory document contrib-

utes to the creation of a new legal framework by introducing a concept relating to an information system (*register*), which has become a key trend in the current phase of digitalization.

Furthermore, the legal support mechanisms introduced (*grants, infrastructure, exports*) strengthen the role of the designated government body responsible for the sector.

However, no matter how rapidly the creative sector develops, legal issues remain an obstacle. Issues such as copyright infringement, inadequate protection of intellectual property and a lack of understanding of content monetization create a situation of uncertainty for creators.

To ensure sustainable development, further improvements to legislation are required. It's necessary to include clarifying regulations on artificial intelligence and copyright, provide creators with training in the basics of the law and strengthen law enforcement. In addition, particular attention must be paid to harmonizing national legislation with international standards and optimal practice. This will enhance the competitiveness of domestic creative works in the global market.

Effective legal provisions designed to regulate the creative sector should not only support existing initiatives, but also attract new investment into this sector.

Consequently, the development of a robust legal framework for state support of the creative industries is becoming increasingly important in the context of digitalization. Effective legal support in this area will help to create favorable conditions for creativity and entrepreneurship and foster their further development.

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Цифрландыру жағдайындағы креативті индустрияларды мемлекеттік қолдаудың құқықтық аспектілері

Мақалада Қазақстандағы креативті индустрияларды мемлекеттік қолдаудың құқықтық аспектілері қарастырылды. Зерттеудің өзектілігі креативті индустриялардың қоғам мен ел экономикасындағы артып келе жатқан рөлімен, сондай-ақ саланы мемлекеттік қолдаудың құқықтық негіздерін қалыптастыру қажеттілігімен негізделді. Мақаланың мақсаты — Қазақстандағы креативті индустрияларды цифрландыру жағдайында мемлекеттік қолдаудың құқықтық негіздерін зерделеу және нормативтік-құқықтық базаны жетілдіру жолдарын айқындау. Зерделеу барысында креативті индустрияларды мемлекеттік қолдаудың тетіктері, өткір мәселелері және оларды жетілдіру бағыттары анықталды. Цифрлық даму жағдайында креативті индустрияларды мемлекеттік қолдаудың тиімді жүйесін қалыптастыру айрықша маңызға ие. Қолданыстағы заңнамалық базаны талдай келе, құқықтық реттеудің институционалдық негіздері, қалыптасу кезеңдері, сондай-ақ әлі де сақталып отырған олқылықтар да талқыланды. Мемлекеттік қолдаудың негізгі формалары мен тетіктері жан-жақты талданды. Зерттеу барысында ресми-құқықтық, жүйелік және талдамалық әдістер қолданылды. Аталған сектор бойынша өзекті проблемалық мәселелерге назар аударып, елдегі креативті индустрияларды мемлекеттік қолдау тетіктерін кешенді дамытуға, заңнаманы жетілдіруге назар аударылды. Алынған нәтижелерді мемлекеттік саясатты жүзеге асыру барысында, сондай-ақ құқықтық нормативтік актілерді әзірлеуде қолдануға болады.

Кілт сөздер: креативті индустриялар, заңнама, зияткерлік меншік, қор, экономика, реестр, цифрландыру, құқықтық реттеу, мемлекеттік қолдау.

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Правовые аспекты государственной поддержки креативных индустрий в условиях цифровизации

В статье рассматриваются правовые аспекты государственной поддержки креативных индустрий в Казахстане. Актуальность исследования обусловлена возрастающей ролью креативных индустрий в экономике общества и страны, а также необходимостью формирования правовых основ государственной поддержки отрасли. Цель статьи — изучить правовые основы государственной поддержки в условиях цифровизации креативных индустрий в Казахстане и определить пути совершенствования нормативно-правовой базы. В ходе изучения выявлены механизмы государственной поддержки креативных индустрий, проблемные вопросы и направления их совершенствования. Особое значение в условиях цифрового развития имеет формирование эффективной системы государственной поддержки креативных индустрий. Проанализирована действующая законодательная база, обсуждены институ-

циональные основы правового регулирования, этапы становления, а также все еще сохраняющиеся пробелы. Всесторонне проанализированы основные формы и механизмы государственной поддержки. В ходе исследования были использованы официально-правовые, системные и аналитические методы. В данном секторе уделено внимание актуальным проблемным вопросам, комплексному развитию механизмов государственной поддержки креативных индустрий в стране, совершенствованию законодательства. Полученные результаты могут быть использованы при реализации государственной политики, а также при разработке правовых нормативных актов.

Ключевые слова: креативные индустрии, законодательство, интеллектуальная собственность, фонд, экономика, реестр, цифровизация, правовое регулирование, государственная поддержка.

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What legislative framework should be established to govern remote work in Kazakhstan?

The purpose of this article is to justify the need for introducing a separate chapter on remote work into the Labor Code of the Republic of Kazakhstan in order to establish clear and enforceable legal standards for employees and employers. The methodological basis of the research includes comparative legal analysis, formal legal analysis, and a comparative assessment of foreign regulatory approaches applied in the United States, the European Union, and the CIS states. The findings indicate that the current legal regulation of remote work in Kazakhstan remains fragmented and does not provide sufficient legal certainty or adequate guarantees for employees. The existing provisions of the Labor Code do not sufficiently regulate the contractual framework for remote work, working hours and rest periods, the limits of employer control, reimbursement of work-related expenses, and communication between employers and employees. These gaps increase legal risks for remote employees and complicate the practical implementation of remote work. The article concludes that the development of remote work in Kazakhstan requires targeted legislative reform. The introduction of a separate chapter on remote work into the Labor Code would strengthen employee protection, ensure a balanced distribution of rights and obligations, and create appropriate legal conditions for the development of flexible forms of employment.

Keywords: remote work, distance employment, labor law, Labor Code of Kazakhstan, legal regulation, employment contract, employee guarantees.

Introduction

Remote work is increasing globally. According to the World Bank, 435 million people worked online in 2023 [1]. A survey conducted by scientists from November 2024 to February 2025 found that remote work averaged 1.27 days per week [2]. The United States has the largest remote workforce, with over 32.6 million people, including 22 million entirely remote workers and the remainder in hybrid arrangements [3]. Several European countries also report high rates of remote work.

Despite the obvious economic and other advantages for both employers and employees, and the widespread use in many countries of the world, remote work remains significantly underutilized in Kazakhstan. Thus, by late 2024, only 46,700 individuals were engaged in remote work, representing just 0.51 % of the total employed population [4].

At the same time, the dynamics of remote employment in Kazakhstan demonstrate not only slow growth, but also instability in the practical use of this form of work. According to the Bureau of National Statistics, the total number of employed persons in Kazakhstan in the first quarter of 2026 amounted to 9.392 million people, while media reports based on official statistical data indicate that only 28,821 persons continued to work remotely during the same period, representing approximately 0.3 % of the employed population. This shows that remote work has not yet become a stable and widely institutionalized segment of the Kazakhstani labor market. The decline from 46,700 remote workers in the fourth quarter of 2024 to 28,821 in the first quarter of 2026 suggests that remote employment in Kazakhstan remains sensitive to organizational, technological and regulatory factors. Therefore, the issue is not limited to the quantitative expansion of remote work, but also concerns the creation of a clear legal environment capable of ensuring predictability for both employees and employers [4].

The relatively small share of remote workers should not be interpreted as evidence of the limited legal significance of this form of employment. On the contrary, even a numerically modest group of remote employees may face specific legal risks that are not typical for traditional employment, including uncertainty regarding working time, the limits of employer control, compensation for work-related expenses, access to occupational safety guarantees, and the distinction between employment contracts and civil law agreements. These risks are particularly important in Kazakhstan, where remote work is regulated mainly by a single provision of the Labor Code rather than by a systematic set of norms. In this regard, empirical data confirm the

practical relevance of the problem: remote employment remains underdeveloped not because it lacks economic potential, but because the existing legal framework does not provide sufficient institutional guarantees for its stable application.

At the same time, the scientific literature on remote work does not fully resolve the specific legal problems arising in the Kazakhstani context. Existing studies mainly examine remote work through the prism of digitalization, flexible employment, organizational efficiency, or general labor market transformation. Although foreign scholarship has developed important approaches to the employment status of remote workers, employer control, working time, privacy, and the right to disconnect, these issues have not been sufficiently adapted to the structure and logic of Kazakhstan's labor legislation. In particular, there remains a lack of research devoted to the systematic codification of remote work as an independent legal institution within the Labor Code of the Republic of Kazakhstan. The scientific gap therefore lies in the absence of a comprehensive legal model that would connect the contractual basis of remote work, electronic interaction between the parties, limits of digital control, guarantees of working time and rest time, reimbursement of work-related expenses, and mechanisms for preventing labor disputes. This article seeks to address this gap by substantiating the need for a separate chapter on remote work in the Labor Code of Kazakhstan.

Kazakhstan began regulating remote work with the Law of the Republic of Kazakhstan "On Amendments and Additions to the Labor Code of the Republic of Kazakhstan on Improving the Legal regulation of Remote Work" No. 61-VIII dated 07/01/2021 [5]. Prior to this, employee-employer relations relied on rules for homeworkers or civil contracts, lacking a precise legal basis.

Analysts identify key barriers to remote work, including poor digital infrastructure, restrictive labor regulations, and an employment structure still dominated by the offline sector [6].

The purpose of the study

The study is intended to demonstrate that the current regulation of remote work in Kazakhstan does not yet provide a sufficiently complete legal framework for the stable development of this form of employment. On that basis, the research seeks to justify the need for a more consistent legislative approach, including the systematization of relevant norms within a separate chapter of the Labor Code of the Republic of Kazakhstan.

Research objectives

To achieve this purpose, the study addresses several interrelated objectives. First, it examines the current state of legal regulation of remote work in Kazakhstan and identifies the main deficiencies of the existing legislative model. Second, it analyzes the legal treatment of remote work in selected foreign jurisdictions, including the United States, the European Union, and several CIS states. Third, it evaluates which regulatory solutions developed abroad may be adapted to the legal system of Kazakhstan. Finally, it formulates proposals aimed at strengthening labor guarantees for remote workers and improving the clarity and practical applicability of national labor legislation.

The object of study

The object of the study is the body of social and labor relations that arise in connection with the performance of work outside the employer's physical premises through the use of digital and communication technologies.

The subject of research

The subject of the research comprises the legal norms, doctrinal approaches, and law-enforcement issues related to the regulation of remote work in Kazakhstan, as well as foreign legal experience relevant to the improvement of national labor legislation. Particular attention is paid to the legal foundations of remote employment, the content of labor rights and obligations of the parties, the regulation of working time and rest time, and the limits of employer control in the digital work environment.

Methods and Materials

This study is based on a combination of normative, comparative legal, and analytical research methods. The materials of the research include the Labor Code of the Republic of Kazakhstan, legislative acts regulating remote work in selected foreign jurisdictions, including the Russian Federation, the Kyrgyz Republic, and the Republic of Belarus, as well as international legal instruments and policy documents developed by the International Labour Organization and European institutions. In addition, the study draws on statistical and analytical reports concerning the development of remote employment at the global level and in Kazakhstan, together with foreign academic literature addressing the legal nature of remote work, employer control, working time, employee privacy, and labor guarantees.

The methodological basis of the article is formed, first, by the formal legal method, which was used to examine the content of national labor legislation and to identify gaps, inconsistencies, and insufficiently regulated aspects of remote work. Second, the comparative legal method made it possible to assess how similar legal issues are addressed in other jurisdictions and to determine which foreign approaches may be adapted to Kazakhstan's legal system. Third, elements of doctrinal analysis were applied to evaluate scholarly positions on the qualification of remote work, the role of the employment contract, and the limits of employer authority in digital working environments. The use of these methods in combination made it possible to formulate proposals aimed at improving the legal regulation of remote work in Kazakhstan.

Results

The research made it possible to formulate several author's results concerning the improvement of the legal regulation of remote work in Kazakhstan. First, it was established that the current model of regulation, based mainly on Article 138 of the Labor Code of the Republic of Kazakhstan, does not form a complete legal institution of remote work. Second, the study identified the key elements that should be legally consolidated in order to ensure the effective protection of remote employees: the contractual basis of remote work, electronic interaction between the parties, the limits of employer control, working time and rest time guarantees, reimbursement of work-related expenses, occupational safety obligations, and the right to disconnect. Third, the article substantiates the author's proposal to introduce a separate chapter on remote work into the Labor Code of the Republic of Kazakhstan, rather than preserving the existing fragmented regulation within a single article.

According to the Article 1 (paragraph 1, subparagraph 55-2) of the Labor Code of the Republic of Kazakhstan (hereinafter LC RK), "remote work is the implementation of the labor process outside the location of the employer, the host party and their facilities using information and communication technologies in the course of work" [5]. In this article, there is also the concept of "combined remote work", which means "the implementation of the labor process by alternating periods of performance of work duties both at the location of the employer, the receiving party and their facilities, and through remote work" (paragraph 1, paragraphs 55-1) [5]. The content of this type of work is described in more detail in the Article 138 of the LC RK, which describes: the procedure for establishing a remote work regime; the content of the employer's act, which specifies the grounds for establishing temporary remote or combined remote work; a register of employees performing their duties remotely; compensation for electricity consumption and other justified expenses incurred in the course of remote work; the regime and duration of working time of a remote worker; the option to introduce flexible scheduling arrangements; remuneration terms; occupational safety and health requirements; obligations related to the protection and non-disclosure of official information and other secrets protected by law [5]. As can be seen, the legislator "accommodated" all issues related to the work of a remote worker in one voluminous regulatory act consisting of ten points. Despite the volume of this article, the analysis shows that a significant part of the problems related to the work of this category of workers has remained outside the legal regulation.

The need to improve the legislative regulation of remote work is also confirmed by the current state of law-enforcement practice in Kazakhstan. Although Article 138 of the Labor Code of the Republic of Kazakhstan formally establishes the possibility of remote and combined remote work, its practical application raises a number of unresolved questions. These include the evidentiary value of electronic communication between the parties, the procedure for recording working time outside the employer's premises, the legal assessment of an employee's availability after working hours, the reimbursement of expenses incurred in the performance of remote work, and the determination of the employer's liability for occupational safety in a workplace that is physically located outside its premises. The Labor Code defines a labor dispute broadly as disagreements between an employee and an employer, including former parties to employment relations, concerning the application of labor legislation and employment conditions. However, the current regulation does not provide special procedural or substantive mechanisms for resolving disputes arising specifically from remote work [5].

Kazakhstani judicial practice on remote work has not yet developed into a stable and sufficiently visible body of case law. This circumstance should not be regarded as the absence of legal problems. Rather, it reflects the early stage of institutionalization of remote employment and the fact that many conflicts may be resolved at the level of internal employer procedures, labor inspections, mediation, or individual negotiations without forming publicly accessible judicial precedents. Nevertheless, the potential categories of disputes are already identifiable from the content of Article 138 of the Labor Code and from the practical nature of remote work. Such disputes may concern, inter alia, whether the employee was properly transferred to remote

work, whether the remote work regime was fixed in an employment contract or an additional agreement, whether the employer lawfully monitored the employee's activity through digital tools, whether overtime work occurred due to constant electronic availability, and whether the employee is entitled to compensation for electricity, internet connection, equipment, and other justified expenses. Thus, the absence of extensive published judicial practice does not weaken, but rather strengthens, the argument for preventive legislative clarification.

From the perspective of law enforcement, the most problematic issue is the evidentiary asymmetry between the employee and the employer. In traditional employment, the workplace, working time, internal labor rules and managerial control are usually fixed within the employer's organizational environment. In remote work, these elements are transferred into the digital sphere, where evidence may consist of emails, corporate messenger correspondence, platform logs, screenshots, electronic documents, task-management systems and records of online meetings. If the Labor Code does not clearly determine the legal significance of such forms of communication and control, courts and labor authorities may be forced to assess similar disputes inconsistently. This may reduce legal certainty and create unequal protection for remote employees depending on the employer's internal policies.

Therefore, the development of remote work requires not only declarative recognition in the Labor Code, but also a more detailed legal framework capable of preventing typical conflicts before they reach the stage of litigation. Such a framework should include rules on the conclusion and amendment of employment contracts with remote employees, the procedure for electronic document exchange, the limits of digital control, the recording of working time, the right to disconnect, reimbursement of expenses, occupational safety obligations, and the specific evidentiary standards applicable to remote employment disputes.

These issues require further detailed examination.

Firstly, despite the legal regulation of remote work in Article 1 (paragraph 1, subparagraphs 55-1 and 55-2) and Article 138 of the LC RK, as mentioned above, they do not contain the most important thing—an indication that the employee performs a labor function according to an employment contract, not a civil contract, which is very important to protect the labor rights of employees and extend to them the guarantees provided for by labor legislation.

1. Clarification of the legal definition of remote work.

Based on the analysis of the current wording of Article 1, paragraph 1, subparagraph 55-2, and Article 138 of the Labor Code of the Republic of Kazakhstan, the study proposes to amend the legal definition of remote work by expressly linking it to the employment contract. The following wording may be suggested: "Remote work is the performance of labor functions defined by an employment contract or an additional agreement to it, outside the location of the employer, the receiving party and their facilities, directly or indirectly under the control of the employer, with the use of information and communication technologies in the course of work". At the same time, it is essential to specify that a remote employee performs their labor function at facilities that are directly or indirectly controlled by the employer, which serves to prevent potential abuses, including the unlawful transfer of such employees to third parties for leasing arrangements or other atypical forms of employment.

2. Consolidation of the employment contract as the legal basis of remote work

Since we focus on the employment contract and the supplementary agreement to it, it is imperative to describe in a separate article of the LC RK the specifics of concluding an employment contract with remote workers, since this loses the essential features of a traditional employment contract.

The employment contract with a remote employee, as well as any supplementary agreement thereto, should clearly define the remote work regime, the procedure for electronic interaction between the parties, the employee's availability during working hours, the provision of equipment, reimbursement of justified expenses and the rules for protecting confidential information. The country has introduced an electronic labor registration system, i.e. electronic workbooks are being introduced instead of paper workbooks. Information about employment is maintained in the Unified System of Accounting for Employment Contracts (USAEC). Employers register contracts on egov.kz, and employees confirm them with an electronic digital signature. And this, of course, ensures transparency, reliability and convenience of accounting for work experience. The information is stored digitally, and only the parties to the employment contract have access to it. Not only information about the conclusion of an employment contract transmitted to the USAEC, but also information about making corrections to the employment contract, in general, about all changes in employment relations, etc. When an employment contract with a remote employee is executed through the exchange of electronic documents, it is also required to stipulate the obligation of the employee to submit the documents specified in Article 32 of the Labor Code of the Republic of Kazakhstan in electronic form or, at the

employer's request, as notarized hard copies. And this is very important in order to avoid forthcoming labor disputes on procedural issues in the future.

3. Regulation of electronic interaction and employer control.

Secondly, in our opinion, the manner in which remote workers interact with employers is critical, and legislation should clearly define these processes, as demonstrated by the legal frameworks of most countries.

First, it is necessary to refer to two International Labour Organization instruments relevant to work performed outside the employer's premises: the Home Work Convention, 1996 (No. 177) [7], and the Home Work Recommendation, 1996 (No. 184) [8]. These documents highlight the limitations of the employee's subordination to the employer, whereas one of the essential features of an employment relationship is the lack of independence of an employee who is economically and organizationally dependent on the employer. Due to the fact that a remote worker performs work on the instructions of the employer and outside of their location, it is important to detail how they interact during remote work.

Article 138, paragraph 5, and Article 1, paragraph 1, subparagraph 81 of the Labor Code of the Republic of Kazakhstan regulate only certain forms and mechanisms of interaction; however, in order to ensure effective protection of employees' labor rights, it appears justified to introduce a separate, dedicated article in the Labor Code of the Republic of Kazakhstan. At the same time, we consider it extremely important to describe the control mechanism on the part of the employer, the frequency of contacts, the time when the employee gets in touch, their duration, etc.

In this context, the Labor Code of the Russian Federation (hereinafter referred to as the LC RF) serves as a relevant example. Article 312.3 of the Labor Code of the Russian Federation provides a detailed regulation of, inter alia, the use of qualified and unqualified electronic signatures; the application of other types of electronic signatures in accordance with collective agreements and local regulatory acts; time limits for acknowledging the receipt of electronic documents; procedures for the exchange of information between the parties; the manner in which an employee submits explanatory statements to the employer; rules for submitting original documents related to temporary disability and maternity; as well as the procedure for reporting on work performed, among other issues.

4. Guarantees of working time, rest time and the right to disconnect.

In this regard, special attention is required by paragraph 5 of Article 138 of the LC RK, which addresses to the working hours of a remote worker, in particular, the employee's availability for communication with the employer. In general, this rule complies with international standards, although it requires some adjustments.

It is known that the innovation of labor law in socially developed countries is the concept of "not being in touch with the employer". What does it mean?

As practice shows, remote workers are blurring the boundary between work and private life. Given this fact, in a number of EU countries, the employee's right to "be offline" is provided for at the legislative level. The LC RK establishes the employee's availability mode during working hours (Article 138, paragraph 5, second part). And that's right. At the same time, it is necessary to clarify whether it is possible to send corporate mail outside of working hours. We do not find an answer to this question in the LC RK, whereas the EU Directive on the right of employees to be disconnected prohibits employers in all EU countries from communicating electronically with their employees outside normal working hours, except in emergencies [9].

Paragraph 5 of Article 138 of the LC RK also shows that Kazakh legislation establishes an equal amount of rights, guarantees and obligations for remote and traditional workers, indicating accessibility outside of working hours in cases provided for in Article 77 (paragraph 2) and Article 86 of the LC RK (when engaging in overtime work, to work on weekends and holidays without consent employee).

Other disadvantages of the Labor Code of the Republic of Kazakhstan should also include:

a) the absence of an effective mechanism for safeguarding the labor rights of remote workers through trade unions, including their involvement in collective bargaining processes, as well as in distinguishing between individual and collective labor disputes;

b) the absence of provisions on the grounds for transfer to another job, as well as termination of employment contracts.

Although we do not see objective reasons for identifying such grounds for differentiating the work of remote workers, it should be noted that the norms of the Labor Code of the Republic of Kazakhstan apply to these workers in these cases.

For possible borrowing, let's look at how these and other issues related to remote work are regulated in the legislation of various EAEU countries.

Incorporating best foreign practices is essential for the effective integration of remote work regulations into Kazakhstani law. And from these positions, we would like to once again note the LC RF, where the new version of Chapter 49 is aimed at solving the most complex problems of legal regulation of remote workers, although not without gaps and shortcomings. The proposed amendments outlined in this chapter are aimed at enhancing the flexibility of employment relations and broadening the application of information and communication technologies within the sphere of labor relations.

The Labor Code of the Kyrgyz Republic dated January 23, 2025, No. 25 (with amendments and additions as of 01.01.26) (hereinafter LC KR), in Article 1 (paragraph 7) [10], defines remote work as “the performance of a labor function stipulated by an employment contract outside the employer’s premises, provided that information and communication technologies are used in carrying out such labor function and in ensuring interaction between the employer and the employee regarding its performance”. As follows from this wording, the definition places primary emphasis on the existence of an employment contract and on the interaction between the parties. However, in our view, it does not fully reflect the comprehensive nature of employment relations, as it fails to take into account other essential elements of an employment contract, including, *inter alia*, the performance of work under the employer’s control and supervision. Article 184 of the LC KR “Specifics of concluding an employment contract with an employee performing remote work” [10] also does not say any particular detail about the employee’s interactions with the employer. Paragraph 8 of Article 184 of the LC KR establishes the conditions and periodicity of interaction between a remote employee and the employer within the framework of an employment contract. And this means that the parties can independently describe the procedure for interaction between the parties to an employment contract, and, as practice shows, it is not always in favor of the employee, which cannot help but lead to many labor disputes in practice [10].

In the Labor Code of the Republic of Belarus (hereinafter LC RB) dated July 26, 1999 No. 296-3, Article 307 provides a concise definition of “remote work”. It refers to work performed by an employee outside the employer’s premises, using information and communication technologies to execute the labor function and maintain communication with the employer [11]. As you can see, there is no indication of an “employment contract”, an “employer control procedure” or other essential features of remote work. Further, this article sets out the rules governing the exchange of electronic documents and messages between the employee and the employer, including SMS, files, and records, which contain written instructions or information necessary for the performance of work duties; the results of the work performed; statements and explanations of the employee, notices, orders and other documents of the employer related to the amendment and termination of the employment contract, which are determined by the employment contract, local legal acts. In this part, Article 307 of the LC RB is similar to Article 312.3 of the Labor Code of the Russian Federation.

The fact that an employment contract is concluded with remote workers is stated in Article 307.2 of the LC RB [11], which describes in detail such features of the contract as: the conclusion of an employment contract in the personal presence of the employee; the conditions for the exchange between the employee and the employer of electronic documents and electronic messages containing information about the results of the work performed; statements and explanations of the employee, notifications and other documents of the employer related to changes and termination of the employment contract. The employment contract also defines the methods and frequency of contact with the employer, etc.

In these countries, Kyrgyzstan and Belarus, the emphasis is appropriately placed on the employment contract, procedural issues, the process of concluding an employment contract, and the interaction of the parties to an employment contract, although many other significant issues related to the work of a remote worker have remained without proper regulation.

The lack of a specific provision in Kazakh legislation recognizing the conclusion of employment contracts with remote workers may create practical difficulties in distinguishing such contracts from civil agreements entered into with remote workers. After all, it is known that employers prefer to conclude a civil law contract (hiring work contract, services agreement) with remote workers instead of a labor contract in order not to provide the employee with social guarantees, such as paid work leave, temporary disability benefits, etc., provided for by labor legislation, as well as to minimize other costs for the employee.

The LC RK should also explicitly state the employer’s obligation to provide the employee with the necessary means of communication, computer equipment, and other means of communication. It is also necessary to fix the obligation of the employer to reimburse the employee for other reasonable expenses, including the cost of electricity, related to the performance of work (in the current version, paragraph 4, Article 138 of the LC RK refers to the reimbursement of these expenses by agreement of the parties).

Considering that this form of non-standard employment is not comprehensively regulated in many CIS countries, it is relevant to analyze the practices of the European Union and the United States.

At the EU level, in 2002, the social partners concluded a Framework Agreement on Teleworking between the European Commission and the European trade unions and employers. It defined the minimum amount of guarantees for remote workers. In response to the employer's growing interest in monitoring remote employees through electronic devices, minimum occupational safety and labor protection standards have been established for work involving devices equipped with video monitoring capabilities [12]. Naturally, the protection of information is a significant concern for the employer; accordingly, Article 5 of the Framework Agreement imposes liability on the employer for failing to implement measures to safeguard information provided to the employee for work purposes. The LC RK does not establish such an employer's responsibility, although paragraph 8 of Article 138 of the LC RK states: "To protect official, commercial or other legally protected secrets that have become known to an employee in the course of remote work, an employment contract or an act of the employer or an act of the receiving party provides for a condition on the preservation and non-disclosure of this information by the employer". It is quite obvious that in paragraph 8, we are talking about the employee's responsibility, not the employer's.

Due to the fact that the work of remote workers is most successfully used in the USA, in our opinion, some aspects of its legal regulation can be incorporated into Kazakhstan's legislation. In the United States, beyond the obligations outlined in the Labor Code of the Republic of Kazakhstan, additional responsibilities of the employer are defined, including:

1. In addition to the employer's obligation to provide the necessary equipment for remote work, instruction on its use is provided.

2. In several US states, the responsibility of the employer for the failure to ensure the safety and hygiene of the workplace is established, although there is no procedure for the control of the employer by the employee for some ethical reasons. Critics of such controls cite non-interference in an employee's private life in order to check their workplace against established standards. In our country, control over the workplace of a remote worker cannot be established either, since privacy is guaranteed by Article 18 of the Constitution of the Republic of Kazakhstan [13], as well as articles 142, 143 of the Criminal Code of the Republic of Kazakhstan [14].

3. It is possible to borrow the experience of the United States in relation to government agencies using remote workers. In particular, the necessity for the state body to develop a remote work policy, to inform all employees of their right to engage in remote work with the employer's consent, the right of employees to submit a request to the employer to switch to a flexible form of employment, including remote work, and the employer's obligation to provide a response within 20 days.

4. Each government agency determines a list of jobs where remote employment is not provided for security reasons.

5. Employees who have disciplinary penalties for being absent from their workplace for more than 5 calendar days per year may not be transferred to remote work.

6. It is prohibited to transfer to a remote form of work those employees who have been held responsible for downloading pornography or sharing it in the workplace.

7. Much attention is paid to the training of remote workers, for whom the manager of the organization of remote work is responsible.

8. The HR Department develops a written manual for remote workers, which reflects the issue of remuneration, working hours, and rest periods, the procedure for working with documents, their storage conditions, occupational safety and security, and many others [15].

Discussion

Foreign legal and interdisciplinary scientific literature considers remote work one of the most significant transformations of labor relations in the context of economic digitalization. Scholars concur that the proliferation of information and communication technologies has significantly transformed the spatial and temporal dimensions of work; however, it has not altered its legal character as an employment activity grounded in the subordinate relationship to the employer. Consequently, the issue of preserving labor and legal guarantees in the event of a change in the form of labor organization occupies a central place in scientific discussions.

A major focus of foreign research is the legal classification of remote work, particularly the distinction between employment contracts and civil law arrangements for performing work. Thus, in the works of G. Davidov, it is emphasized that the remote nature of work cannot be considered as an independent basis for

concluding that an employee has an independent status. On the contrary, as long as the elements of organizational control, economic dependence, and integration of the employee into the employer's operations are preserved, remote work should be classified exclusively as an employment relationship [16]. M. Freedland takes a similar position, pointing out that the spatial autonomy of an employee does not mean the loss of legal subordination, and therefore requires strengthening the protective function of labor law [17].

This study supports the position of G. Davidov and M. Freedland that the remote nature of work does not in itself transform an employee into an independent contractor. Spatial separation from the employer's premises should not be equated with legal or economic independence. This conclusion is particularly relevant for Kazakhstan, where the current definition of remote work does not expressly emphasize the performance of a labor function on the basis of an employment contract. However, this approach requires further specification in the Kazakhstani context. The problem is not limited to the distinction between employment and independent work; it also concerns the absence of a systematic legislative framework regulating electronic interaction, working time, employer control and compensation of work-related expenses. Therefore, the present research develops this doctrinal position by arguing that the employment nature of remote work should be directly consolidated in the Labor Code of the Republic of Kazakhstan.

In furtherance of this position, S. De Stefano draws attention to the risk of systemic substitution of employment relations by civil law contracts in remote employment, especially in the absence of a direct indication in the law of the obligation of the employment contract [18]. According to the author, remote work increases the asymmetry between the parties to the contract, since the employer actually retains control over the results of work, without incurring traditional social obligations. These conclusions are of fundamental importance for States with developing models of distance labor regulation, including the Republic of Kazakhstan.

The concerns expressed by S. De Stefano regarding the substitution of employment relations by civil law contracts are also relevant to Kazakhstan. In remote work, the employee may appear formally autonomous, while in practice the employer continues to determine tasks, deadlines, reporting procedures and performance standards. For this reason, the present study agrees that remote work may increase contractual asymmetry between the parties. At the same time, this problem cannot be resolved only through doctrinal recognition of the employment relationship. In Kazakhstan, it requires direct legislative clarification, including a more precise definition of remote work, a mandatory reference to the employment contract or supplementary agreement, and special rules preventing the exclusion of remote employees from labor law guarantees.

Considerable attention in foreign doctrine is paid to the issues of control and subordination in remote work. As opposed to classical forms of employment, remote work is typified by the use of digital monitoring tools, including activity tracking, performance analysis, and algorithmic management systems. Scientific research stresses that such forms of control frequently cause heightened employee dependence, despite the external flexibility of the labor process [19]. Prassl points out that digital control actually forms an "invisible and permanent" subordination, which requires special legal regulation and setting limits on the employer's intervention in the labor process [20].

This study agrees with J. Prassl's conclusion that digital control may intensify, rather than weaken, the employee's subordination. For Kazakhstan, this issue is especially important because Article 138 of the Labor Code does not contain detailed rules on the permissible limits of employer monitoring in remote work. However, the idea of "invisible and permanent" subordination should not be interpreted as a reason to prohibit employer control entirely. Such control is connected with the employer's legitimate interest in organizing the labor process, protecting confidential information and evaluating work results. Therefore, Kazakhstan's legislation should establish not the prohibition of digital control, but its legal boundaries, including the purpose of monitoring, proportionality requirements, prior notification of the employee, permitted digital tools and protection against excessive interference with private life.

A natural progression of this research is the examination of remote employees' working hours and periods of rest. Foreign authors emphasize that remote work blurs the boundary between work and private time, negatively affecting employees' physical and mental health. Reports from Eurofound and the European Commission note that it is remote workers who are more likely to experience unpaid overtime and constant availability to the employer [21]. In reply to these challenges, the concept of the right to disconnect has been developed in European Union law, considered as an element of occupational safety and the continuation of the right to rest [22].

The legal literature emphasizes that the right to be "out of touch" should be imperative and cannot be left entirely to the parties' discretion under the employment contract [23]. These provisions are reflected in

the national legislations of a number of EU countries and form a steady trend in the development of labor law, which, according to researchers, should be taken into account in the legal systems of post-Soviet states.

American scientific doctrine considers remote work mainly through the prism of employment flexibility and employer responsibility. M. Cherry's research emphasizes that the remote format does not relieve the employer of responsibilities to ensure safe working conditions, employee training, and compensation for expenses related to the performance of a labor function [24]. At the same time, the emphasis is on the necessity to balance the employer's interests with the constitutional guarantee of the inviolability of the employee's private life [25].

The European approach to the right to disconnect is generally acceptable for Kazakhstan, since remote work objectively blurs the boundary between working time and private life. Nevertheless, this guarantee should be adapted to the existing structure of Kazakhstan's labor legislation. It would be inappropriate to formulate the right to disconnect as an absolute prohibition of any communication outside working hours. Rather, it should be linked to the rules on working time, overtime work, work on weekends and holidays, and urgent production necessity. This approach would allow the employer to respond to exceptional circumstances, while preventing remote work from becoming a regime of permanent availability.

A separate area of foreign research is devoted to the collective labor rights of remote workers. According to T. Novitz, remote employment weakens traditional forms of trade union solidarity and employee participation in collective bargaining, which requires the adaptation of collective labor law institutions to digital working conditions [26]. The ILO also stresses the need for remote workers to have equal access to social dialogue and dispute resolution mechanisms [27].

Comparative legal studies substantiate the conclusion that the most effective models of legal regulation are those that provide for independent and systematic norms on remote work within the structure of labor legislation. B. Hepple notes that fragmented regulation does not allow for a balance between flexibility of employment and protection of workers' rights, while a codified approach promotes legal certainty and reduces conflict in labor relations [28]. Similar conclusions are contained in the ILO's analytical reports, which emphasize that States that have consolidated remote work as a separate legal institution demonstrate a higher level of protection of labor rights.

In summary, foreign scientific literature consistently recognizes remote work as a full-fledged form of labor relations, requiring clear legislative consolidation of the employment contracts, mechanisms of interaction and control, guarantees of working hours, and protection of employee privacy. These approaches are of considerable scientific and practical interest to the Republic of Kazakhstan and confirm the need for further improvement of national labor legislation, taking into account international standards and best foreign practices.

The Kazakhstani context confirms the relevance of these doctrinal conclusions. In jurisdictions where remote work is regulated only fragmentarily, legal uncertainty is likely to appear not immediately in the form of numerous court cases, but first in the form of unstable contractual practices, inconsistent employer policies, and difficulties in proving violations of labor rights. This is particularly relevant for Kazakhstan, where the number of remote workers remains relatively small, but the legal risks associated with this form of employment are structurally significant. The limited development of judicial practice should therefore be understood as a warning sign rather than as evidence of the sufficiency of current regulation. If remote work expands without a detailed legislative framework, disputes concerning working time, availability, digital surveillance, reimbursement of expenses and the substitution of employment contracts by civil law agreements may become more frequent and more difficult to resolve.

For this reason, the proposed introduction of a separate chapter on remote work into the Labor Code of the Republic of Kazakhstan should be viewed as a preventive legal measure. Its purpose is not merely to reproduce existing provisions of Article 138, but to transform remote work into a clearly defined legal institution. Such an approach would improve the predictability of judicial and administrative practice, reduce the risk of inconsistent interpretation by employers, employees and courts, and ensure that remote work develops as a protected form of employment rather than as a mechanism for weakening labor guarantees.

Thus, the reviewed scientific literature provides an important theoretical basis for understanding remote work, but it does not fully resolve the specific legislative tasks facing Kazakhstan. The present study agrees with the general doctrinal position that remote work should remain within the scope of labor law where the features of employment are present. At the same time, the mechanical transplantation of foreign models would be inappropriate. Kazakhstan requires selective adaptation of foreign approaches: the employment-contract approach developed in labor law doctrine, the European guarantees concerning working time and the right to disconnect, and the American emphasis on employer responsibility for equipment, training and

work-related expenses should be combined within a codified model. This conclusion corresponds to the results of the present research, which demonstrate that fragmented regulation under a single article of the Labor Code is insufficient for the stable development of remote employment.

In order to resolve these and other pertinent issues and to address gaps in the legal regulation of remote work, it is necessary to establish a dedicated chapter within the Labor Code of the Republic of Kazakhstan.

Conclusions

The findings of this research indicate that Kazakh legislation significantly lags behind that of many other countries in regulating remote work. The current norms of the Labor Code of the Republic of Kazakhstan focus primarily on procedural matters rather than on legal guarantees for remote employees. The rapid development of distance employment in countries such as the United States, European Union member states, Singapore, and South Korea, contrasted with its slow adoption in Kazakhstan, underscores the necessity of drawing on foreign experience to address future challenges in law enforcement practice.

The analysis of empirical data and law-enforcement issues in Kazakhstan confirms that the problem of remote work regulation is not purely theoretical. Although remote employees constitute less than one percent of the employed population, this form of work creates specific legal risks that are insufficiently addressed by the current Labor Code. The absence of a developed and consistent body of judicial practice further demonstrates the need for preventive legislative regulation. A separate chapter on remote work would allow the legislator to reduce future labor disputes by clearly defining the contractual basis of remote work, the rules of electronic interaction, the limits of employer control, working time guarantees, the right to disconnect, and the procedure for compensating work-related expenses.

In addition to effective legal regulation, a comprehensive resource framework is required. This should encompass not only well-developed policies but also appropriate management and training systems, as well as sufficient material and information resources.

The scientific significance of the results lies in the development of the doctrinal understanding of remote work as an independent legal institution of labor law rather than merely a flexible form of work organization. The study clarifies the legal elements that distinguish remote work from civil law arrangements, including the employment contract, employer control, electronic interaction, working time guarantees and reimbursement of work-related expenses. The practical significance of the results consists in the possibility of using the proposed conclusions for improving the Labor Code of the Republic of Kazakhstan, developing internal employer policies on remote work, preventing labor disputes and ensuring a more predictable balance between the rights and obligations of employees and employers.

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Е.Н. Нұрғалиева, А.С. Баймаханова

Қазақстанда қашықтықтан жұмыс істеуді заңнамалық реттеу қандай болуы керек?

Мақаланың мақсаты — Қазақстан Республикасының Еңбек кодексіне қашықтан жұмысты реттейтін жеке тарау енгізу қажеттілігін негіздеу. Мұндай тарау жұмыскерлер мен жұмыс берушілер үшін нақты, жүйелі және құқықтық тұрғыдан қамтамасыз етілген стандарттарды қалыптастыруға бағытталуы тиіс. Зерттеудің әдіснамалық негізін салыстырмалы-құқықтық талдау, формальды-құқықтық әдіс және Америка Құрама Штаттарында, Еуропалық одақта және ТМД мемлекеттерінде қолданылатын шетелдік реттеу тәсілдерін жинақтау құрайды. Зерттеу нәтижелері Қазақстанда қашықтан жұмысты құқықтық реттеу әлі де фрагментарлық сипатта екенін және жұмыскерлер үшін жеткілікті құқықтық айқындық пен тиісті кепілдіктерді қамтамасыз етпейтінін көрсетеді. Еңбек кодексінің қолданыстағы нормалары қашықтан жұмыстың шарттық негізін, жұмыс уақыты мен тынығу уақытын, жұмыс беруші тарапынан бақылаудың шектерін және тараптар арасындағы коммуникация тәртібін жеткілікті деңгейде реттемейді. Аталған олқылықтар қашықтан жұмыс істейтін жұмыскерлер үшін құқықтық тәуекелдерді арттырып, қашықтан жұмыспен қамтуды тәжірибеде қолдануды қиындатады. Мақалада Қазақстанда қашықтан жұмысты мақсатты түрде

заңнамалық реформалау қажеттігі туралы қорытынды жасалды. Еңбек кодексіне қашықтан жұмыс туралы жеке тарау енгізу жұмыскерлердің қорғалуын күшейтуге, тараптардың құқықтары мен міндеттерінің теңгерімді бөлінуін қамтамасыз етуге және жұмыспен қамтудың икемді нысандарын одан әрі дамытуға құқықтық жағдай жасауға мүмкіндік береді. АҚШ тәжірибесі Қазақстанның құқықтық жүйесіне бейімдеу үшін маңызды үлгі ретінде қарастырылды.

Кілт сөздер: қашықтан жұмыс істеу, қашықтан жұмыспен қамту, еңбек құқығы, Қазақстанның Еңбек кодексі, құқықтық реттеу, еңбек шарты, жұмыскерлердің кепілдіктері.

Е.Н. Нургалиева, А.С. Баймаханова

Каким должно быть законодательное регулирование дистанционной (удаленной) работы в Казахстане?

Цель данной статьи — обосновать необходимость введения в Трудовой кодекс Республики Казахстан отдельной главы о дистанционной работе для установления четких и подлежащих исполнению правовых норм для работников и работодателей. Методологическая основа исследования включает сравнительно-правовой анализ, формально-правовой анализ и обобщение зарубежных нормативно-правовых подходов, применяемых в США, Европейском Союзе и странах СНГ. Исследование показывает, что действующее правовое регулирование дистанционной работы в Казахстане остается фрагментарным и не обеспечивает достаточной правовой определенности или адекватных гарантий для работников. Существующие положения Трудового кодекса недостаточно регулируют договорную основу дистанционной работы, рабочее время и периоды отдыха, пределы контроля со стороны работодателя, возмещение расходов, связанных с работой, и коммуникацию между сторонами. Эти пробелы повышают правовые риски для работников, работающих дистанционно, и осложняют практическое применение дистанционной занятости. В заключение статьи делается вывод о том, что развитие дистанционной работы в Казахстане требует целенаправленной законодательной реформы. Введение в Трудовой кодекс отдельной главы о дистанционной работе усилило бы защиту работников, обеспечило бы сбалансированное распределение прав и обязанностей и создало бы правовые условия для развития гибких форм занятости.

Ключевые слова: удаленная работа, дистанционное трудоустройство, трудовое право, Трудовой кодекс Казахстана, правовое регулирование, трудовой договор, гарантии работника.

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Legal Regulation of Labour Protection under Hazardous and Dangerous Working Conditions in the Republic of Kazakhstan: From the Soviet List-Based Model to a Risk-Oriented Approach

This study examines the evolution of legal regulation of labour protection in hazardous working conditions in the Republic of Kazakhstan, focusing on the transition from the Soviet-era list-based model to elements of a contemporary risk-based approach. The purpose of the research is to identify the structural characteristics of the current regulatory framework and assess the degree to which risk-based mechanisms have been integrated into the system of social guarantees. The methodology combines historical-legal, comparative-legal, formal-legal, and systemic-structural approaches, each applied to a specific research task as described in the Methods section. The study draws on the Labour Code and the Social Code of the Republic of Kazakhstan, ILO Conventions No. 81, No. 155, and No. 187, and the ILO-OSH 2001 Guidelines. Although occupational risk assessment has been formally incorporated into the regulatory framework, entitlement to statutory social guarantees—including reduced working hours, additional leave, and increased remuneration—continues to depend on approved occupational lists. Thus, the risk assessment procedure exists within the regulatory framework but does not determine the provision of these guarantees. This reveals a structural inconsistency: the legislation incorporates two competing regulatory approaches without clearly establishing their hierarchy or determining which should prevail. In practice, employers continue to rely on the approved lists because the Labour Code and Social Code link the relevant guarantees to them. A substantive transition to a risk-based model would therefore require corresponding amendments to the codes themselves.

Keywords: occupational safety and health, labour regulation, hazardous working conditions, occupational risks, social guarantees, Kazakhstan.

Introduction

The regulation of labour under conditions involving exposure to hazardous and harmful production factors constitutes a core domain of labour law, as it is directly linked to the protection of fundamental constitutional principles. These include occupational safety, the protection of human life and health, and the balance between employers' economic interests and employees' social rights. In the Republic of Kazakhstan, this issue is not only of practical relevance but also of systemic importance, driven by the sectoral structure of the national economy, where mining, metallurgy, construction, transport, energy, and other high-risk industries continue to play a significant role.

The relevance of the study is linked to global trends. According to the International Labour Organization, approximately 3 million people die each year worldwide as a result of occupational accidents and diseases, while hundreds of millions of workers are exposed to hazardous working conditions [1]. International academic literature emphasizes that traditional occupational safety regulatory models, primarily based on compensatory mechanisms, fail to ensure sufficient effectiveness in the context of ongoing labour market transformations. As noted by V. Leso, L. Fontana, and I. Iavicoli, contemporary occupational risks are increasingly complex, encompassing not only physical but also psychosocial and organizational factors, thereby necessitating a transition toward integrated preventive regulatory frameworks [2].

National statistical data confirm the persistent nature of occupational injuries and diseases in the Republic of Kazakhstan. In 2024, 2,471 occupational accidents were recorded, representing a 7.5 % decrease compared to 2023 (2,670 cases). At the same time, 529 cases of occupational diseases and 288 victims of group accidents were reported [3].

According to the Ministry of Labour and Social Protection of the Republic of Kazakhstan, the occupational injury rate in 2024 stood at 0.20 cases per 1,000 workers [4]. Accidents remain concentrated in indus-

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trially developed regions—which is roughly where you would expect them, given the sectoral makeup of those economies [4].

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The aggregate figures, though, obscure more than they reveal. In the first nine months of 2025, 934 workers were injured in occupational accidents, 133 of them fatally [5]. A falling total count does not mean the risk is shrinking—it may just mean the numbers are cycling within a range that has stayed high for years. Severe and group accidents persist. The same industries produce casualties repeatedly [3–5].

This points to a system built around dealing with harm once it has happened, not stopping it beforehand. K.B. Baiterekova, B.M. Smatlaev, and Yudzel Ogurlu put it plainly: compensation dominates, prevention does not [6].

How the system got here is partly a historical question. Early legal regulation of hazardous labour was limited in scope—it targeted the most visible abuses rather than risk as such. The Soviet period added structure: safety standards, compensation schemes, state oversight bodies. But the framework was built sector by sector, through subordinate acts, without a unifying legal foundation. Independence did not fix that. The fragmentation stayed, and the current system still reflects it [3].

After independence, Kazakhstan kept most of the Soviet legal framework it had inherited—not out of deliberate choice, but because building from scratch was not realistic. Market reforms, shifting employment relations, and international commitments pushed the system toward change over time, but without a coordinated plan. The result is regulation scattered across labour, social, and administrative law. Workplace safety, compensation for occupational harm, and risk prevention each have their own instruments, and those instruments do not always align.

This matters beyond the technical level. The way the system works today reflects decisions—and non-decisions—made over several decades. Tracing that history is not an academic exercise; it is the only way to understand why the legislation is structured as it is, and where the real obstacles to reform actually sit.

This study focuses on identifying the key stages and patterns in the historical evolution of labour regulation under conditions involving exposure to hazardous and harmful factors in the Republic of Kazakhstan, as well as to determine the influence of historically established approaches on the modern system of occupational safety regulation.

Unlike existing approaches, this study proposes to conceptualize the current regulatory framework as a hybrid model formed through the interaction of the Soviet list-based system and modern risk-based regulatory mechanisms.

Methods and Materials

The materials of the study include normative legal acts of the Republic of Kazakhstan regulating occupational safety—in particular the Constitution, the Labour Code, the Social Code, and subordinate regulatory acts establishing requirements for working conditions, lists of hazardous and harmful factors, and procedures for the recognition of occupational diseases and the provision of compensation guarantees. The analysis also draws on international legal instruments in the field of occupational safety, as well as historical legal acts of the USSR and the Kazakh SSR. Empirical materials include official statistical data from the Bureau of National Statistics and the Ministry of Labour and Social Protection of the Republic of Kazakhstan.

For the purposes of this study, the “risk-oriented approach” to occupational safety regulation is understood as a regulatory model in which the scope of an employer’s legal obligations, as well as the entitlement of a worker to social guarantees, are determined on the basis of individually assessed professional risk at a specific workplace—not through that workplace’s pre-assigned membership in a normatively fixed category (a class, a list, or an enumerated profession). Three related instruments are sometimes conflated with the risk-oriented approach but are conceptually distinct from it. Workplace certification under Order No. 1057 classifies working conditions against hygienic norms but does not itself determine whether a worker is entitled to social guarantees. Working conditions appraisal operates as a formal administrative procedure and does not establish a continuous link between individually measured risk and individualised entitlements. The compensation model addresses harm that has already materialised rather than the conditions that produced it. The risk-oriented approach differs from all three in that it treats prevention as the primary regulatory objective: legal obligations and entitlements attach to identified and measured risk, not to the pre-assigned category of a job title.

The four methods applied in this study are each directed at a specific research task. The historical-legal method is used to reconstruct the principal stages in the formation of the Soviet list-based model and to trace its transformation throughout the period of independence, identifying which elements were retained, which

were formally modified, and which structural patterns persisted in the absence of explicit legislative choice. The comparative-legal method is applied to assess the conformity of the national regulatory framework with international occupational safety standards—specifically ILO Conventions No. 81 (Labour Inspection), No. 155 (Occupational Safety and Health), and No. 187 (Promotional Framework) [7, 8]—and to situate the Kazakhstani hybrid model in a broader comparative context. The formal-legal method is used to identify normative contradictions between specific provisions of the Labour Code and the Social Code, and between statutory and subordinate legislation: in particular, the conflict between Articles 181–182 of the Labour Code, which establish risk assessment as an employer obligation, and Articles 248 and 250 of the Social Code together with the subordinate acts (Government Resolution No. 1930, Order No. 1053), which condition entitlement to social guarantees on occupational list membership rather than on risk assessment outcomes. The systemic-structural method enables the analysis of the contemporary system as an integrated whole comprising constitutional guarantees, labour legislation, social protection mechanisms, and subordinate regulation, and makes it possible to conceptualise that system as a hybrid model in which two structurally different regulatory logics operate in parallel without adequate coordination [9–11].

The combined application of these methods ensures the comprehensive character of the study and makes it possible not only to describe the existing regulatory framework but also to identify its systemic shortcomings as shaped by historical evolution and contemporary socio-economic conditions.

Results

The Soviet Regulatory Framework for Labour under Hazardous and Harmful Conditions

The normative foundation of labour regulation under conditions involving exposure to hazardous and harmful production factors in the territory of present-day Kazakhstan was established within the unified legal system of the USSR. The primary instrument at the Union level was the Fundamentals of Labour Legislation of the USSR and the Union Republics of 15 July 1970, which introduced uniform principles of labour regulation and imposed on enterprises an obligation to ensure safe and healthy working conditions [12]. These provisions were supplemented by the Fundamentals of Health Legislation of the USSR and the Union Republics of 1969, which guaranteed citizens the right to health protection, including protection from occupational hazards [13]. The constitutional dimension of this framework was established by the 1977 Constitution of the USSR, which recognised the right to health protection as a socio-economic guarantee [14].

At the sub-constitutional level, regulation was carried out through a system of subordinate acts: sector-specific occupational safety and industrial hygiene rules, sanitary norms and standards establishing maximum permissible exposure levels, procedures for investigating occupational accidents, and official lists of industries and occupations with hazardous working conditions that served as the basis for granting compensation and benefits. State supervision was exercised by Gosgortekhnadzor of the USSR, which oversaw compliance in high-risk industries. In parallel, trade unions were vested with authority to monitor working conditions and participate in the investigation of occupational accidents [15].

What matters most about this model, in light of the argument developed in this article, is how it allocated entitlements. The legal basis for benefits was always categorical membership in a list—not any measurement of individual exposure or risk at a specific workplace. This was not a pragmatic shortcut adopted in the absence of better tools; it was the organising principle of the Soviet regulatory architecture. The following sections show that this principle did not disappear with the Soviet state. It was carried forward into the legislation of independent Kazakhstan and continues to determine how social guarantees are assigned today.

Implementation of the Soviet Model in the Kazakh SSR

At the level of the Kazakh SSR, Union-level principles were given concrete normative content through the Labour Code of the Kazakh SSR of 1972 [16]. Unlike the framework character of the Union Fundamentals, the Code established direct legal obligations for enterprise administrations, covering compliance with occupational safety and industrial hygiene rules, prevention of exposure to hazardous factors, provision of personal protective equipment, and organisation of training in safe work practices.

The substantive content of these requirements was determined through subordinate regulation: sector-specific and model occupational safety rules, sanitary norms and standards (SanPiN), and regulations on the investigation and recording of occupational accidents [17]. Central to the system were lists of industries, professions, and positions with hazardous and harmful working conditions, which provided workers with additional guarantees: reduced working hours, supplementary leave, and early retirement benefits [18]. These lists differentiated the legal treatment of workers.

Oversight comprised both state and public components. Article 243 of the Labour Code of the Kazakh SSR vested trade unions with the authority to inspect working conditions, participate in accident investiga-

tions, and require employers to remedy violations [16]. The sectoral structure of the Kazakh SSR economy—with its high concentration of mining, metallurgy, oil and gas, and energy industries—made these regulatory mechanisms practically relevant across a large share of the workforce [19].

In the most hazardous sectors of the Kazakh SSR economy, the Soviet model was applied with particular consistency. The normative apparatus was detailed and formally complete. Its underlying logic, however, was compensatory: the list produced the benefit, and whether a worker's actual exposure to risk had decreased was irrelevant to whether the benefit was retained. When Kazakhstan became an independent state, this architecture was not dismantled or redesigned. It passed into the new legal order in largely unchanged form.

The Transitional Period of the 1990s

Following the dissolution of the USSR and the declaration of independence of the Republic of Kazakhstan, labour legislation entered a transitional phase governed by the principle of legal continuity. The Labour Code of the Kazakh SSR of 1972 [16], the Fundamentals of Labour Legislation of 1970 [12], and the full body of subordinate acts regulating occupational safety—including sanitary norms, occupational safety rules, accident investigation regulations, and lists of hazardous occupations—remained formally in force [17, 18].

In practice, the functioning of this system changed significantly. The transition to a market economy was accompanied by the privatisation of enterprises and the dismantling of centralised control over production processes. Regulatory bodies lost a significant part of their institutional capacity, and enforcement weakened. Approximately 3,000 occupational accidents were recorded annually during this period, of which around 300 were fatal [20]. Compliance with sanitary and technical standards depended on the financial condition of individual enterprises, and the provision of legally prescribed guarantees was not uniform [21].

The transitional decade left a specific institutional legacy. Enforcement capacity declined sharply, oversight became fragmented, and the practical application of legal guarantees grew uneven across enterprises. Yet the list-based allocation of occupational safety obligations and social guarantees survived this disruption intact—not because it was consciously preserved, but because no alternative mechanism was ever developed. When Kazakhstan began constructing a new regulatory framework after 2000, the list remained the default instrument for determining entitlements, as it had been throughout the enforcement vacuum of the 1990s. The absence of reform during a period of institutional collapse effectively settled the question of which model would carry forward.

The Contemporary Regulatory Framework of the Republic of Kazakhstan

The current system of labour regulation under conditions involving exposure to hazardous and harmful production factors is structured as a multi-level framework. Its constitutional foundation rests on Article 24 of the Constitution of the Republic of Kazakhstan, which guarantees the right to working conditions that meet safety and hygiene requirements, and Article 29, which secures the right to health protection [9].

At the sectoral level, regulation is carried out through the Labour Code of the Republic of Kazakhstan of 23 November 2015 No. 414-V [10]. Article 4 establishes the priority of workers' life and health as a fundamental principle of labour legislation. Article 181 sets out workers' rights: the right to a safe workplace, access to information on working conditions and occupational risks, training in safe work practices, and the right to refuse work in the event of a threat to life or health. Article 182 establishes employers' obligations, including risk assessment, implementation of preventive measures, provision of protective equipment, organisation of training, and mandatory medical examinations.

The social protection component is regulated by the Social Code of the Republic of Kazakhstan of 20 April 2023 No. 224-VII [11], which defines hazardous working conditions as a legal basis for entitlement to specific social guarantees, including mandatory occupational pension contributions. Eligibility for these contributions is determined by reference to lists of industries, professions, and positions approved by authorised bodies.

At the subordinate level, regulation is implemented through a differentiated system of instruments: List No. 1 (especially hazardous and severe working conditions) and List No. 2 (hazardous and severe working conditions) approved by the Government of the Republic of Kazakhstan [22]; rules for workplace certification in terms of working conditions [23]; lists defining entitlement to reduced working hours, additional leave, and increased remuneration [24]; and regulations governing the provision of protective equipment, compensatory nutrition, and special clothing [25, 26]. The system of mandatory occupational pension contributions is included among the elements of social protection [27]. Supervision is carried out by the state labour inspectorate within the constraints established by the Entrepreneurial Code [28].

Discussion

The Soviet Model: Characteristics and Structural Limitations

The Soviet model of labour regulation under hazardous and harmful conditions can be characterised as a centralised techno-normative system resting on three structural features: imperative regulation, a list-based approach to the classification of working conditions, and administrative control mechanisms. The formal allocation of responsibility to enterprise administrations was, in conditions of state ownership, functionally equivalent to direct state management—the employer and the state were identical entities. This arrangement precluded the emergence of genuine employer accountability and reinforced the formalisation of compliance: producing evidence of adherence to occupational safety requirements served as a functional substitute for substantive compliance itself.

The absence of independent oversight—trade unions operating within the state governance system rather than as autonomous actors—further limited the effectiveness of public control [15]. The prioritisation of plan fulfilment over production conditions constituted a structural constraint on the practical application of safety norms [29]. Despite the extensive normative detail of the Soviet system, a persistent gap between formally prescribed rules and their actual implementation was an inherent feature of the model, not an incidental failure of enforcement.

The Transitional Period: Institutional Disruption without Normative Replacement

The 1990s represent a particularly instructive period from a legal-theoretical perspective. The formal preservation of Soviet legislation was not accompanied by the maintenance of the institutional infrastructure through which that legislation had operated. The privatisation of enterprises redefined the legal status of the employer without providing the regulatory and oversight mechanisms necessary to ensure compliance in a market context. The transfer of responsibility from the state to private employers occurred in conditions of institutional vacuum: enforcement bodies had lost capacity, and new mechanisms of legal compulsion remained underdeveloped [21].

The consequence was not simply a decline in compliance but a qualitative transformation of the regulatory model's character. What had been a system of state-administered safety obligations became, in practice, a residual framework whose application depended on the economic condition and discretion of individual enterprises. This period established the structural conditions—fragmented enforcement, inconsistent application of guarantees, and a growing gap between formal entitlements and actual working conditions—that continue to characterise the contemporary system.

The Contemporary Model: Coexistence of Risk-Based and List-Based Approaches

The analysis of the current legal framework reveals a hybrid regulatory model in which two structurally distinct approaches operate in parallel without adequate integration. Labour legislation—in particular the Labour Code of 2015—establishes a risk-based regulatory logic oriented toward prevention: the employer is obliged to assess risks, implement mitigation measures, and ensure workers' right to refuse unsafe work [10]. This approach is consistent with the trajectory of occupational safety regulation identified in comparative research, which emphasises the transition from reactive compensation to proactive risk management [30].

Social and subordinate regulation, by contrast, continues to operate on the list-based model inherited from the Soviet period. Entitlement to social guarantees—including mandatory occupational pension contributions—is determined not by the actual level of risk at a specific workplace, but by reference to predefined lists of industries, professions, and positions [11, 22]. This produces a structural asymmetry: the legal obligation to manage risk is assigned to the employer by labour law, while the legal entitlement to compensation for risk exposure is assigned by social law through categorical classification. These two logics are not coordinated, which reduces the overall effectiveness of the regulatory mechanism.

The normative conflict between the two codes can be traced to specific provisions. Under Articles 181 and 182 of the Labour Code, employers are obliged to conduct occupational risk assessment and to implement preventive measures proportionate to the identified risk level, applying the methodology established by Order No. 363 of the Ministry of Labour and Social Protection. However, Articles 248(2) and 250(1) of the Social Code, read together with Government Resolution No. 1930 and Order No. 1053 of the Ministry of Health and Social Development, make the worker's entitlement to reduced working hours, additional paid leave, increased remuneration, and mandatory occupational pension contributions contingent on the worker's profession appearing in an approved list—without reference to what any risk assessment has found.

The mechanism of the conflict is the following: an employer who conducts a risk assessment and identifies an elevated level of professional risk at a given workplace acquires no legal obligation—and the worker acquires no legal entitlement—to adjust the social guarantee package on the basis of that result. Equally, a

worker in a listed profession continues to receive the guaranteed benefits regardless of whether the actual risk level at the specific workplace has been reduced through engineering or organisational controls. The result is a system in which the risk assessment and the entitlement structure operate in parallel without interaction: the Labour Code creates the assessment obligation, but the Social Code and subordinate acts determine outcomes by reference to occupational lists that are updated independently of assessment results.

International experience demonstrates that a transition from fixed classification lists to systems of individual workplace risk assessment allows for more accurate and responsive regulation of actual working conditions. As noted by A.R. Yensebayeva, A.F. Yagmussova, and K.B. Baiterekova, effective contemporary models integrate risk assessment with flexible mechanisms for the provision of social guarantees [31]. The current Kazakhstani framework has not achieved this integration.

Structural Constraints on the Effectiveness of Contemporary Regulation

Several systemic factors constrain the effectiveness of the current regulatory framework. First, normative fragmentation—the dispersal of key regulatory parameters across multiple subordinate acts without consolidation into a unified instrument—reduces legal certainty and complicates compliance monitoring [6]. Second, the preventive capacity of state supervision is structurally limited by the provisions of the Entrepreneurial Code, which regulate inspection procedures in ways that prioritise enterprise interests over preventive oversight [28]. Third, the absence of a unified system for recording occupational injuries, combined with discrepancies between statistical sources, impedes objective risk assessment and the development of evidence-based preventive policy [6].

A further challenge concerns the emergence of platform and other non-standard forms of employment. The recognition of platform employment in the Social Code of 2023 [11] marks an acknowledgment of this development at the legislative level, but does not address the regulatory gaps it generates. Workers engaged in platform employment face elevated occupational risks—including intensification of work, psychosocial stress, and instability of employment relations—for which traditional occupational safety mechanisms, designed for stable employer-employee relationships, provide insufficient protection. As D.A. Myktybayeva and R.Sh. Davletgildeev observe, current legislation lacks a systematic definition of non-standard employment and does not adequately capture emerging forms of labour, resulting in a gap between legal regulation and practice [32]. Bibliometric analyses of international research confirm that workers in the informal and platform sectors are disproportionately exposed to elevated occupational risks in the absence of systematic protection mechanisms [33].

Taken together, these findings indicate that the contemporary regulatory model represents an incomplete transformation: it has formally adopted a risk-based logic at the level of labour legislation while retaining list-based classification structures in social regulation, without resolving the tension between the two. The persistence of compensation-oriented elements is thus confirmed in the Kazakhstani context—but the present analysis further demonstrates that this persistence is not merely residual but is structurally reproduced through the parallel architecture of labour and social legislation.

Conclusions

Labour regulation under hazardous working conditions in Kazakhstan has developed through several identifiable stages, each of which has shaped the level of protection available to workers in the present.

The Soviet system created a centralised model based on detailed subordinate regulation and a list-based approach to the allocation of compensation entitlements. Its effectiveness depended on administrative control rather than on the protection of individual rights, and its central structural choice—using occupational list membership as the trigger for legal entitlements—has proved remarkably durable.

During the transitional period of the 1990s, the formal legal framework remained in place while enforcement weakened substantially. This period did not generate an alternative allocation logic; it confirmed that the list-based approach would persist by default in the absence of a deliberate policy choice to replace it.

Today, occupational safety regulation in Kazakhstan rests on a combination of labour, social, and subordinate legislation. Risk-based elements exist in the legislation. The Labour Code's risk assessment obligation is genuine. Whether that obligation produces risk-proportionate outcomes is a different question—and the answer, as this analysis shows, is that it does not, because the Social Code and the subordinate acts maintain a list-based entitlement structure that operates independently of risk assessment results.

On the basis of this analysis, five directions for legislative reform are identified.

The first concerns the basis for social guarantees. Amendment of Articles 69, 89, 105, 182, and 183 of the Labour Code is required to make the level of individually assessed occupational risk—determined under Order No. 363—the legal trigger for reduced working hours, supplementary leave, pay supplements, and re-

lated guarantees. Order No. 1053 should be repealed, and Order No. 363 should be extended to include a methodology for translating risk assessment results into concrete guarantee parameters.

The second direction addresses the conflict between the Labour Code and the Social Code. Articles 248(2) and 250(1) of the Social Code should be amended to condition entitlement to mandatory occupational pension contributions on assessed risk levels rather than on list membership. The corresponding amendment to Government Resolution No. 520 of 30 June 2023 would be required to give effect to this change.

The third direction concerns regulatory consolidation. Orders No. 1053, No. 1054, No. 1056, and No. 1057 should be merged into a single normative instrument establishing unified rules for social guarantees at hazardous workplaces, grounded in individual risk assessment rather than categorical occupational classification.

The fourth direction relates to state supervision. The provisions of the Entrepreneurial Code governing the grounds and frequency of unscheduled inspections should be revised to extend the preventive reach of labour inspection in line with ILO Convention No. 81, with corresponding amendments to the Labour Code's chapter on occupational safety oversight.

The fifth direction covers emerging employment forms and the occupational disease list. The list of occupational diseases should be reviewed against ILO Recommendation No. 194 to capture contemporary production factors. Platform workers should be brought within the scope of minimum occupational safety standards through targeted amendments to the Social Code's chapter on platform employment.

These findings are consistent with positions advanced in international scholarly literature. N. Aburumman et al. emphasise the need for transition to integrated models of occupational risk management, and V. Leso et al. call for adaptation of legal regulation to emerging forms of employment [2, 30]. The Kazakhstani case confirms both the general diagnosis and the specific difficulty: hybrid models are not self-correcting. The coexistence of two regulatory logics without a resolution rule does not gradually resolve itself in favour of the more effective approach; it tends instead to reproduce itself through the path of least institutional resistance, which is—as the history reviewed here shows—the list.

The scientific novelty of the study lies in the substantiation of the concept of a hybrid regulatory model formed through the combination of a Soviet list-based system and contemporary risk-based regulatory approaches applied to the Kazakhstani context. Further development of the regulatory framework should be aimed at establishing a coherent, integrated, and effective model ensuring genuine protection of workers' life and health.

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Қазақстан Республикасында зиянды және қауіпті еңбек жағдайларында еңбекті қорғауды құқықтық реттеу: кеңестік тізімдік модельден тәуекел-бағдарлы тәсілге дейін

Мақалада Қазақстан Республикасында зиянды және қауіпті өндірістік факторлардың әсеріне ұшырайтын жағдайларда еңбекті қорғауды құқықтық реттеудің эволюциясы зерттелді; кеңестік тізімдік модельден қазіргі заманғы тәуекел-бағдарлы тәсілдің элементтеріне өтуге ерекше назар аударылған. Зерттеудің мақсаты — қолданыстағы нормативтік-құқықтық базаның құрылымдық сипаттамаларын анықтау және тәуекел-бағдарлы механизмдердің әлеуметтік кепілдіктер жүйесіне интеграциялану дәрежесін бағалау. Зерттеудің методологиялық негізін тарихи-құқықтық, салыстырмалы-құқықтық, формальды-заңдық және жүйелік-құрылымдық әдістердің жиынтығы құрайды; олардың әрқайсысы «Әдістер» бөлімінде сипатталған нақты зерттеу міндетіне қолданылады. Эмпирикалық базасын Қазақстан Республикасының Еңбек кодексі мен Әлеуметтік кодексі, ХЕҰ-ның № 81, № 155 және № 187 конвенциялары, сондай-ақ ХЕҰ-ның еңбекті қорғауды басқару жүйесі бойынша нұсқаулығы (ILO-OSH 2001) құрайды. Кәсіптік тәуекелдерді бағалау ресми түрде енгізілді, алайда әлеуметтік кепілдіктерге құқық, яғни жұмыс уақытының қысқартылған ұзақтығы, қосымша демалыс, еңбекақының жоғарылауы әлі де бекітілген кәсіптер мен өндірістердің тізбелері арқылы анықталады. Бағалау тетігі бар, бірақ ол іс жүзінде нәтижеге әсер етпейді. Анықталған алшақтық жүйелік сипатқа ие. Заңнама бірін-бірі жокқа шығаратын екі реттеуші тәсілді қамтиды, бірақ олардың арасындағы басымдықты белгілейтін норма жоқ. Жұмыс берушілер тізімдерді басшылыққа алады, өйткені қолданыстағы кодекстер дәл осыны талап етеді. Қалыптасқан жағдайды өзгерту кодификацияланған актілерге тиісті түзетулер енгізілмейінше мүмкін емес.

Кілт сөздер: еңбекті қорғау, еңбек құқықтық реттеу, зиянды еңбек жағдайлары, кәсіптік тәуекелдер, әлеуметтік кепілдіктер, Қазақстан.

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Правовое регулирование охраны труда во вредных и опасных условиях в Республике Казахстан: от советской списочной модели к риск-ориентированному подходу

В статье исследуется эволюция правового регулирования охраны труда в условиях воздействия вредных и опасных производственных факторов в Республике Казахстан, с акцентом на переходе от советской списочной модели к элементам современного риск-ориентированного подхода. Цель исследования — выявить структурные характеристики действующей нормативно-правовой базы и оценить степень интеграции риск-ориентированных механизмов в систему социальных гарантий. Методологическую основу исследования составляет совокупность историко-правового, сравнительно-правового, формально-юридического и системно-структурного методов, каждый из которых применяется к конкретной исследовательской задаче, описанной в разделе «Методы». Эмпирическую базу составляют Трудовой кодекс и Социальный кодекс Республики Казахстан, Конвенции МОТ № 81, № 155 и № 187, а также Руководство МОТ по системе управления охраной труда (ILO-OSH 2001). Оценка профессиональных рисков введена формально, однако право на социальные гарантии — сокращённую продолжительность рабочего времени, дополнительный отпуск, повышенную оплату труда — по-прежнему определяется через утверждённые перечни профессий и производств. Механизм оценки существует, однако не определяет практических результатов. Выявленный разрыв носит системный характер. Законодательство содержит два конкурирующих регуляторных подхода без нормы, устанавливающей их приоритет. Работодатели руководствуются перечнями, поскольку именно на них указывают действующие кодексы. Изменение сложившейся ситуации невозможно без внесения соответствующих поправок в кодифицированные акты.

Ключевые слова: охрана труда, правовое регулирование труда, вредные условия труда, профессиональные риски, социальные гарантии, Казахстан.

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ҚЫЛМЫСТЫҚ ҚҰҚЫҚ, КРИМИНОЛОГИЯ, ҚЫЛМЫСТЫҚ ПРОЦЕСТІК ҚҰҚЫҒЫНЫҢ ӨЗЕКТІ МӘСЕЛЕЛЕРІ АКТУАЛЬНЫЕ ПРОБЛЕМЫ УГОЛОВНОГО ПРАВА, КРИМИНОЛОГИИ, УГОЛОВНОГО ПРОЦЕССУАЛЬНОГО ПРАВА CURRENT ISSUES IN CRIMINAL LAW, CRIMINOLOGY, AND CRIMINAL PROCEDURE LAW

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The use of artificial intelligence technologies in interrogations within the criminal justice system: current status and prospects

This study aims to examine ways of improving the efficiency and accessibility of criminal proceedings through the application of artificial intelligence (AI) technologies in law enforcement. The authors examine the application of new technologies in one of the most common investigative actions—interrogation—as this mechanism enhances the accuracy and efficiency of criminal investigations and increases transparency in the conduct of investigative actions. This study employed cybernetic and comparative legal methods, which enabled an analysis of how artificial intelligence functions during interrogations, as well as an examination of international experience in the application of various artificial intelligence technologies. The authors have investigated the potential for applying machine learning algorithms to optimise interrogation procedures, including automatic transcription, analysis of participants’ non-verbal behaviour, and the identification of inconsistencies in testimony. The authors have concluded that by using artificial intelligence technologies, law enforcement officers can obtain more accurate evidence and expedite criminal investigation procedures.

Keywords: criminal procedure, evidence, interrogation, artificial intelligence, digitalisation, interrogation protocol, transcription, psychophysical condition, machine learning.

Introduction

Against the backdrop of rapid digital transformation, the introduction of artificial intelligence (AI) technologies into the criminal justice system is of particular relevance. The application of new technologies helps to improve the efficiency of detecting and investigating criminal offences, thereby ensuring quality and speed, as well as respect for the rights and legitimate interests of all participants in the criminal process. The application of artificial intelligence in the legal environment is revolutionising most areas of legal practice, improving efficiency, accuracy and decision-making [1].

In the Address by the President of the Republic of Kazakhstan, Kassym-Jomart Tokayev, entitled “Kazakhstan in the Age of Artificial Intelligence: Current Challenges and Their Solutions through Digital Transformation”, a strategic course towards innovation and the application of artificial intelligence technologies

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was outlined. In it, the Head of State noted that “The widespread implementation of artificial intelligence and total digitalisation, which can exponentially enhance the country’s potential in all spheres, must become a key component of our strategic course” [2].

The focus on developing an effective digital infrastructure for public administration involves the introduction of mechanisms to automate administrative processes, the optimisation and streamlining of bureaucratic procedures, and a significant improvement in the speed and soundness of decision-making. Artificial intelligence technologies, therefore, take on particular significance in criminal proceedings and can be regarded as a tool for enhancing the efficiency of investigations, optimising procedural activities, and strengthening oversight of compliance with the law.

The scientific community is currently engaged in lively debate regarding the use of artificial intelligence technologies by law enforcement agencies; however, the question of the limits and admissibility of such technologies—for instance, in the conduct of investigative activities—remains contentious. On the one hand, the positive aspects of its use in reducing workload and minimising the influence of the human factor are being discussed; on the other hand, researchers fear a breach of procedural safeguards and the rights of those involved in legal proceedings.

When considering this issue, particular attention must be paid to the conduct of interrogations, which constitute one of the most important investigative measures. The results of an interrogation often contain important evidential information, and this investigative measure is carried out during the investigation of any criminal case. The procedure for conducting an interrogation is set out in detail in Chapter 26 of the Criminal Procedure Code of the Republic of Kazakhstan [3].

It is worth noting that the traditional model of conducting an interrogation may have a number of shortcomings, such as subjective assessment of the interviewee’s behaviour, the influence of the human factor, and the risk of incomplete recording of information. However, to improve the effectiveness and reliability of the data obtained, it is recommended that modern information technologies be actively utilised during interrogations [4]. In this regard, there is a pressing need to apply artificial intelligence technologies to enhance the objectivity, accuracy and completeness of the information obtained during interrogations.

Moreover, at present, the interrogation procedure within the criminal police is predominantly manual, labour-intensive and demanding in terms of human effort, both for analysis and for documentation. In this context, it is crucial to equip the security and justice sectors, particularly criminal investigations, with tools capable of assisting investigators in analysing the content of interrogations, as well as ensuring the full digitalisation of the relevant administrative processes.

The scientific literature increasingly discusses the potential application of AI for analysing the psychophysical states of interrogation participants, such as speech, emotions and behaviour, as well as in the automation of the recording process. The introduction of such technologies will improve the accuracy of recording statements, reveal hidden behavioural inconsistencies, and reduce the influence of the investigator’s subjective perception when assessing the information obtained. At the same time, such technologies are used primarily as an auxiliary tool, requiring regulatory framework and procedural safeguards for their use to prevent the infringement of the rights of participants in criminal proceedings.

It should be noted that research conducted in this field has mainly focused on the use of AI technologies in criminal proceedings in general, and that there has been insufficient research into the specific application of AI in interrogations to assess the psychological and physiological states of the person being questioned, as well as into automated record-keeping within the context of investigative practice.

The aim of this article is to analyse the use of artificial intelligence technologies during interrogations, to examine the specific features of their application in investigative work, and to develop proposals for their implementation in the criminal justice system of the Republic of Kazakhstan. To achieve this aim, the following tasks are proposed: to examine the legal nature of interrogation; to study the potential of AI technologies that can be applied in interrogation; to analyse international experience in the use of AI technologies during interrogation; and to formulate proposals for the application of AI technologies during interrogation within the criminal justice system of the Republic of Kazakhstan.

The scientific novelty of the research lies in a comprehensive examination of the possibilities for applying artificial intelligence technologies during interrogations in the criminal justice system of the Republic of Kazakhstan. The article examines the specific features of using speech and behaviour analysis technologies and automated recording within the framework of investigative activities, and identifies promising areas for their implementation in the practice of pre-trial investigation bodies. The practical significance of this work

lies in the potential to utilise the findings to improve the criminal procedure legislation of the Republic of Kazakhstan governing the use of digital technologies in investigative activities.

The authors' position is essentially that the use of AI technologies during interrogations represents a promising avenue for the development of criminal proceedings; however, this tool should be used only as an auxiliary one, whilst preserving the investigator's key role and without infringing upon the procedural safeguards of those being questioned.

Methods and Materials

The methodological framework of the study was developed using a combination of general and specialised scientific methods to understand the socio-legal reality, including cybernetic and comparative legal approaches. The application of the cybernetic method has led to the conclusion that new AI technologies can effectively improve criminal proceedings, in particular by enhancing the quality of interrogations and obtaining accurate, reliable data. The application of the comparative legal method enabled an analysis of international experience in the use of artificial intelligence technologies and the development of proposals for their adaptation to the criminal procedure system of the Republic of Kazakhstan.

The application of these methods enabled a comprehensive and holistic analysis of the subject matter under investigation, identified key patterns and trends in the use of artificial intelligence technologies during interrogations, and formulated scientifically grounded conclusions and proposals for the implementation of such technologies in Kazakhstan's criminal justice system. The theoretical framework is based on the works of domestic and foreign scholars who have contributed to research into the application of artificial intelligence in law enforcement activities.

Results

An analysis of this study has shown that the use of information and digital technologies in the conduct of interrogations enables a range of tasks to be carried out: automatic recording of investigative proceedings in accordance with legal requirements; analysis of the speech and behavioural characteristics of the person being questioned; identification of contradictions in testimony; rapid processing of large volumes of information; increased objectivity in data recording; and the provision of intellectual support to the investigator during the conduct of investigative proceedings.

An examination of the legal nature of interrogation has made it possible to identify its key features as a procedural and psychological process requiring strict observance of the rights of those involved. It is worth noting that interrogation is one of the most common investigative actions, as it yields important information that contributes to the detection and investigation of crimes. Conducting a transparent interrogation is of particular importance, both in terms of ensuring the admissibility and reliability of evidence and in terms of safeguarding the rights and legitimate interests of persons involved in criminal proceedings. The use of artificial intelligence technologies in investigative actions allows for their recording and the establishment of factual circumstances relevant to the case transparently and openly.

In this regard, artificial intelligence technologies are capable of achieving these objectives by providing a more accurate and objective analysis of the interviewee's verbal and non-verbal reactions, automating the recording and processing of the information obtained, and identifying hidden patterns and contradictions in testimony, which collectively enhance the effectiveness and quality of the interrogation. However, it is worth noting that in most countries, artificial intelligence is viewed not as an independent mechanism, but as an auxiliary tool that complements the work of the investigator.

The authors concluded that the use of artificial intelligence technologies enhances transparency in the conduct of interrogations and simplifies the work of investigators; however, it does not imply the complete replacement of the human role in criminal proceedings, as the essence of applying such technologies lies in improving the execution of specific processes and enhancing the efficiency of information analysis. On this basis, it can be argued that artificial intelligence technologies are of an auxiliary nature and are applicable only if the principles of criminal proceedings are strictly observed.

Discussion

Artificial intelligence technologies are currently developing at an ever-increasing pace, expanding their applications across all sectors. Criminal proceedings are keeping pace with these developments. Artificial intelligence has already established itself as a tool capable of fundamentally transforming the organisation of

procedural and analytical activities within law enforcement agencies, as its use allows for a significant reduction in routine paperwork and accelerates the collection, verification and assessment of evidence.

In the academic literature, issues relating to the introduction of digital technologies and elements of artificial intelligence into criminal proceedings are primarily considered in the context of the digitalisation of law enforcement activities. Thus, E.P. Shulgin noted that the digital transformation of law enforcement activities is an inevitable factor affecting all public institutions without exception [5]. According to V.B. Batoev, the processes of introducing artificial intelligence technologies, including neural network solutions, into the activities of law enforcement agencies are objective and inevitable in nature [6; 87]. In turn, D.A. Amangeldiev emphasised that the use of artificial intelligence in the analysis of criminological data enhances the soundness of management decisions, contributes to a more efficient allocation of resources and reduces crime levels [7].

Shulgin E.P. and Kussainova L.K. rightly noted in their work that AI is capable of automating routine analytical operations, speeding up the processing of case materials, reducing the workload on judges, and even increasing the objectivity of decisions made through comprehensive data analysis [8; 127]. According to D.V. Pshichenko, the use of artificial intelligence in the work of law enforcement agencies, particularly in the fight against crime, is both practically necessary and highly relevant [9].

We would like to focus on the application of AI during investigative activities carried out by law enforcement agencies, specifically at the interrogation stage, to enhance the effectiveness of investigations, minimise subjective factors, and ensuring more accurate recording of evidential information.

Interrogation is the most common investigative action, as it is impossible to investigate a criminal case without conducting interrogations, given that the statements of those involved in criminal proceedings constitute the primary source of evidence. The Criminal Procedure Code of the Republic of Kazakhstan (CPC RK) stipulates that testimony from the suspect, victim and witness constitutes a form of evidence. Chapter 26 of the CPC RK sets out the procedure and rules for conducting an interrogation [3].

To understand the essence of interrogation, we will refer to researchers' opinions on its legal nature. S.D. Ospanov, in his analysis of interrogation, writes that it "consists of the authority conducting the criminal proceedings obtaining and recording, in the form prescribed by law, statements from individuals regarding circumstances relevant to the case" [10; 96]. Thus, R.S. Belkin understands interrogation as "a procedural (investigative and judicial) action consisting in the obtaining of testimony (information) regarding an event that has become the subject of criminal proceedings" [11; 36]. A.G. Kan defines interrogation at the preliminary investigation stage as "an investigative action regulated by criminal procedure law and constituting the process of the criminal prosecution authority directly obtaining and recording from the person being interrogated full and objective testimony regarding circumstances known to them that are relevant to the criminal case and subject to proof" [12; 68].

It should be noted that interrogation is a complex psychological and communicative investigative action that determines both the psychophysiological state of the person being questioned and behavioural indicators, such as nervousness or, conversely, complete calmness, gestures, facial expressions, and tone of voice when answering certain questions, etc. This makes it possible to identify hidden emotional reactions, assess the degree of sincerity of the information provided, record possible contradictions in testimony, and form a more objective view of the reliability of the information obtained.

An analysis of scientific approaches to the study of human psycho-emotional and behavioural reactions reveals a correlation between an individual's internal state and their external non-verbal manifestations, which are significant for assessing the reliability of information provided during an interrogation. In his work "The State of Neuropsychological Stress", T.A. Nemchin concluded that the symptomatology of neuropsychological stress is determined by both the baseline level and the characteristics of the activation and functioning of the perceptual-cognitive, psychomotor and somatic subsystems [13; 130]. An analysis of the arguments presented in the book "The Language of the Subconscious" leads to the conclusion that a person's internal psycho-emotional state manifests itself through non-verbal reactions—gestures, facial expressions, postures and features of motor behaviour—which can serve as external indicators of the emotions being experienced, the level of tension, cognitive load and the degree of sincerity of the information being communicated [14]. In another study, O. Vrij notes that a person telling a lie may experience various emotions or face logical difficulties, which are expressed in facial expressions and gestures—signs of emotions and the complexity of the content [15; 18]. A review of this literature has led us to conclude that the provision of false information during an interrogation is objectively linked to increased self-control and emotional tension, which may manifest itself in changes in the interrogated person's psychomotor and autonomic reactions.

The relevance of using AI technologies in the criminal prosecution process stems from the need to analyse complex and diverse information, including not only text but also audiovisual data. The effectiveness of applying artificial intelligence technologies during interrogation is based on a combination of natural language processing (NLP) and computer vision technologies. The use of these technologies allows for the analysis of the interviewee's speech, facial expressions and behaviour based on objective digital data, reducing the dependence of information assessment on the investigator's subjective perception.

For example, modern speech recognition models convert audio information into text, including the recognition of context and intonation with punctuation marks, i.e. transcription. It is worth noting that the drafting of the interrogation report is the most labour-intensive final stage of this investigative action [16]. In this regard, the use of transcription reduces the hours spent on transcription to minutes of automated processing. Transcription, as a modern method of converting spoken language into text, will contribute to the completeness and objectivity of the recorded statements, speed up the process of drawing up the record, and enable more effective use of interrogation tactics. However, in our opinion, the investigator should inform the person being questioned of the use of transcription for the purpose of drawing up the interrogation record and explain its nature in accordance with the provisions of the Criminal Procedure Code of the Republic of Kazakhstan.

AI technologies can also perform semantic analysis, identifying hidden contradictions with previous statements, or by comparing the information obtained with a vast array of data relating to the criminal case and detecting discrepancies in the information. Furthermore, the technologies under investigation make it possible to identify verbal cues in the person being questioned, which are defined by specific markers (tone, rate of speech). These indicators may vary depending on the circumstances of the interview, for example, in the case of threats, manipulation or pressure, as speech contains prosodic features and spectral characteristics that serve as indicators of truthful and false information. It is also worth noting that when collecting verbal data, it is necessary to suppress external noise, which may be caused by microphone quality or environmental interference. To this end, median filtering is applied, which removes such noise and allows for the acquisition of high-quality voice data from the interrogated person.

However, this system may face a number of challenges, such as linguistic adaptation and ethno-psycholinguistic characteristics. This manifests itself in the use of bilingualism, for example, in Kazakh-Russian speech, where switching from one language to another may be a sign of stress or an attempt to give false testimony. It is also worth considering the peculiarities of national speech etiquette, where a manner of speaking may simply be a cultural norm rather than an attempt to evade a question.

It is worth noting the computer vision system, which analyses visual information obtained from video footage. In this case, we can identify non-verbal cues, including facial expression recognition, eye-tracking and gesture analysis. For example, avoiding eye contact or, conversely, an excessively intense gaze in an attempt to control the investigator's reaction are recognised by the algorithm as deviations from the subject's usual behaviour. Also, indicative is the use of illustrative gestures (describing an incident) and manipulative gestures (touching the face, adjusting clothing), which often correlate with the unreliability of testimony.

Extensive experimental data show that internal emotional and psychophysiological states are manifested through facial expressions, micro-expressions, intonation, speech rate, sentence structure, the frequency of pauses, and the incoherence of responses. Correlating verbal signs of uncertainty with visual markers of stress allows for a comprehensive assessment of the credibility of testimony. This knowledge forms the basis for identifying indicators that can be detected using neural networks and machine learning algorithms.

The application of machine learning to audio and video recordings of interrogations is of interest not only as a technical tool for the digitalisation of criminal proceedings, but also as a potential mechanism for procedural protection of the individual. In this context, the algorithm's task must be formulated with the utmost precision: not as "lie detection" or "reading the internal state" of the person being questioned, but as the identification and recording of risk indicators of procedurally significant violations during the interrogation—signs of pressure, coercion, undue influence, disregard for the right to defence, the right to an interpreter, the right not to testify against oneself and not to be compelled to confess.

It follows that machine learning may be useful primarily for recording structural signs of pressure, rather than for psychological profiling of an individual. The system could, for example, automatically flag instances of repeated interruptions, aggressive dominance by one participant, a series of leading questions, the absence of pauses for a response, repeated phrases such as "you'd better confess", "we have already proven everything", "a lawyer won't help you", "otherwise it will be worse", as well as discrepancies between the transcript and the actual duration, sequence or completeness of the recording.

During interrogation, a lack of coherence in the interviewee's answers or statements often leads to the involvement of specialists to analyse specific behavioural characteristics with the aim of examining the interviewee's behavioural and emotional patterns. These characteristics can range from body posture to the position of the hands and wrists, as well as the interviewee's emotional reactions, visible through facial expressions.

As previously noted, emotions have long been studied by renowned scientists, who have examined emotional indicators as relevant behavioral signals. For example, the scientific literature discusses the possibility of using eye-tracking technology to identify signs of false information and determine the validity of information in testimony. This approach is based on observing a person's eye movements and analysing the resulting data, which can subsequently be used as an additional indicator when assessing the veracity of the information provided [17]. This method was examined in a research study by K. Büttner, who raised the question of whether eye-tracking technology could be used as a new psychophysiological tool for detecting concealed information, specifically for determining the guilt of suspects [18]. The study aimed to investigate differences in eye movement activity between categories of individuals, such as those "guilty" and "innocent" of committing a crime, including the identification of witnesses from the aforementioned category. Another study by D. Borza, R. Itu and R. Danescu also examined the characteristics of eye movement activity in individuals who gave false answers [19]. In this study, eye-tracking technology was used to examine eye characteristics such as the centers of the iris, gaze direction, blink intervals, blink rate, and the number of saccades.

Eye movements and gaze patterns have proven to be particularly reliable indicators of deceptive behaviour, with studies revealing characteristic patterns of blink rate, pupil dilation and gaze avoidance during deceptive interactions. Based on the data collected, artificial intelligence technologies are capable of identifying behavioural patterns and recording responses to specific topics or the wording of questions. The effectiveness of this method can exceed 80 %. A significant advantage of this approach is that it does not require physical contact with the interrogated person, as well as its simplicity, in contrast, for example, to the traditional polygraph. This method is widely used in the Russian Federation, which demonstrates its popularity and practical significance [20; 156–165].

One of the most promising areas for the integration of digital technologies into interrogation procedures and other investigative activities is the development of tools capable of identifying signs of false information. International experience, including that of the United States of America, demonstrates the widespread use of the DARE system, which features a built-in function for detecting false information (lies) in the statements of those being questioned. One of the artificial intelligence neural networks was trained on a large number of video recordings (over 120 court trial videos) [21]. This model, built using artificial intelligence technologies, takes into account facial expressions, voice, tone of speech and other implicit behavioural characteristics of the individual to determine the presence of deception.

It is also worth highlighting another study in which a group of researchers led by Garcia J. P., Grilo, C. and others proposed a concept for conducting interrogations based on the INTU-AI system, which serves as a support tool for investigators [22]. Its essence lies in documenting and analysing the interrogation, as well as using multimodal analysis (facial expressions, speech, text) to identify emotional inconsistencies in testimony. This concept has been tested and received a positive assessment from practitioners, which indicates the prospects for its implementation in law enforcement. In their study, Kleinberg and Verschuere noted that when machine learning was used, it was able to identify truth-tellers and liars with 69 % accuracy [23].

At the same time, recent scientific research shows that it is extremely difficult for a person to control all channels of communication simultaneously, including speech patterns, motor activity and facial expressions. Further development of lie detection systems may be based on the results of research conducted by A.A. Kibrik and his colleagues [24; 180–191]. This research enables us to examine in detail the signals received from various communication channels, treat them as elements of natural language, and determine their communicative role.

The study by Brennen and Magnussen is, in our view, of particular interest; they argued that traditional verbal and physiological methods do not meet legal standards due to their high error rates and limited reliability [25]. In the same vein, the position of Valerie Hauch and her co-authors is indicative; in a meta-analysis of computer-based lie detection, they concluded that computer systems are indeed capable of extracting statistically significant signs of deception from speech, but that these signs do not, in themselves, constitute an absolute and universal criterion [26]. For the legal profession, this has a very important implication: machine learning can be useful as a tool for identifying probabilistic linguistic patterns, but it should

not be interpreted as an infallible mechanism for establishing the credibility of testimony. Critical limitations pose a challenge in this field, as illustrated by the work of Alex Constancio [27]. The author reports an accuracy rate of approximately 54 % in detecting human deception and challenges the widespread view that non-verbal cues, such as avoiding eye contact, are scientifically unreliable.

In order to examine the practical application of AI technologies during interrogations, it is necessary to consider international experience of using such technologies in law enforcement. First and foremost, the experience of the United States, where artificial intelligence technologies are used primarily for analytical and auxiliary purposes. For instance, automated speech recognition systems are used to transcribe interrogations, as well as software solutions that enable the analysis of the behavioural and speech characteristics of the person being questioned. At the same time, considerable attention is paid to the admissibility of such technologies: courts critically assess the results of automated analysis, particularly regarding the detection of lies, as such tools are not recognised as sufficient evidence without corroboration by other means.

In China, there is a more active introduction of intelligent systems into law enforcement activities. So-called “intelligent interrogation systems” are being developed and implemented, which include real-time analysis of the interviewee’s facial expressions, speech and behaviour [28]. Such technologies make it possible to identify inconsistencies in testimony and generate recommendations for the investigator.

The experience of Japan is particularly interesting, as it employs AI technologies to record the psychophysiological aspects of interrogations, with a particular focus on analysing the emotional state and behaviour of the person being questioned. In Japanese practice, active research is being conducted into the impact of interrogation methods on confessions, and psychophysiological approaches are being used to analyse human reactions during investigations, as well as exploring the potential of modern technologies to enhance the objectivity of investigations. Thus, current Japanese research focuses on the development of technologies for analysing facial expressions, micro-expressions and human emotional reactions. Such technologies are viewed as a potential tool to assist law enforcement agencies in analysing the behaviour of those involved in investigative proceedings. Nevertheless, Japanese researchers emphasise that the results of such analysis cannot stand alone as evidence and should be used exclusively as an auxiliary tool for evaluating information [29].

Based on the above, it is advisable to identify a number of areas for adapting international experience in the application of AI technologies to the interrogation system of the Republic of Kazakhstan. Firstly, it is proposed to consider the possibility of introducing automated interrogation recording systems based on speech recognition technology for the Kazakh and Russian languages, with subsequent transcription of the recorded information. Secondly, it is proposed to introduce the use of analytical tools to identify contradictions in testimony, provided that these are subject to oversight by investigators and serve a supplementary role. Thirdly, we consider it necessary to establish a regulatory framework for the use of AI technologies in criminal proceedings, setting out criteria for the admissibility and assessment of the results of their application as evidence.

Despite the significant potential of artificial intelligence technologies in law enforcement, there are a number of legal, organisational and methodological challenges. Firstly, the level of scientific reliability of such technologies remains a matter of debate. As AI systems are trained using large datasets, the accuracy of this data remains questionable. International practice shows cases where the results of AI analysis have demonstrated varying levels of accuracy with regard to individuals of different ages, genders or ethnic origins. In this regard, it is necessary to adopt an objective approach to the application of such technologies, as their use without taking into account possible algorithmic errors, bias in training samples, and limitations in the interpretation of results may lead to a breach of the principles of objectivity, equality and the admissibility of evidence in criminal proceedings.

Furthermore, it should be noted that the criminal legislation of the Republic of Kazakhstan currently lacks legal provisions governing the use of the results of AI technologies as a source of evidence, which makes it impossible to determine their admissibility and procedural significance.

Moreover, for the implementation of such technologies, it is necessary to regulate the algorithm of AI operation during questioning in order to minimise the risks of violating the procedural rights of those involved in the questioning. Such violations may manifest, for example, in the reliability of AI technology conclusions during questioning for the independent determination of truthfulness. Many researchers point out that the psychophysical state of those involved in the interrogation does not allow the truthfulness of testimony to be determined with 100 % certainty. There remains a high percentage of erroneous interpretation of

behaviour, as it is impossible to unequivocally demonstrate the unreliability of testimony due to a person's emotional state, stress or individual characteristics.

We also consider it necessary to highlight the issue of law enforcement officers formally accepting the system's conclusions as objectively reliable. Such an approach runs counter to the principle of internal conviction and the free assessment of evidence, as enshrined in criminal procedure legislation. In this regard, these technologies should be used solely as an auxiliary tool for analysing information, without replacing the procedural activities of the investigator. An analysis of other countries has shown that even in states with a high level of digitalisation of law enforcement activities, artificial intelligence technologies are predominantly used in a limited and auxiliary capacity.

Consequently, the introduction of modern artificial intelligence technologies into the criminal justice system, including during the interrogation procedure, helps to enhance the efficiency, objectivity and quality of investigative procedures. The use of intelligent systems allows for the automation of the process of recording statements, the analysis of participants' speech and behavioural characteristics, and the identification of contradictions in the information obtained. At the same time, these technologies are viewed primarily as an auxiliary tool requiring clear legal regulation and compliance with procedural safeguards for the rights of those being questioned.

Conclusions

At present, all areas of life are undergoing a profound transformation driven by the rapid development of digital technologies. Against the backdrop of digitalisation, the use of innovative technologies is becoming increasingly widespread, including for the purpose of improving crime detection and investigation. Artificial intelligence is of the greatest significance in this regard, as it is being actively integrated into all areas of life.

The research conducted leads to the conclusion that the use of artificial intelligence technologies during interrogations represents a promising direction for the development of criminal proceedings in the context of the digitalisation of law enforcement activities. Interrogation, being a key investigative action, is characterised by a high degree of psychological and communicative complexity, which explains the relevance of applying modern technological solutions to enhance its effectiveness and objectivity.

A review of international practice has shown that, in other countries, artificial intelligence is used exclusively as a supporting tool, the use of which must be strictly regulated and confined within the framework of respect for human rights. We believe it is essential to apply this concept when developing a national model of legal regulation.

The analysis has shown that artificial intelligence technologies have significant potential in terms of automating the recording of proceedings, analysing the speech and behavioural characteristics of the person being questioned, and identifying contradictions in testimony. Their use can improve the quality of the recording of evidential information and reduce the influence of subjective factors.

At the same time, it should be noted that neural technologies do not replace human judgement in procedural decision-making at any stage of criminal proceedings. They serve as a tool for intellectual support in the investigator's work, since the assessment, analysis and final interpretation of the results obtained remain within the investigator's remit. This conclusion stems from the need to uphold the fundamental principles of criminal proceedings, including legality, reasonableness and fairness.

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Қылмыстық сот ісін жүргізуде жауап алу кезінде жасанды интеллект технологияларын қолдану: жағдайы мен болашағы

Зерттеудің мақсаты — құқық қорғау қызметінде жасанды интеллект (ЖИ) технологияларын енгізу арқылы қылмыстық сот ісін жүргізудің тиімділігі мен қолжетімділігін арттыру мәселелерін зерделеу. Авторлар тергеу әрекеттерінің ішіндегі ең кең таралған түрі — жауап алу барысында жаңа технологияларды қолдану мәселелерін қарастырған. Бұл механизм қылмыстық тергеудің дәлдігін қамтамасыз етіп, тергеу әрекеттерінің ашықтығын арттыруға мүмкіндік береді. Зерттеу аясында кибернетикалық және салыстырмалы-құқықтық әдістер қолданылды; бұл жауап алу процесіндегі ЖИ жұмысына талдау жасауға, сондай-ақ осы технологияларды қолданудың шетелдік тәжірибесін зерделеуге мүмкіндік берді. Сонымен қатар жауап алу процесін оңтайландыру үшін машиналық оқыту алгоритмдерін, соның ішінде автоматты транскрипциялауды, вербалды емес реакцияларды талдауды және айғақтардағы қайшылықтарды анықтау мүмкіндіктері талданған. Зерттеу нәтижесінде авторлар ЖИ технологияларын қолдану арқылы құқық қорғау органдарының қызметкерлері неғұрлым дәл бұлтартпас дәлелдер алып, қылмысты тергеу процедураларын жеделдете алады деген қорытындыға келді.

Кілт сөздер: қылмыстық іс жүргізу, дәлелдемелер, жауап алу, жасанды интеллект, цифрландыру, жауап алу хаттамасы, транскрипция.

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Использование технологий искусственного интеллекта при проведении допроса в уголовном судопроизводстве: состояние и перспективы

Целью данного исследования является изучение вопросов повышения эффективности и доступности уголовного судопроизводства путем применения технологий искусственного интеллекта (ИИ) в правоохранительной деятельности. Автором рассмотрены вопросы применения новых технологий при проведении одного из самых распространенных следственных действий — допроса, поскольку данный механизм повышает точность и эффективность уголовного расследования и позволяет повысить прозрачность в проведении следственных действий. В рамках данного исследования применялись кибернетический и сравнительно-правовой методы, которые позволили провести анализ функционирования ИИ в процессе проведения допроса, а также исследовать зарубежный опыт применения различных ИИ-технологий. Автором проанализированы возможности применения алгоритмов машинного обучения для оптимизации процесса допроса, включая автоматическую транскрипцию, анализ невербальных реакций и выявление противоречий в показаниях. Автор пришел к выводу, что, используя технологии искусственного интеллекта, сотрудники правоохранительных органов могут получить более точные доказательства и ускорить процедуры расследования преступлений.

Ключевые слова: уголовный процесс, доказательства, допрос, искусственный интеллект, цифровизация, протокол допроса, транскрипция.

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Differentiation of Responsibility for Laser Interference

The article analyzes modern technological threats to aviation security, including the possibility of remote interference with aircraft control using readily available technical means. Special attention is paid to laser exposure to aircraft crews as one of the most common and illustrative forms of such interference. The purpose of the study is to provide a theoretical basis for differentiating liability for interference with aircraft control in the context of evolving technological threats to aviation. Based on statistical and empirical data, the study substantiates the need to distinguish between technological impact and its consequences in the form of interference with aircraft control. The paper examines the problems of determining the point at which such acts are completed and the limits of criminal liability. It demonstrates that not every technological impact reaches a level of public danger warranting criminal-law assessment. In this regard, the article proposes a concept of differentiated liability based on the degree of public danger posed by the act and its consequences. This approach ensures a proportionate legal response and contributes to the effectiveness of law enforcement. The findings may be used to improve legislation and develop measures to prevent technological threats to aviation security.

Keywords: aviation, technological threats, public safety, aviation safety, laser exposure, interference with control, flight safety.

Introduction

Modern civil aviation operates in an increasingly complex threat environment, in which, alongside traditional risk factors, technologically mediated forms of intervention are gaining importance. Previously, flight safety was primarily associated with the human factor, including crew training and compliance with operational standards. However, currently, there is a shift in emphasis towards remote, technically feasible impacts on aircraft control processes.

The relevance of this study stems from the steady increase in incidents involving the misuse of available technical means that can affect flight safety. In particular, the problem of laser exposure of aircraft crews in Kazakhstan has acquired a pronounced practical character, as evidenced by the increase in relevant cases in recent years. This trend indicates the need to rethink existing approaches to the legal assessment of such acts and improve the mechanisms of legal response.

The purpose of the study is to develop a theoretically sound model of differentiation of responsibility for interference with aircraft control, based on the differentiation of technological impact and its actual consequences.

To achieve this goal, the following tasks have been set: to analyze the transformation of the structure of threats to aviation security, to identify the legal nature of technologically mediated interventions, to determine the content of the category “interference with aircraft control”, to establish criteria for differentiating levels of public danger, and to formulate a model for differentiating legal responsibility.

Several contradictions remain in the scholarly literature and law enforcement practice. In particular, the issue of the moment of the end of the act is debatable: whether it is recognized as completed at the time of the act or only when the consequences occur in the form of real interference with aircraft control. There is also no unified approach to defining the limits of criminality of technological impacts, which creates uncertainty in the qualification of relevant acts.

The methodological conflict manifests itself in the confrontation between formal-legal and functional approaches: the former focuses on assessing the action itself, while the latter analyzes its consequences and the degree of interference with flight safety.

Research gaps are evident in the absence of a comprehensive theoretical model that accounts for the multilevel nature of technological threats and enables differentiation of responsibility based on the degree of

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public danger. In existing works, as a rule, there is no clear distinction between potentially dangerous effects and actual consequences.

The author argues that it is necessary to move from a formal approach to a functional and legal interpretation of the acts in question. At the same time, the legal assessment should be based not only on the technical impact's characteristics, but also on its actual impact on aircraft control safety.

Methods and Materials

The empirical and normative basis of the study was made up of: international legal acts in the field of civil aviation and aviation safety, national regulatory legal acts of the Republic of Kazakhstan, including criminal, administrative and aviation legislation, official statistical and informational materials characterizing the prevalence of incidents related to laser exposure to aircraft crews, scientific literature materials by domestic and foreign authors on issues of criminal policy, criminalization, aviation security and technological threats, empirical data obtained during the study of primary inspection materials, analytical and methodological documents of international aviation organizations.

The empirical basis of the study also included an analysis of 4 primary audit materials related to cases of laser exposure to civil aviation crews, which were recorded after the introduction of criminal liability for interference in aircraft control in the Republic of Kazakhstan. The study analyzed the explanations and testimony of the flight crew members contained in the materials of the initial inspections. The analysis was carried out using elements of qualitative content analysis aimed at determining the nature of the impact, its duration, and the presence or absence of actual interference in aircraft control.

The study was conducted in 5 stages: 1) Identification and theoretical understanding of modern technological threats to aviation that can pose risks to aircraft control; 2) Analysis of international and national legal norms governing aviation safety, as well as research on the place of a new criminal law norm in the system of current legislation; 3) Clarification of the content of the category "interference with aircraft control", differentiation between action and consequence, as well as the study of the problem of the moment of the end of the act; 4) Verification of the hypothesis put forward based on the analysis of statistics, materials of primary inspections and comparison of theoretical provisions with practical cases; 5) Formulation of the author's model of responsibility architecture and conclusions on the directions of improvement of legal regulation.

The work uses a set of general scientific and private scientific research methods. General scientific methods: analysis and synthesis, induction and deduction, a systematic approach, and structural and functional analysis.

Private scientific methods:

A formal legal method for analyzing the content of legal norms and their systematic interpretation.

The comparative legal method is used to compare international and national approaches to assessing technological threats to aviation.

Doctrinal analysis examines scientific approaches to criminalization, the differentiation of responsibility, and the qualification of acts.

Content analysis — when studying statistical and analytical materials.

The method of legal modeling is used in building the concept of responsibility architecture.

The research is based on an interdisciplinary approach combining criminal law analysis, a criminological approach, elements of aviation law, and risk-based analysis.

As part of the work, a functional approach was also used, according to which the legal assessment of an act is based not only on the technical means used, but also on its functional role in creating a threat to flight safety.

Due to the limited number of officially documented criminal cases following the introduction of Article 352-1 of the Criminal Code of the Republic of Kazakhstan, the empirical analysis was exploratory in nature and aimed at identifying typical patterns of technological interference and their legal assessment.

Results

During the research, it was found that technological threats to aviation have several specific features. The most common signs are: the remote nature of the impact, the possibility of using publicly available technical means, and the difficulty in identifying the source of the interference. These features necessitate a revision of traditional approaches to the legal assessment of relevant acts.

Based on empirical data analysis, including a review of primary inspection materials, it was found that the necessity of distinguishing between technological exposure and legally significant consequences was established. In some cases, laser exposure is short-term and does not disrupt piloting, which confirms the need to distinguish between exposure and its consequences.

The study proposes a differentiated model of responsibility depending on the nature and consequences of technological interference.

The scientific novelty of the research consists in: substantiating the distinction between technological impact and interference with aircraft control as an independent legally significant consequence, forming a model for the legal stratification of technological threats to aviation, developing criteria for determining the threshold of criminal liability, and proposing the introduction of administrative and legal response mechanisms.

The results obtained are fully consistent with the study's stated goals and objectives, as they allow us to define the boundaries of criminal responsibility and clarify the limits of criminal liability.

The key idea developed in the work is the transition to a functional model of legal regulation, in which legal assessment is based on the degree of actual interference with flight safety, rather than solely on the committed act.

Thus, the proposed model of responsibility differentiation serves as the basis for further development of legal regulation in aviation security and balances the effectiveness of legal impact with the principle of proportionality of responsibility.

Discussion

Previously, ensuring aircraft safety primarily focused on the human factor—the discipline of the crew, the quality of training of aviation personnel, and compliance with the rules of air transport operation—but in modern conditions, the threat landscape has changed significantly. Along with traditional risk factors, technologically mediated interventions are becoming more prominent, which can affect flight safety, the functioning of aviation infrastructure, and aircraft control stability.

Currently, several of the most significant technological threats to aviation can be identified: laser exposure of aircraft crews, the use of uncrewed aerial vehicles near airports and air routes, radio-electronic interference, the substitution of navigation signals, and cyber-interference with the digital infrastructure of the aviation industry.

The unifying feature of these threats is that interference with the safe control of an aircraft can be carried out remotely and covertly, using publicly available technical means that do not require complex professional training or direct penetration into the protected area [1]. Unlike traditional forms of encroachment, such actions are often committed outside the direct control of aviation services and law enforcement agencies, making it difficult to promptly identify and legally assess them.

These features determine not only the high latency of the relevant acts but also their potentially transboundary nature, which affects the stability of international air traffic.

In this context, the International Civil Aviation Organization's activities aimed at coordinating States' actions in crisis and emergencies in airspace are of great importance. ICAO supports Member States by developing and implementing response measures to minimize disruptions to international air traffic while ensuring the required level of flight safety. In the event of conflicts or disruptions to international air traffic flows, ICAO initiates and coordinates regional and interregional cooperation mechanisms, ensuring the implementation of emergency measures within flight information areas in accordance with Annex 11 to the Convention on International Civil Aviation [2].

These provisions indicate that an approach based on coordination and differentiation of response measures according to the nature and degree of threats has already been established at the international level. In this regard, it seems reasonable to apply a similar logic in the national criminal law regulation of technological impacts, including interference with aircraft control.

Despite differences in the technical means and impact mechanisms used, all these forms are united by a single functional feature—the ability to disrupt the safe control of an aircraft and the sustainable functioning of elements of the aviation system. It is this circumstance that allows us to consider them not as isolated episodes, but as manifestations of a single class of socially dangerous technological interventions.

Laser devices occupy a special place among aviation's technological threats. They are the ones that most clearly demonstrate how a relatively simple and affordable technical tool can become an increased public danger if used in an aviation environment.

For Kazakhstan, the problem of laser exposure to aircraft crews is not hypothetical, but of a pronounced practical nature. According to available data, 247 cases of laser blinding of pilots were recorded in Kazakhstan from 2021 to 2024, including 15 in 2021, 22 in 2022, 70 in 2023, and 140 in 2024.

The above dynamics indicate a sharp increase in relevant incidents and objectively confirm the need for a deeper analysis of both the legal nature of such acts and the adequacy of existing legal response mechanisms.

It should be considered that the degree of danger of laser exposure to the organs of vision is determined not only by the radiation power, but also by its spectral characteristics. As a rule, green and blue lasers pose a greater risk to visual perception and orientation, whereas red lasers usually have a significantly lower dangerous exposure distance [3]. However, in the criminal law sense, it is not only the device's physical characteristics that are important, but also the kind of actual interference it can cause in the process of controlling an aircraft.

It is this circumstance that is of fundamental importance for further discussion: not every technological impact is identical to interference with aircraft control.

It is fundamentally important that, for a long time, such cases were considered primarily as aviation incidents, without a subsequent full-fledged criminal response against persons who pointed laser devices, launched uncrewed aerial vehicles, or engaged in other forms of technical intervention.

In many ways, this situation could be due to the absence of a special provision in national criminal legislation explicitly providing for liability for interference with aircraft control.

The situation changed in 2025, when Article 352-1 of the Criminal Code of the Republic of Kazakhstan was introduced, providing for liability for interference with aircraft control. The very fact of the appearance of this norm should generally be assessed positively, since it reflects the recognition by the state of the increased public danger of technological forms of interference in the activities of civil aviation.

However, for this study, the question of what the limit of criminal law response in this area is of fundamental importance. In other words, whether the act in question is subject to criminal assessment already at the time of the impact itself, or only when this impact actually transforms into interference with aircraft control.

It seems that with regard to the category of acts under consideration, the very fact of technological impact is not always the same as interfering with aircraft control, since not every pointing of a laser beam, not every launch of an unmanned aerial vehicle near an airway, and not every other technological impact automatically creates the level of public danger that requires a criminal law response. That is why the issue of the moment of the end of the act and the criteria for its criminal assessment is of particular importance.

From the point of view of the criminal law structure, the issue of the moment of the end of the act in question is debatable. A literal interpretation of the disposition of part 1 of Article 352-1 of the Criminal Code of the Republic of Kazakhstan may give the impression that the crime is recognized as over from the moment the act itself is committed, which may interfere with aircraft control. However, this interpretation is debatable.

This is because the actual public danger of the acts in question is manifested primarily not in the technical impact itself. However, in a real violation or difficulty in the safe control of the aircraft, that is, in the occurrence of a result that objectively affects flight safety.

For a proper criminal assessment of technological threats to aviation, it is fundamental to define the content of the category "interference with aircraft control".

As we noted earlier, interference with aircraft control should be understood as a socially dangerous consequence of intentionally committing illegal actions, posing a threat to flight safety due to violations or difficulties in the normal functioning of the aircraft control system and the crew's activities [4].

Consequently, interference with aircraft control is not identified with the action itself, such as laser guidance, the use of an uncrewed aerial vehicle, radio-electronic interference, or other forms of technological intervention. They are the result of such an impact, which has an independent criminal legal significance and must be established when qualifying an act.

This distinction is of fundamental importance for the subsequent differentiation of legal liability, since it allows us to distinguish between potentially dangerous technological impacts, actual interference with aircraft control and the serious consequences caused by such interference, which most accurately reflects the varying degree of public danger of the relevant acts.

The practical significance of this approach is confirmed by the information obtained from the primary inspection materials, namely, the testimony of civil aviation pilots.

According to the testimony contained in one of the primary inspection materials, during the approach an unknown person on the ground aimed a green laser beam into the cockpit. The impact lasted less than 10 seconds, according to the pilot, causing a short-term distraction but not resulting in a loss of aircraft control, and the landing was completed safely.

Another primary inspection material contained testimony from a pilot describing a similar incident during landing at Astana airport. After the exposure was identified, the crew immediately reported it to the dispatcher. At the same time, the respondent noted that there was no significant interference with aircraft control, and the landing was performed normally.

The International Civil Aviation Organization considers laser exposure of crews a flight safety risk. It has therefore developed special recommendations regarding pilot actions in the so-called laser attack [5].

These cases are of particular interest for criminal law assessment, as they allow us to trace the distinction between impact and consequence in practice.

On the one hand, pointing a laser beam at the cockpit of an aircraft during flight is objectively associated with the risk of interference in the piloting process and therefore cannot be considered harmless behavior. On the other hand, the pilots' testimony indicates that such an impact does not always develop into actual interference with aircraft control.

In the cases studied, the impact was short-lived, did not result in loss of aircraft control, and did not require a change in the landing procedure. That is why it seems reasonable to differentiate such acts according to the degree of public danger.

If a technological impact has actually caused interference with the control of an aircraft, caused a violation of the visual perception of the crew, caused a change in the flight trajectory, caused a second lap, disrupted takeoff or landing, or otherwise jeopardized flight safety, it should receive a criminal assessment.

If the impact did not result in a real violation of aircraft control and did not result in specific consequences, then, despite its potential danger, it seems more reasonable to classify it as an act requiring administrative and legal response rather than immediate criminalization.

The problem that arises in this regard is not limited to the question of the presence or absence of a special provision of the criminal law. More broadly, it affects the methodology of criminalization of relevant acts and the limits of permissible criminal law interference.

The historical evolution of criminal legislation demonstrates a steady tendency to complicate the differentiation of responsibility, making it possible to consider this institution a universal tool of criminal policy [6].

In the science of criminal law, the validity of criminalization is traditionally assessed through a set of criteria, which include:

- the public danger of an act;
- its prevalence;
- exceeding the positive effect of criminalization over its negative consequences;
- consistency with the current system of legislation, including the Constitution and the international obligations of the state;
- compliance with the social and moral principles of society;
- procedural feasibility of criminal prosecution;
- observance of the principle of repressive economy [7].

Regarding interference with aircraft control, these criteria provide a more precise definition of the limits of criminal liability.

Thus, there is no doubt about the public danger of such acts, since they are objectively capable of affecting flight safety, the life and health of passengers and crew members, as well as the stability of the aviation system.

The prevalence of such attacks is also confirmed by both statistics and a steady increase in incidents related to laser exposure to aircraft crews.

At the same time, the criterion of a repressive economy is nevertheless significant, by virtue of which the criminal law should be used only in cases where other means of legal influence are insufficient.

From these positions, the same criminal law response to both acts that actually violated the control of an aircraft and actions that did not go beyond the potentially dangerous impact seems excessive. It does not fully comply with the principle of proportionality.

This approach tends to make the legislator excessively harsh and to expand the scope of criminal prosecution. As a result, there is a risk of a disproportionate criminal law response, which can naturally lead to various legal, social, and economic consequences, including increased social tension [8].

Consequently, the criminalization of interference with aircraft control is generally justified. However, its further doctrinal and legislative understanding requires a more precise definition of the threshold of criminal liability, that is, the distinction between:

- potentially dangerous technological impact;
- real interference with aircraft control;
- severe consequences caused by such exposure.

It is in this part that certain incompleteness in legal regulation becomes apparent. Currently, there is no independent administrative responsibility in Kazakhstan for actions involving, for example, pointing a laser beam at an aircraft, and using technical means of influence, or other technological intervention if such actions did not result in actual interference with aircraft control.

As a result, in practice, situations may arise in which such acts either do not receive an independent legal assessment or cause difficulties in choosing an adequate form of legal response.

This state of legal regulation cannot be considered optimal. From the standpoint of criminal policy, legal technique, and the principle of proportionality in legal responsibility, a differentiated model of legal response based on the nature and degree of public danger posed by the committed act seems more justified.

Similar conclusions regarding the necessity of adapting legal regulation to the rapid development of digital technologies have been reached in studies examining the use of Smart City technologies in forensic and law enforcement activities. Researchers emphasize that the expansion of technological capabilities should be accompanied by the development of appropriate legal mechanisms ensuring both public safety and the proportionality of state intervention [9].

Taking the above into account, it seems possible to discuss not only the presence or absence of criminal liability for interfering with aircraft control, but also the need to differentiate responsibility in this area.

In the theory of criminal responsibility, an approach has been developed according to which the same behavioral action can generate several independent legal consequences if it affects different protected interests. In particular, the Anglo-American doctrine distinguishes between an attempt to commit a crime and its completed result, while each can constitute an independent basis for responsibility.

This approach can be adapted to the analysis of technological threats to aviation security. Within the threat architecture, the impact on the aircraft control system does not always yield a single result: the same intervention can simultaneously interfere with communication, disrupt navigation stability, and create the risk of loss of aircraft control. Therefore, such consequences should not be considered as a single incident, but as a set of legally significant violations.

Similar to the doctrine of “transfer of intent”, in conditions of distributed, nonlinear technological impacts, the subject’s initial intention to create interference may manifest itself across various elements of the aviation system, affecting both manned and automated control components [10].

A similar approach is supported in studies on criminal policy and the principle of proportionality, which emphasize the need to take into account differences in the degree of harm and culpability [11, 12].

Thus, the architectural approach to threats enables the differentiation of responsibility for interference with aircraft control based on the nature of the affected subsystems and the scale of the impact.

In addition, there is often a position that offenses classified as criminal offenses (which include offenses provided for in part 1 of Article 352-1 of the Criminal Code), depending on the presence or absence of a sign of public danger, should be classified either as minor crimes or as administrative offenses [13].

Differentiation of responsibilities is proposed:

1. Administrative responsibility—should be imposed for the very fact of a potentially dangerous technological impact on an aircraft or elements of the aviation infrastructure, if it did not entail the actual creation of interference with aircraft control.
2. Criminal liability should apply only where the relevant interference actually affected the control of the aircraft, resulting in a disruption of, or difficulty in, the safe conduct of the flight.
3. Qualified criminal liability—should be provided for acts that have serious consequences, including: threatening an aviation accident, causing harm to human life and health, disrupting flight operations, and destabilizing the functioning of the aviation system.

This approach is more in line with Kazakhstan’s modern criminal law policy, which focuses on humanizing legislation, reducing excessive criminalization, and respecting the principle of proportionality of crimi-

nal repression. Criminal liability should be used as a last resort, and therefore its use is justified only in cases where the technological impact has really acquired the character of a real threat to flight safety [14].

In this sense, the proposed model allows us to move from a formal descriptive understanding of the ban to its functional and legal interpretation, in which the legal assessment is based not only on the technical impact itself, but also on the degree of its actual interference in flight safety.

It should be noted that one of the main criteria for distinguishing offenses is their public danger, regulated by the legislator through the imposition of punishment [15].

Thus, the analysis results allow us to conclude that the modern model of countering technological interference in aircraft control requires a more precise legal stratification.

Formally, the behavior, which is uniform in appearance, can differ significantly:

In the mechanism of influence.

By the nature of the intervention.

According to the degree of public danger.

By the presence or absence of real interference to control.

According to the severity of the consequences.

That is why the further development of legislation in this area should be based not on the model of total criminalization, but on the model of differentiated responsibility, combining administrative and criminal law means of response.

The category of differentiation of responsibility for interference with aircraft control proposed in the article allows not only for a more accurate interpretation of the current criminal law norm, but also provides a theoretical basis for further improvement of legislation, law enforcement practice, and the system of prevention of technological threats to aviation.

Conclusions

The purpose of this study was to develop the concept of responsibility architecture to address interference with aircraft control in the context of the growing technological threats to aviation. To achieve this goal, formal-legal, comparative-legal, doctrinal, systematic, and empirical research methods were used.

The study found that modern forms of interference with flight safety are increasingly implemented through laser exposure, crewless aerial vehicles, radio-electronic interference, and other technological means available to a wide range of people. It is shown that criminal liability should depend on the actual impact on flight safety. The key is not the technical impact itself, but the presence of a real violation or difficulty in safely controlling the aircraft.

The study substantiates the necessity of differentiated legal responsibility depending on the severity of the consequences.

It is concluded that the further development of legislation should be based on proportionate differentiation of responsibility, but on the model of proportionate differentiation of responsibility, taking into account the degree of realized public danger.

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Лазерлік кедергілер үшін жауапкершілікті саралау

Мақалада қолжетімді техникалық құралдарды пайдалану арқылы, әуе кемесін басқару процесіне қашықтан араласу мүмкіндігімен байланысты авиациялық қауіпсіздікке төнетін заманауи технологиялық қатерлер талданды. Ерекше назар экипаждарға лазерлік әсер етуге — мұндай араласудың ең кең таралған әрі айқын түрлерінің бірі ретінде аударылады. Зерттеудің мақсаты — авиациялық қауіпсіздікке төнетін технологиялық қатерлердің даму жағдайында әуе кемесін басқаруға кедергі келтіргені үшін жауаптылықты саралауды теориялық тұрғыдан негіздеу. Қазақстан бойынша статистикалық деректерге, сондай-ақ азаматтық авиация ұшқыштарымен жүргізілген сұхбаттарды қамтитын эмпирикалық материалдарға сүйене отырып, технологиялық әсер етудің өзі мен оның әуе кемесін басқаруға нақты кедергі келтіру түріндегі салдары арасындағы айырмашылықты ажырату қажеттілігі негізделді. Зерттеуде аталған әрекеттердің аяқталу сәтін анықтаудың, сондай-ақ оларды жасағаны үшін қылмыстық жауапкершілік шектерін айқындаудың теориялық және практикалық мәселелері ашып көрсетілді. Әрбір әсер ету қылмыстық-құқықтық бағалауды талап ететін қоғамдық қауіптілік деңгейіне жете бермейтіні көрсетілген. Осыған байланысты автор жауапкершілікті саралаудың үш деңгейлі моделіне негізделген тұжырымдамасын ұсынады: әлеуетті қауіпті әсер ету, басқаруға нақты кедергілер келтіру және ауыр зардаптардың туындауы. Ұсынылған тәсіл құқықтық ықпал ету шараларының шамаластығын қамтамасыз етуге, артық криминализациядан сақтануға және құқық қолдану тәжірибесінің тиімділігін арттыруға мүмкіндік береді. Зерттеу нәтижелері заңнаманы жетілдіруде және авиациядағы технологиялық қатерлердің алдын алу шараларын әзірлеуде қолданылуы мүмкін.

Кілт сөздер: авиация, технологиялық қатерлер, қоғамдық қауіпсіздік, авиациялық қауіпсіздік, лазерлік әсер ету, басқаруға кедергілер, ұшу қауіпсіздігі.

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Дифференциация ответственности за лазерные помехи

В статье анализируются современные технологические угрозы авиационной безопасности, связанные с возможностью дистанционного вмешательства в процесс управления воздушным судном с использованием технических средств. Особое внимание уделяется лазерному воздействию на экипажи как одной из наиболее распространенных и показательных форм такого вмешательства. Целью исследования является теоретическое обоснование дифференциации ответственности за создание помех управлению воздушным судном в условиях развития технологических угроз авиации. На основе статистических данных, а также эмпирических материалов, обосновывается необходимость разграниче-

ния между самим фактом технологического воздействия и его последствиями в виде реальных помех управлению воздушным судном. В работе выявляются теоретические и практические проблемы определения момента окончания соответствующих деяний, а также пределов уголовной ответственности за их совершение. Показано, что не каждое воздействие достигает уровня общественной опасности, требующего уголовно-правовой оценки. В этой связи предлагается концепция дифференциации ответственности, основанная на трехуровневой модели: потенциально опасное воздействие, создание реальных помех и наступление тяжких последствий. Сформулированный подход обеспечивает соразмерность правового реагирования, исключает избыточную криминализацию и повышает эффективность правоприменения. Результаты исследования могут быть использованы при совершенствовании законодательства и разработке мер предупреждения технологических угроз в авиации.

Ключевые слова: авиация, технологические угрозы, общественная безопасность, авиационная безопасность, лазерное воздействие, помехи управлению, безопасность полетов.

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Қылмыстық істер бойынша параллель қаржылық тергеу жүргізу: de lege lata және de lege ferenda

Авторлар зерттеуде Қазақстанның ұлттық заңнамасына 2027 жылғы 1 қаңтардан бастап қолданысқа енгізілетін қылмыстық істерге қатысты параллель қаржылық тергеу институтын қолдану мәселелерін қарастырды. Зерттеу халықаралық стандарттар мен әлемдік құқық қолдану тәжірибесіне сүйену арқылы Қазақстан Республикасының Қылмыстық-процестік кодексіндегі (бұдан әрі — ҚПК) параллель қаржылық тергеу жүргізу институтын одан әрі жетілдіруге арналған өзгерістер мен толықтырулар енгізуге қатысты тиісті ұсыныстар беруді өз алдына мақсат етіп қойды. Жүргізілген зерттеу нәтижесінде параллель қаржылық тергеу институтының заңнамаға енгізілген құқық нормаларының құрылымындағы кемшіліктер анықталды. Бұл өз кезегінде параллель қаржылық тергеу жүргізуге қатысты құқықтық қатынастарды реттейтін құқық нормаларын қолдану кезінде бір қатар қиындықтарға алып келеді. Зерттеу жұмысының қолданбалық құндылығы зерттеу нәтижелерінің қылмыстық жолмен алынған активтерді іздеу, тыйым салу, арест қою және елге қайтарумен кәсіби айналысатын мамандарға бағытталуында. Құрылымы тұрғысынан топтастырылмаған заңдағы параллель қаржылық тергеуге қатысты нормалар оны жүргізудің процессуалдық тәртібі мен бұл институттың мәнін және оның қылмыстық сот өндірісіндегі мағынасы мен орнын толыққанды ашып көрсетпейді. Жүргізілген зерттеудің методикасын дедукция, индукция, анализ, синтез сияқты жалпы ғылыми әдістер айқындады, сонымен қоса құқықты ғылыми танудағы спецификалық әдістер ретінде құқық нормаларын салыстырмалы талдау, құқық аналогиясы, заң аналогиясы, құқықтық модельдеу әдіс-тәсілдері зерттеу аясында қолданылды. Пайдаланылған әдіс-тәсілдер өз кезегінде қылмыстық сот өндірісі шеңберінде параллель қаржылық тергеу жүргізудің эффективті құқықтық-процестік механизмін қалыптастырып ұсынуға септігін тигізді.

Кілт сөздер: қаржылық тергеу, параллель қаржылық тергеу, Қылмыстық-процестік кодексе, құқық құрылымы, заң құрылымы, іздеу, конфискация.

Кіріспе

Елімізде соңғы уақытта заңға қайшы жолмен алынған кірістерді заңдастырумен күрестің құралы және заңсыз иемденген активтерді қайтарудың кепілі болатын сотқа дейінгі негізгі тергеумен қатар жүргізілетін параллель қаржылық тергеу институтының белсенді дамуы байқалады. Зерттеудің өзектілігі отандық заңнамаға параллель қаржылық тергеу институтының жақында ғана «Қазақстан Республикасының кейбір заңнамалық актілеріне Қазақстан Республикасының қылмыстық заңнамасын оңтайландыру мәселелері бойынша өзгерістер мен толықтырулар енгізу туралы» 2025 жылғы 16-шілдедегі № 210-VIII Қазақстан Республикасының Заңымен енгізілгендігімен байланысты [1]. Толықтырулар қылмыстық іс бойынша заңды күшіне енген сот үкімі негізінде жеке өндірісте мүлікті тәркілеу, оның ішінде шетелдегі активтерді тәркілеуді қамтамасыз ету тәсілдері белгіленген Қазақстан Республикасының 2030 жылға дейінгі құқықтық саясаты тұжырымдамасын орындау бойынша іс-шаралар жоспарының 56-тармағын орындау аясында әзірленді [2].

Параллель қаржылық тергеу институтына қатысты ҚПК-ге енгізілген жаңа нормалар 2027 жылдың 1-қаңтарынан бастап заңды күшіне енетіндігін ескерсек, оларды тәжірибе жүзінде қолданғанға дейін заңнамалық өзгерістердің мазмұны мен құрылымында кездесетін олқылықтарға назар аудартып, оны қолданудың процестік тәртібі мен механизмін жетілдіру бойынша өзіміздің ғылыми көзқарасымызды ұсынғымыз келеді.

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Зерттеу параллель қаржылық тергеу институтына қатысты ҚПК-ге енгізілген нормаларға талдау жүргізіп, соның нәтижесінде оларды жетілдіру бойынша тиісті ұсыныстар беріп, заңсыз шығарылған активтерді қайтару туралы қаралатын қылмыстық істерді тергеу мен сот өндірісінің жүргізілуінің тиімді механизмін қалыптастыруды өз алдына мақсат етіп қойды. Параллель қаржылық тергеу туралы әлемдегі стандарттар мен шет елдердің тәжірибесін қарастыру нәтижесінде ҚПК-нің құрылымындағы нормаларды әлі де жетілдіріп, тиісті өзгерістер мен толықтырулар енгізу қажеттілігі анықталды.

Зерттеу жұмысының белгіленген мақсатқа қол жеткізу үшін айқындалған төмендегідей міндеттері бар:

- Параллель қаржылық тергеу институтының мәнін ашу, оның қолданыстағы құқықтық жағдайына сараптама жасау;
- ҚПК-ге енгізілген параллель қаржылық институты туралы нормаларды талдау, олардың құқық құрылымы және заң құрылымы бойынша сәйкестігін тексеру, ерекшеліктерін ашып көрсету;
- Параллель қаржылық тергеу институтының тиімді механизмін қалыптастыру мақсатында оны жетілдіру бойынша заңнамалық және практикалық ұсыныстар беру;
- Заңсыз елден шығарылған активтерді қайтару аясында параллель қаржылық тергеу институтын қолданудың тиімді тетіктерін ұсыну;
- Халықаралық жоғары стандарттарға сай келетін параллель қаржылық тергеудің қазақстандық моделін жасау.

Әдістер мен материалдар

Параллель қаржылық тергеу институтын зерттеу барысында оның мазмұны мен мағынасын терең түсінуге көмектесетін құқықты ғылыми танудың бірқатар әдістері қолданылды. Негізгі әдістер ретінде жүргізілген зерттеудің методикасын айқындайтын дедукция, индукция, анализ, синтез сияқты жалпы ғылыми әдістер пайдаланылды. Құқықты ғылыми танудың арнайы әдісі ретінде құқық нормаларын салыстырмалы талдау, құқық пен заң аналогиясын қолдану, құқықтық модельдеу әдісі алынды. Зерттеу жұмысы отандық ғалымдар мен практиктер А. Ахпанов, Р. Юрченко М. Когамов, Р. Нугманов, И. Сейткасымова, Д. Кенбаев, Ж. Елемесов, А. Оспанов, О. Тажмагамбетованың және шетелдік зерттеушілер А. Ларин, А. Волеводз, Д. Кашников, В. Панов, Н. Крылов, Э. Гейл, М. Леви, Х. Вуд, Л. Бойцова, В. Бойцованың және тағы басқалардың еңбектеріне негізделді. Зерттеу барысында қазақстандық және шетелдік құқық қорғау мен сот органдарының тәжірибесі талданып, ҚР Бас Прокуратурасы жанындағы Құқық қорғау органдары академиясының методикалық нұсқамалары, параллель қаржылық тергеу жүргізу органдарының тәжірибелік бастамалары (АҚШ-тың ақшаны жылыстатумен күрес пен активтерді қайтару бөлімшесі (MLARS), Нидерландының (FIOD), Молдованың (Бас Прокуратура), қаржылық тергеу бойынша ФАТФ басшылықтары (ақшаны жылыстатуға қарсы қаржылық әрекет жөніндегі жұмыс тобы деп аталатын үкіметаралық ұйым), сонымен қатар ЕАГ-ның қылмыстық жолмен алынған кірістерді заңдастыруға жылыстатуға және терроризмді қаржыландыруға қарсы саласында қаржылық тергеу жүргізуді ұйымдастыру бойынша методикалық нұсқамалары зерттелді. Соның нәтижесінде пайдаланылған әдістер мен материалдар зерттеу пәнін анағұрлым терең қамтып, заңнаманы жетілдіруге бағытталған ұсыныстар әзірлеуге септігін тигізді.

Нәтижелер

«Қазақстан Республикасының қылмыстық заңнамасын оңтайландыру мәселелері бойынша кейбір Қазақстан Республикасының заңнамалық актілеріне өзгерістер мен толықтырулар енгізу туралы» қабылданған Заңға сәйкес ҚР ҚПК-де параллель қаржылық тергеуге қатысты нормалар қарастырылған. Кодекстегі ұғымдар бөлімінде «параллель қаржылық тергеу» ұғымының анықтамасы беріліп, бірқатар баптар параллель қаржылық тергеу жүргізуге қатысты ережелермен толықтырылған. Атап айтқанда, 59-бап (Тергеу бөлімінің бастығы), 60-бап (Тергеуші), 61-бап (Анықтау органы), 62-бап (Анықтау органының бастығы), 63-бап (Анықтаушы), 193-бап (Сотқа дейінгі тергеу барысындағы прокурордың өкілеттіктері), 299-бап (Қылмыстық іс бойынша сотқа дейінгі тергеуді аяқтау есебінің мазмұны), 301-бап (Сотқа дейінгі тергеуді аяқтау есебімен келіп түскен қылмыстық істі зерттеу кезінде прокурормен шешілетін сұрақтар), 302-бап (Сотқа дейінгі тергеуді аяқтау есебімен келіп түскен қылмыстық іс бойынша прокурор қабылдайтын шешімдер мен іс-әрекеттер) параллель қаржылық тергеу жүргізуге қатысты нормалармен толықтырылды. Зерттеу

барысында бұл нормалар үш топқа бөліп қарастырылды, әрқайсысына талдау жүргізіліп, соның нәтижесінде оларды жетілдіру бойынша қажетті ұсыныстар мен ескертулер берілді. ҚПК-ге енгізілген «параллель қаржылық тергеу» жүргізудің шектері ҚР ҚК-нің 48-бабына сәйкес конфискациялауға жататын мүлікпен ғана шектелгендігі анықталып, бұл өз кезегінде, оның қылмыстық сот өндірісіндегі мақсатына сай кеңінен қолдану мүмкіндігін кемітуге алып келуі мүмкін екендігін көрсетіп отыр.

Талқылау

ҚР ҚПК-не енгізілген қылмыстық жолмен алынған активтерді іздеу, тыйым салу, арест жасау, конфискациялау және қайтаруға қатысты параллель қаржылық тергеу жүргізуге қатысты бұл толықтыруларды жасалатын іс-әрекеттің сипаты мен оларды жүзеге асыратын және қадағалайтын субъектілеріне қарай шартты түрде 3 топқа бөліп қарастыруға болады.

А) Алғашқы топқа ҚР ҚПК-нің 7-бабында берілген глоссарийге «параллель қаржылық тергеу» ұғымының енгізілуін жатқызамыз. Бұл толықтыру дер кезінде жасалған қажетті қадам болды, өйткені осы уақытқа дейін ешқандай заңнамалық актіде «параллель қаржылық тергеу» ұғымына анықтама берілмеген болатын.

Параллель қаржылық тергеу ұғымы заңмен сотқа дейінгі тергеу аясында ҚР ҚК-нің 48-бабына сәйкес конфискациялауға жататын мүліктің заңсыз жолмен алынғандығын, оның ішінде қылмыстық құқық бұзушылық нәтижесінде алынғандығын, сондай-ақ осындай мүліктен алынған табыс екендігін дәлелдейтін мән-жайларды зерттеуге, анықтау мен тексеруге, сонымен қатар қылмыстық жолмен алынған кірістерді жасыруға қатысы бар тұлғаларды анықтауға, қылмыстық кірістердің қозғалысын бақылауға, оларды заңнамада көзделген процедураларға сай, оның ішінде халықаралық ынтымақтастық аясында тыйым салу, конфискациялау және заңды иелеріне қайтару бойынша ҚПК көзделген шаралардың жиынтығы ретінде анықталған (ҚР ҚПК 7-бабы 59-тармағы).

Заң жобасының бастапқы нұсқасында «параллель қаржылық тергеу» ұғымы анықтамасын ҚР Бас прокуратурасы жанындағы Құқық қорғау органдары академиясы ҚР Қаржылық мониторинг агенттігімен бірлесіп әзірлеген методикалық нұсқамаларға сәйкес енгізу ұсынылған болатын. Оған сәйкес параллель қаржылық тергеу — қылмыстық іс-әрекеттің қаржылық аспектілерін анықтап, тексеру мен тергеуге, қылмыстық әрекетті жүзеге асырудан алынған қылмыстық табыстың жылжуын анықтауға, оның ішінде террористік және басқа да қылмыстық әрекетті қаржыландыруды, қылмыстық жолмен алынған мүлік пен қаржының шығу көзі мен оны алушылардың арасындағы байланысты, активтерді иеленудің мән-жайлары мен оларды сақтау орны мен олардың заңсыз жолмен алынғандығын дәлелдейтін басқа ақпарат көздерін, сондай-ақ жымқырылған мүлікті азаматтарға, ұйымдарға немесе мемлекетке қайтару мақсатында қылмыстық табысты анықтау мен конфискациялауға бағытталған шаралардың жиынтығы [3, 6].

Заңда бекітілген соңғы нұсқада «параллель қаржылық тергеу» жүргізудің шектері ҚР ҚК-нің 48-бабына сәйкес конфискациялауға жататын мүлікпен ғана шектелгендігін байқауға болады, біздің ойымызша, бұл жағдай оның қылмыстық сот өндірісіндегі мақсатына сай кеңінен қолдану мүмкіндігін кемітеді.

Сонымен қатар ҚР ҚК-нің 48-бабының 3-бөлігімен егер белгілі бір затты оны пайдалану, сату немесе басқа себеппен конфискациялау мүмкін болмаған жағдайда соттың шешімімен осы заттың құнына тең болатын қаржы соммасын конфискациялау қарастырылған [4].

Бұл ерекшеліктер мен ескертпелердің барлығы параллель қаржылық тергеу нәтижелері бойынша анықталуы мүмкін қылмыстық жолмен алынған активтерді мәжбүрлі түрде конфискациялаудан сақтап қалуға мүмкіндік береді. Тергеу және сот тәжірибесінде предикат құқық бұзушылық нәтижесінде заңсыз жолмен алынған кез келген қылмыстық активтерді минималды шектеулер (мысалы, ҚР Қылмыстық-атқару кодексіне қосымша) қолдана отырып, конфискациялау мүмкіндігін кеңінен қолдану қалыптасу керек.

Осыған орай «параллель қаржылық тергеу» ұғымының халықаралық-құқықтық актілердегі анықтамасы ғылыми және практикалық қызығушылық туғызады. Кең мағынасында қаржылық тергеу ретінде қылмыстық іс-әрекеттің қаржылық аспектілерін зерттеу түсініледі [5].

ФАТФ-тың 30-ұсынымында (Құқық қорғау және тергеу органдарының міндеттері) «параллель қаржылық тергеу» термині уәкілетті құқық қорғау органдарының өзінің бастамасы бойынша табыс алуға алып келетін қылмыстардың *барлық жағдайында* ақшаны жылыстатуға қатысты істерді қарау барысында, предикат қылмыстар мен терроризмді қаржыландыру, сондай-ақ басқа юрисдикцияда

предикат қылмыс жасаған жағдайда параллель қаржылық тергеу жүргізу міндетті екендігі контекстінде аталады.

ФАТФ-тың 30-ұсынымына түсіндірме жазбада «параллель қаржылық тергеу» ақшаны жылыстату, терроризмді қаржыландыру мен предикат қылмысты (қылмыстарды) негізгі қылмыстық тергеу жүргізумен қатар немесе оның аясында қаржылық тергеуді жүргізуге қатысты екендігі нақтыланады. Сондай-ақ, құқық қорғау органдары тергеушілерінің ақшаны жылыстату мен терроризмді қаржыландыруға қатысты, предикат қылмыстарды тергеу барысында параллель қаржылық тергеу жүргізу бойынша уәкілеттігі немесе осындай параллель қаржылық тергеу жүргізетін басқа уәкілетті органға істі жолдау мүмкіндігі болуы атап өтіледі [6].

«Параллель қаржылық тергеудің» мақсатына қатысты Элеонора Гейл мен Джессика Келли өздерінің зерттеуінде қаржылық тергеулер бұрын белгісіз болған басқа қылмыстар мен активтерді, қылмыстардан алынған, сәйкесінше тәркілеуге жататын табысты анықтауға алып келеді [7]. Қаржылық тергеудің ұйымдасқан қылмыспен күрестегі ерекше рөлін Хелена Вуд та өз мақаласында атап көрсетеді, оның пікірінше, қылмыстарды жасау мен олардан алынған табысты пайдалану қаржылық із қалдырады, оны құқық қорғау органдары қаржылық тергеу жүргізу арқылы анықтап, пайдалана алады. Хелена Вудтың ойынша, «қаржылық тергеу» көбіне тек «қаржылық қылмыстарға» ғана қатысты белгіленген шекте қолданылады, осыған байланысты ол тек қана спецификалық «қаржылық қылмыстармен» күрес инструменті болып қарастырылып, оның түпкілікті мәні дұрыс түсінілмейді [8]. Майк Леви де өз еңбегінде қаржылық тергеу институтының белгіленген осы шектеулерден тыс қаралған жағдайда оны құқық қорғау органдары тергеу барысында тәркілегісі келетін активтерді анықтаудың құралы ретінде жиі қарастыратындығын атап өтеді [9].

«Ақшаның соңынан ілес» принципіне сәйкес, біздің пікірімізше, параллель қаржылық тергеу жүргізу аясында қылмыскердің қылмыстық және қылмыстық емес қаржы ағымдарын, өмір сүру салтын, саяхаттары мен жеке байланыстарын бақылау предикаттық құқық бұзушылықтарын тергеуді қолдауға пайдасы бар дәлелдемелерді ұсынуға мүмкіндік береді.

Ең алғаш қаржылық тергеу институтын енгізу Президенттің 2021 жылғы 15 қазандағы № 674 жарлығымен бекітілген Қазақстан Республикасының 2030 жылға дейінгі Құқықтық саясаты концепциясында ұсынылғандығын атап өткен жөн. Концепцияда конфискацияға негіз болатын қылмыстық іске қатысты заңды күшіне енген сот актісі бойынша заңсыз жолмен алынып, шетелде жасырылған активтерді қайтару мақсатында жеке өндірісті енгізу көзделген (қаржылық тергеу институты) [10].

Концепцияның авторлары қаржылық тергеу институтын енгізу қажеттілігін негіздегенде Эстония практикасымен аналогия келтіреді және Нидерландының тәжірибесіне назар аударады. Эстония ҚПК-нің «Қылмыстық жолмен алынған мүлік пен қылмысты жасау құралы мен тікелей объектісін конфискациялау өндірісі» 16-1 тарауында 2016 жылдан бастап жеке конфискациялау өндірісінің жүргізілуі қарастырылған [11]. Нидерландыда 1993 жылдан бастап қылмыстық-процестік заңнамада тергеудің жаңа формасы — «қылмыстық қаржылық тергеу» (*strafrechtelijk financieel vooronderzoek*) енгізілген. Нидерландыдағы тергеу жүргізудің мақсаты күдіктінің қылмыстық әрекетінің нәтижесінде алуы мүмкін қандай кірісі бар екендігін анықтау және бұл кірістерді конфискациялау жөніндегі сот шешімінің шығарылуына қажетті дәлелдерді жинақтау [12, 284].

Молдова Бас Прокуратурасының параллель қаржылық тергеу жүргізу бойынша басшылығында параллель қаржылық тергеу заңсыз жолмен алынған мүлікті қайтару мақсатында күдіктінің, айыпталушының, сотталушының және сотталғанның өзіне тиесілі, меншік иесі болып отырған немесе басқарып отырған меншігі мен мүлкіне қатысты дәлелдерді жинақтауға бағытталған қылмыстық қудалау мен арнайы іздестіру шараларының жиынтығы ретінде анықталады.

Бұл ретте параллель қаржылық тергеу ұғымының анықтамасы (Молдова ҚПК-нің 6-бабының 20-1-тармақшасы) 22.12.2017 жылғы № 308 Заңының 3-бабында келтірілген қаржылық тергеу ұғымынан бөлек. Оған сәйкес, қаржылық тергеу барлық қаржылық және экономикалық қатынастарды тексеру мен талдауда, сондай-ақ ақшаны жылыстату мен терроризмді қаржыландыруға қатысы бар клиенттерді тексеруде қажет ақпаратты жинау бойынша қызмет ретінде және қылмыстық жолмен алынған мүліктің шығу тегін, пайдаланылуын бақылау, конфискациялау мен бұлтартпау шараларының пәні бола алатын террористтердің қоры мен басқа да мүлкін анықтауға бағытталған қызмет ретінде, сондай-ақ қылмыстың деңгейіне сәйкес қылмыстық тордың көлемін анықтау бойынша қызмет ретінде қарастырылады. Сонымен қатар параллель қаржылық тергеу ұғымын № 59/2012 Арнайы іздестіру қызметі заңымен реттелетін арнайы тергеулерден ажырату қажет [13].

Жалпылай алғанда қаржылық тергеу өз жиынтығында қылмыстық іс-әрекетті жүзеге асыру шеңберінде қаржы құралдарының жылжу фактілерін анықтап, оны құжатқа түсіруге бағытталған өз алдына бірнеше мақсат қояды. Біріншіден, қаржылық тергеу қылмыстық тор мен қылмыстылықтың өзінің масштабын анықтауға қызмет етеді. Екіншіден, конфискацияға жатуы мүмкін қаржы ағымдарының, қылмыстық жолмен алынған кіріс пен басқа мүліктің қозғалысын анықтау мен бақылау мақсаты қойылады. Үшінші мақсат ретінде қылмыстық сот өндірісі барысында қолданылуы мүмкін жасалған қылмыс туралы қаржылық ақпарат пен дәлелдерді жинау қаралады.

ЕАГ-ның қылмыстық жолмен алынған кірістерді заңдастыруға жылыстатуға және терроризмді қаржыландыруға қарсы саласында қаржылық тергеу жүргізуді ұйымдастыру бойынша методикалық нұсқамаларында «қаржылық тергеу» мен «параллель қаржылық тергеу» ұғымдары теңдестірілген. Қаржылық тергеу (параллель қаржылық тергеу) қылмыстық қызметтің келесілерге бағытталған қаржылық құрамдасын зерттеу процесі ретінде қарастырылады:

- қылмысты жасау кезінде және оның аяқталуынан кейінгі қаржы ағымдарын анықтау және бақылау;
- қылмыстық жолмен алынған кірістерді заңдастырудың келесі іс-әрекеттері мен қадамдарын анықтау;
- қылмыстық жолмен алынған кірістердің орналасқан жерін табу;
- тергеліп жатқан қылмыстар бойынша дәлелдемелерді бекітуге бағытталған қаржылық ақпаратты жинау;
- конфискациялауға жататын мүлікті анықтау, оның ішінде оның бағалық эквивалентін және қосымша қылмыстық кірісті анықтау;
- иемденуінің заңдылығы дәлелденбеген мүліктің болу фактілерін тексеріп анықтау [14].

Параллель қаржылық тергеудің жоғарыда келтірілген кеңейтілген анықтамасынан бұл процестің бірнеше өзара байланысқан, бірақ соңында ортақ мақсатқа бағытталған кезеңдерден тұратындығын көруге болады.

В) Екінші топқа сотқа дейінгі тергеуді жүзеге асыратын органдар мен тұлғалардың параллель қаржылық тергеуді жүргізуді сақтау бойынша нормалардағы құқықтары мен міндеттері, сондай-ақ осы салада сотқа дейінгі тергеу жүргізуге прокурорлық бақылаудың жүктелуіне қатысты ҚР ҚПК баптарына толықтырулар жатады. Бұл толықтырулар сотқа дейінгі тергеу барысында параллель қаржылық тергеу жүргізбегендігі үшін лауазымды тұлғалардың жауапкершілігін күшейтуді қарастырады.

С) Үшінші топқа параллель қаржылық тергеудің нәтижелерін процессуалдық құжаттарда, атап айтқанда сотқа дейінгі тергеуді аяқтау туралы есепте көрсетуге қатысты ҚР ҚПК баптарына толықтырулар жатады. Енгізілген толықтыруға сәйкес прокурорлардың қылмыстық іс бойынша параллель қаржылық тергеу жүргізілді ме жоқ па екендігін тексеру міндеті қойылды. Параллель қаржылық тергеу жүргізілмеген жағдайда немесе ол сапасыз жүргізілсе, прокурор істі қайтадан қосымша тергеу жүргізу үшін қайтарып, тергеушілер мен олардың басшыларын тәртіптік жауаптылыққа тарта алады. Сонымен қатар қылмыстық істі сотқа жібергеннен кейін конфискациялануға жататын мүлік анықталатын болса, тергеушіні, тергеу бөлімінің бастығын және прокурорды тәртіптік жауаптылыққа тарту анықталған (ҚР ҚПК 59-бабының 2-1-тармақшасы, 193-баптың 5-тармақшасы, 302-баптың 1-бөлігінің 3-1-тармақшасы).

Прокурорлық қадағалауды күшейту 2023 жылғы 30 мамырдағы Бас Прокуратураның мүдделі органдармен өткізген Координациялық кеңесі отырысының № 2кс/23-01 хаттамасының 15.1 тармағына сәйкес ірі мөлшерде мүліктік пайда алумен байланысты қылмыстық істер бойынша қаржылық тергеудің жүргізілмеуіне назар аударып, жеткілікті негіздер мен мәліметтер болған жағдайда қосымша тергеу жүргізу үшін қайтаруды және жоғарыда көрсетілген негіз бойынша істерді қайтарудың нормативті бекітілу мәселесін қарастыру қажеттілігімен байланысты болды.

Біздің ойымызша, прокурордың қылмыстық істі параллель қаржылық тергеу жүргізілмеген немесе сапалы жүргізілмеген жағдайда тек тергеушілер мен олардың тікелей басшылығын тәртіптік жауапкершілікке тартуын қарастыра отырып қосымша тергеу өндірісін жүргізуі үшін қайтаруы қаржылық тергеудің алдына қойған мақсаттарын түпкілікті шешпейді. Қылмыстық іс бойынша сотқа дейінгі қылмыстық қудалаумен айналысатын органның ресурстарының шектеулілігі мен сотқа дейінгі тергеу жүргізудің шектелген қысқа уақытымен байланысты жағдайларда сот үкімін орындау сатысында қосымша қаржылық тергеу жүргізу институтын қарастыру қажет деп есептейміз. Бұл

институт белгілі объективті себептер бойынша өзінің мақсатына жетпеген параллель қаржылық тергеудің логикалық жалғасы болады.

Параллель қаржылық тергеу қылмыстық іспен байланысты қаржы ағымдарын және заңсыз жолмен алынған кіріс пен мүлікті анықтауға бағытталған жария және жасырын тергеу іс-әрекеттерінің, жедел-ізвестіру, қаржы шараларының комплексін құрайды. Елімізде параллель қаржылық тергеу институтының енгізілуі «Заңсыз иемденілген активтерді мемлекетке қайтару туралы» заңның ережелерін орындаудың заңды жалғасы. Оның ҚР ҚПК-не енгізілуі қылмыстық капиталды елден жылыстату мен заңдастырумен байланысты құқықбұзушылықтармен күрестің, заңсыз иемденілген активтерді қайтару процесінің тиімділігін арттырудың жаңа мүмкіндіктерін ашады. Аталған бастаманың тиімді орындалуы үшін бірқатар ұйымдастырушылық және заңнамалық сипаттағы шешімдерді қабылдау қажет.

Бірінші кезекте дәстүрлі тергеу әрекеттерімен қатар бір мезетте параллель қаржылық тергеу жүргізумен айналысатын тергеушілердің кадрлық потенциалын арттыру қажет. Қаржылық тергеуді жүргізу көбіне арнайы салалық білімді қажет ететін болғандықтан, әр салада өзінің маманы болатын тұлғаларды эксперт ретінде тарту орынды. Мысалы, банктердің комплаенс қызметінің мамандары банктік операцияларды талдау барысында, мүлікті тіркеу органдарының мамандары өзінің бағасынан анағұрлым арзан сатылған мүлікті анықтау мен нақты меншік иелерін жалған тұлғалармен алмастыру бойынша көзбаяушылықты және т.б. анықтауда эксперт ретінде қатыса алады. Отандық құқық қолданушы үшін мұндай тәжірибе кеңестік кезеңде де тән болды, ол уақытта әр түрлі қылмыстық істер бойынша арнайы білімі бар КСРО ИМ ОҒЗКЗ (ЦНИКЛ) қызметкерлері эксперт ретінде тартылды, бұл өз кезегінде сапалы дәлелдемелер базасын жинақтауға және тергеліп жатқан істер бойынша жан-жақты сараптама жүргізуге мүмкіндік берді.

Құқық қорғау органдары пайдаланатын материалды-техникалық базаның және ақпараттық-коммуникациялық технологиялардың, оның ішінде жасанды интеллекттің (ЖИ) дамуы да параллель қаржылық тергеудің жүргізілуінің табысты болуында ерекше орын алады. Қаржы ағымдарын талдау мен жасырылған активтерді анықтау мақсатында ЖИ мен заманауи цифрлық технологияларды енгізу құқық қорғау органдары үшін маңызды міндет болып отыр.

OSINT (Open Source Intelligence) дағдыларының көмегімен интернет желісіндегі, әлеуметтік желілердегі және т.б. ашық дереккөздерден жеткілікті ақпарат алуға болады. Тергеу жүргізіліп жатқан және олармен байланысы бар тұлғалардың «Instagram», «Одноклассники», «В Контакте» (VK), «Facebook» (FB) және т.б. әлеуметтік желілердегі аккаунттары; Google, Yandex жүйесіндегі мәліметтер; ҚР электронды сот кабинетіндегі ақпарат (тергеу жүргізіліп жатқан тұлға мен оған тиесілі заңды тұлғалардың қатысуымен қаралған істер туралы); Opencorporates.com (компаниялар, олардың директорлары мен қаржысы туралы); Offshoreleaks.icij.org (офшорлық компаниялар мен олардың шоттары туралы); Google earth, Iconsquare.com, Tineye.com (фотосуреттер, түсірілімдер, камералар туралы) және тағы басқа ақпараттық жүйелердегі барлық қылмыстық іске қатысы бар ақпараттар тексерілуі қажет [4].

Параллель қаржылық тергеу институтын енгізу бойынша заңнамалық бастамаларды қолдай отырып, қабылданған Заңдағы нормалардың құрылымының қылмыстық-процестік құқықтағы құрылымға сәйкес келмейтіндігін атап көрсету қажет. Қабылданған нормалар ҚР ҚПК-нің Жалпы және Ерекше бөліміне баптар бойынша қосылған, қылмыстық істің сатылар бойынша қозғалысына қарай енгізілген. Бұл айырмашылық туралы белгілі құқықтанушы-ғалым А.М. Ларин өзінің фундаментальды еңбегінде келесіні атап көрсетеді: «Қылмыстық-процестік заңның құрылымы құқық құрылымына сәйкес келмейді және принципіалды сәйкес келе бермеуі мүмкін. Сондай-ақ, бұл бір уақытта өзара байланысқан және бір-біріне сәйкес келетін құрылымдар. Олардың шын мәнінде өзара сәйкес келуі әр түрлі аумақта және әр түрлі кезеңде түрліше болуы мүмкін. Заңның құрылымының құқықтың құрылымына оптимальды сәйкестігі оның бірізді, дұрыс, жүйелі түсіну мен сақтауға қызмет ететіндігі айқын» [15].

Осыған орай жоғарыда көрсетілген өзгерістерді *de lege lata* және *de lege ferenda* қаржылық тергеудің ҚР ҚПК-нің 15-бөлімінде келесі тараулар бойынша басқа модельге біріктіру көзделеді: параллель қаржылық тергеу (70-1-тарау), сот үкіміне дейінгі конфискация (конфискация *in rem* — ҚР ҚПК-нің 71-тарауы), сот үкімі сатысындағы қаржылық тергеу (71-1-тарау).

Тергеушінің таңдауына, прокурордың нұсқауына сәйкес сотқа дейінгі тергеудің тиімділігі мен жеделдігі үшін екі тергеу-жедел іздестіру тобы құрылуы мүмкін. № 1-ші тергеу тобы негізгі (дәстүрлі) сотқа дейінгі тергеу өндірісі аясында дәлелдеудің пәні болатын мән-жайларды анықтаумен

айналысады (ҚР ҚПК-нің 113-бабы және айып тағылған ҚР ҚК-нің Ерекше бөлімі бабының диспозициясы). № 2-ші тергеу тобы сол іс өндірісі бойынша құрылып, конфискациялауға жатуы мүмкін, сондай-ақ қылмыстық әрекеттен алынған мүліктерді анықтау, табу, бақылау, тыйым салуға бастама жасау және арест қою мақсатында жұмыс жасайды. Сонымен қатар параллель қаржылық тергеу жүргізу барысында егер қылмыстық процесті жүргізетін әр түрлі органдардың тергеулігіне жататын қылмыстық істердегі қаржылық ағымдар өзара байланысты болса, ведомствоаралық тергеу топтары құрылуы мүмкін [16].

Әдебиетте атап көрсетілгендей, бұл бағытта ҚР Қаржы мониторингі агенттігі мен бұрынғы Сыбайлас жемқорлыққа қарсы іс-қимыл агенттігі белсенді түрде енгізіп жатқан тергеу тәжірибесіне назар аударуға болады. Қылмыстық іс бойынша негізгі тергеуді толықтыратын бағыттағы жұмыс бойынша ғана құрылған тергеу, тергеу-іздістіру топтарының құрылуы қалыпты тәжірибеге айналып келеді [17].

Осылайша қаржылық тергеуді жүргізуге қатысты барлық нормаларды ҚР ҚПК-нің бір бөліміне консолидация жасау тәжірибеде жұмыс істейтін мамандар үшін аталған институттың мәнін, енгізу логикасы мен мазмұнын, өндіріс сатыларын жақсырақ түсінуге және оны жүргізудің процесуалдық тәртібін рационалды, кезекпен, жүйелі түрде бекітіп қолдануға мүмкіндік береді.

Қорытынды

Параллель қаржылық тергеу институты өз алдына қаржылық қылмыстар мен сыбайлас жемқорлыққа қарсы күресте маңызды құрал. Оның Қазақстанда енгізілуі тек қана тергеудің тиімділігін арттырып қана қоймай, азаматтардың елдің құқықтық жүйесіне деген сенімін арттыра түседі.

Қойылған мақсаттарға қол жеткізу үшін қылмыстық процеске қатысушы барлық мүдделі тараптардың өзара белсенді әрекеттесуі мен ынтымақтастығына қажетті жағдайлар мен негіздерді қамтамасыз ететін аталған институттың құқықтық реттелуіне қатысты жүйелі және жан-жақты қадамдар жасау қажет.

ҚР ҚПК-нің 15-бөлімінің жекелеген 70-1-тарауында тек қана заңға енгізілген ережелер ғана емес, сонымен қатар параллель қаржылық тергеу жүргізу өндірісінде дәлелдеуге қатысты сәтті апробациядан өткен халықаралық стандарттар да интеграциялануы тиіс.

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С.Е. Сакенов, О.И. Андреева, М.М. Кулбаева

Параллельное финансовое расследование по уголовным делам: de lege lata и de lege ferenda

Авторами рассматривается вопрос о параллельном финансовом расследовании по уголовным делам, вводимом с 1 января 2027 года в национальное законодательство Республики Казахстан. Целью научного исследования является разработка предложений по внесению изменений и дополнений, направленных на совершенствование института параллельного финансового расследования в структуре Уголовно-процессуального кодекса РК (далее — УПК), с учётом международных стандартов и зарубежной правоприменительной практики. В ходе исследования установлено, что введенный законом институт содержит пробелы в структурировании системы норм о параллельном финансовом расследовании. Данное обстоятельство повлечёт сложности в толковании и применении норм, регулирующих правоотношения в области параллельного финансового расследования. Прикладная ценность научных подходов состоит в практической ориентации на специалистов-практиков, занимающихся поиском, замораживанием, арестом и возвратом активов, добытых преступным путем. Разрозненные в законе нормы о параллельном финансовом расследовании к тому же не раскрывают в полной мере сущность и оптимальный процессуальный порядок его проведения, нивелируют его значение в уголовном судопроизводстве. Наряду с общенаучными методами, такими как дедукция, индукция, анализ, синтез, определяющими методику проводимого исследования, в качестве специального метода научного познания права также использованы сравнительный анализ норм права, применение аналогии права и закона, методы правового моделирования. Это, в свою очередь, способствовало разработке в результате исследования процессуально-правового механизма проведения параллельных финансовых расследований в рамках уголовного судопроизводства.

Ключевые слова: финансовое расследование, параллельное финансовое расследование, Уголовно-процессуальный кодекс, структура права, структура закона, поиск, конфискация.

S.Ye. Sakenov, O.I. Andreeva, M.M. Kulbaeva

Parallel financial investigations in criminal cases: de lege lata and de lege ferenda

The authors examine the issue of introducing parallel financial investigations in criminal cases into the national legislation of the Republic of Kazakhstan, with the relevant provisions scheduled to enter into force on January 1, 2027. The purpose of this research is to develop proposals for amendments and additions aimed at improving the institution of parallel financial investigations within the framework of the Criminal Procedure Code, taking into account international standards and foreign law enforcement practices. The authors have found that the institution introduced by law contains gaps in its regulatory framework, which may make it difficult to interpret and apply the rules governing parallel financial investigations. The practical value of the proposed approaches lies in their relevance to practitioners involved in the identification, freezing, seizure, and recovery of criminally obtained assets. The fragmented provisions of the legislation on parallel financial investigations also fail to fully define the essence and optimal procedural framework for their implementation, thereby diminishing their significance in criminal proceedings. Along with general scientific methods, the authors employ comparative analysis of legal norms, the analogy of law, and legal modeling methods in this research. These methods contribute to the development of a procedural and legal mechanism for conducting parallel financial investigations within the framework of criminal proceedings.

Keywords: financial investigation, parallel financial investigation, the Criminal Procedure Code, legal structure, structure of the law, search, confiscation.

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The problem of preventive effect on crime: the need for an axiological and organizational revision

The article is devoted to substantiating fundamentally new approaches to assessing the preventive impact on crime under the current conditions of Kazakhstani society. It examines theoretical and applied issues concerning the relationship between the concepts of “crime prevention”, “crime deterrence”, and “combating crime” in the context of the modern criminal law policy of the Republic of Kazakhstan. The purpose of the study is to provide a theoretical and applied understanding of the prevention of offenses and crime within the framework of the modern criminal law policy of the Republic of Kazakhstan. The methodological basis of the study comprises dialectical, formal-legal, comparative-legal, systemic-structural, and logical-semantic methods, as well as methods of analysis, synthesis, generalization, and forecasting. The study substantiates that current legislation and policy documents do not always use the aforementioned terminology consistently, which complicates the development of a unified methodological framework for preventive activities. Particular attention is paid to national legislation directly regulating crime prevention, measures aimed at ensuring public safety through the establishment of partnerships between the state and society, and the development of a qualitatively new legal consciousness based on a clear understanding of the concepts of “law” and “order”. The international experience of developing national crime prevention systems is analyzed. Particular emphasis is placed on the need for criminological support for preventive policies, the development of analytical, predictive, and research capacities, and the strengthening of cooperation between law enforcement agencies and civil society institutions. The author concludes that developing a national crime prevention model based on a systematic approach, interagency cooperation, scientific validity, and long-term evaluation of results should be a priority for Kazakhstan.

Keywords: offenses prevention, crime deterrence, crime prevention model, foreign experience, criminological support of crime prevention system.

Introduction

Effective crime prevention practices are possible through systematic and regular analysis of key public safety markers, as well as scientific approaches to developing strategic crime deterrence solutions. In its most general form, this is the focus of the Concept for Ensuring Public Safety in Partnership with Society for 2024–2028 (in the Sphere of Crime Prevention), approved by Decree of the Government of the Republic of Kazakhstan dated December 29, 2023, No. 1233 (hereinafter referred to as the Concept) [1]. According to the Concept, law enforcement agencies are tasked with the operational management of current processes, forecasting and planning crime deterrence and prevention measures based on data that will help reduce the rate of repeat offenses, which account for approximately 40 % of those previously brought to criminal responsibility [1]. According to paragraph 17 of Art. 1 of the Law of the Republic of Kazakhstan dated December 30, 2025 No. 245-VIII “On the Prevention of Offenses”, “prevention of offenses is a set of legal, economic, social, organizational and other measures implemented by offense prevention entities aimed at maintaining and strengthening law and order by identifying, studying, eliminating the causes and conditions that contribute to the commission of offenses” [2]. Thus, the ratio of terms “deterrence” and “prevention”, which is still the subject of theoretical discussions, is established within the framework of the specified legal acts in a kind of basic version: prevention is a set of various measures that are designed to suppress the determination of offenses; deterrence is a specific functional mechanism aimed at achieving specific results in one or another direction of counteracting offenses and (or) crimes (for example, in countering domestic violence, cybercrime, recidivism, etc.). At the same time, as researchers quite rightly note, the prevention system is more characterized by legal guidelines (normative consolidation of certain methods and mechanisms), while the most typical ones for the deterrence system are its assessment as a combined criminological and organizational category [3; 49–53]. In general, criminological studies are characterized by a complex refer-

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ence to the concepts of “prevention” and “deterrence”, in which deterrence is nevertheless assessed as a more general category [4; 138–145].

At the same time, the researchers correctly point out that the array of normative legal acts itself abounds with such a number of special terms (in addition to the terms “prevention”, “deterrence”—also “counteraction”, “detection”, “suppression”, etc.), that the ratio of the sought concepts can take a wide variety of combinations: in one case, deterrence includes prevention, in others, prevention is realized, including through deterrence [5; 84–88]. A similar combinatorial approach is also found in the studies of Kazakhstan authors. In particular, it is noted: “In domestic criminology, an understanding of crime deterrence has developed as a targeted influence of the state, society, individuals and legal entities on the processes of determination and causation of crime in order to prevent the involvement of new persons in crime, the commission of new criminal acts, and the expansion of the criminalization of social relations” [6; 34–40].

Method of content analysis of regulatory legal acts allows us to conclude that indeed the relevant specialized criminological terminology is used quite arbitrarily and there is a clear lack of methodological unity in its application. Thus, in particular, the system of basic concepts and terms of the Law of the Republic of Kazakhstan dated February 18, 2018, No. 31-III “On Counteracting Extremism” provides a legal definition of the concepts of “counteracting extremism” (clause 2, Article 1) and “prevention of extremism” (clause 4, Article 1) [7]. Moreover, the counteraction is defined through the elements of the preventive action system, and prevention is assessed as the basis for extremism deterrence. In turn, for example, the Model Regulation on Anti-Corruption Compliance Services contains the following definition: “corruption deterrence is the activity of anti-corruption entities to study, identify, limit, and eliminate the causes and conditions that contribute to the commission of corruption offenses, through the development and implementation of a system of preventive measures” [8]. That is, in this case, the term “deterrence” is also effectively identified with the term “prevention” (see the previously cited quote from the Law of the Republic of Kazakhstan “On the Prevention of Offenses”). Accordingly, within the framework of this study, it is necessary to determine as a starting methodology that the terms “prevention” and “deterrence” are related; however, for the sake of clarity, prevention should still be assessed as a system of measures to neutralize the determinants of criminal behavior, and deterrence—as specific measures aimed at preventing the planning and commission of offenses.

The purpose of the study is to provide a theoretical-applied understanding of crime and (or) offense prevention in the context of the current criminal law policy of the Republic of Kazakhstan, as well as to substantiate the need to develop a national prevention model based on criminological analysis, interagency cooperation, and state-society partnership.

The objectives of the study, arising from the objective, are as follows:

1. To reveal the theoretical relationship between the concepts of “crime prevention”, “crime deterrence”, and “combating crime” identifying their common features and semantic differences;
2. Analyze the specifics of the use of criminological terminology in the legislation and policy documents of the Republic of Kazakhstan, identifying the problem of its heterogeneity and the need for a more unified approach;
3. Evaluate international experience in building national crime prevention systems from the perspective of its potential use in formation of the Kazakh model of preventive policy;
4. Justify the need to develop the national crime prevention model in the Republic of Kazakhstan based on criminological support, interagency cooperation, state-society partnership, and long-term evaluation of results.

The object of the study is social relations developing within the state’s criminal law and criminological policies on crime prevention, deterrence, and combating.

The subject of the study is theoretical approaches to the relationship between the concepts of “crime prevention”, “crime deterrence”, and “combating crime” as well as the legislative provisions and policy documents of the Republic of Kazakhstan in this area, as well as selected international crime prevention models relevant to the development of the national Kazakh approach.

Methods and Materials

The material basis of the study consisted of regulatory legal acts and policy documents of the Republic of Kazakhstan governing issues of crime prevention, deterrence, and combating, including the Concept of Ensuring Public Safety in Partnership with Society for 2024–2028, the Concept of Legal Policy of the Republic of Kazakhstan, and the Concept for Promoting the Ideology of Law and Order in Society for 2025–2030. In addition, scientific works of Kazakh, Russian, and foreign authors were used devoted to criminolog-

ical policy, offense prevention, crime deterrence, foreign models of preventive activity, and issues of criminological support for the fight against crime. The methodological basis of the study consisted of dialectical, formal-legal, comparative-legal, systemic-structural, logical-semantic methods, as well as methods of analysis, synthesis, generalization, and forecasting. The dialectical method allowed to consider crime prevention and deterrence as interrelated elements of preemptive action. The formal-legal method was used to analyze the legislation and policy documents of the Republic of Kazakhstan. The comparative-legal method was employed to evaluate international experience in building national crime prevention systems. The systemic-structural method allowed to reveal crime prevention as a multi-level system of interaction between the state, society, and law enforcement agencies. The logical-semantic method was used to clarify the content and relationship between the concepts of “prevention”, “deterrence” and “combating”. Methods of analysis, synthesis, generalization, and forecasting ensured to draw conclusions about the need to formation the national crime prevention model for the Republic of Kazakhstan.

Results

The state’s criminal law policy in the area of combating crime, as this area is currently most often referred to in light of the conceptual rejection of the term “crime control” is generally based on policy documents defining the strategy, policy, and tactics for countering this socially negative phenomenon. Within the framework of specialized terminology, the term “combating” should obviously be regarded as a symbiosis of prevention and deterrence (it is possible that other criminological terms and concepts may be included within the concept of “combating”).

It is known that the Concept of Legal Policy of the Republic of Kazakhstan emphasizes “continuing work to update legislation in order to ensure effective and proactive criminal law protection of the constitutional values of Kazakhstan society” [9]. The effectiveness of primarily the theoretical development of the main areas of legislative support for preemptive actions aimed at combating crime, depends on how this work is carried out. In other words, in this case, it is necessary, first, to establish more or less clear guidelines for understanding the terms “prevention” and “deterrence” (as well as their relationship with other terms and concepts). At the same time, there is no doubt that prevention and deterrence can be combined within the framework of understanding the preemptive impact on crime by both preventive and deterrence subjects.

As has been previously noted, the legislative basis for crime and other offenses prevention in the country has already been created and is being implemented in practice. The basis for the participation of the state and society in this work is the Concept of Ensuring Public Safety in Partnership with Society for 2024–2028 (in the Sphere of Crime Prevention) [1], aimed at building a comprehensive system of offense prevention based on the joint responsibility of all its subjects and the establishment of a constructive partnership with the population. In the context of this document, the category of “prevention” is clearly predominant, since “deterrence” is primarily assessed as one of the desired results of the corresponding preventive impact. As Ya. I. Gilinskii rightly notes, “the globalization of the economy, finance, and technology is accompanied by the globalization of crime, especially organized crime. Addressing this challenge presupposes globalization and the unification of the efforts of law enforcement agencies of all countries” [10; 112]. In general, this statement appropriately systematizes the sequence of globalization processes, within the framework of which the globalization of criminal manifestations also requires the globalization of law enforcement efforts. And in this case, another significant factor in distinguishing between the concepts of “prevention” and “deterrence” is revealed: the international (global) aspect of crime tends to a greater extent toward the category of “deterrence” while the system of crime prevention clearly correlates much more strongly with national systems, since it presupposes the use of, among other things, such resources as the cultural factor, the peculiarities of the national mentality, etc., as well as being oriented toward the system of prevention subjects formed in a specific national jurisdiction.

It would be fair to assert that success in deterrence a significant portion of international crimes will largely depend on how crime prevention activities are organized within individual jurisdictions. For this reason, most international conventions defining the goals of combating a particular type of crime (human trafficking, cybercrime, etc.) require the accession of a significant number of states, which must formulate corresponding regulatory prohibitions at the national legislative level, as well as their own national prevention system. In particular, the Concept for the Promotion of the Ideology of Law and Order in Society for 2025–2030 [11] effectively works toward the formation of an appropriate national prevention system, since its mission is to strengthen legal culture and awareness, ensuring security and public order through active civic participation.

The question arises as to whether it is possible to implement positive experience in crime prevention in the national practice of Kazakhstan? Obviously, direct borrowing will be somewhat difficult due to the fact that all national crime prevention systems are based not only on certain legislative decisions, but also on established systems of interaction of the “state-society-individual” type, which have been cultivated over a significant period of time. In particular, the authors of comparative-legal studies highlight the following specific features of crime prevention systems in individual foreign countries: 1) in general, for most EU countries, this is a combination of social and situational prevention (in the latter context, it is much closer to the understanding of deterrence); 2) Germany is testing a three-level prevention, within which the first level is the impact on the social causes of crime; the second is the level of prevention of offenses and crimes by law enforcement agencies; the third is the use of punishment and resocialization as tools to prevent re-criminalization; 3) The United States actually uses the factor of public institutions (interacting with the police) as structural elements of the prevention mechanism; the factor of personal safety and the factor of influencing crime through the environment; 4) Great Britain is a supporter of the development and implementation of strategies to combating crime [12; 137–144]. In turn, the experience of preventive influence on crime in Japan, which has demonstrated the most favorable indicators of combating crime over a long period, indicates that it is almost entirely based on the specifics of trusting relationships between law enforcement agencies and citizens [13; 103–110]. The report of the Australian Institute of Criminology notes that the prevention system in the country is based on the formation of inter-level relatively independent systems, when the main standards are set at the federal level, and specific existing systems are formed in the regional mode, based on the most significant criminogenic factors [14]. The specificity of the Canadian experience in crime prevention lies in the special emphasis on research activities, the value of which is determined by the evidentiary (i.e. tested in practice) factor [15].

Overall, this schematic analysis suggests that the prevention systems themselves do not include any “complex” elements, as they are all fairly straightforward, do not require complex technological solutions, and are primarily based on the development of various social communications. However, their implementation may be entailed difficulty because the relevant models lack clear markers that can be fragmentarily adopted; all of these models are inextricably linked to civil society and its interaction with law enforcement agencies. Accordingly, all the “specific” aspects that, at one stage or another, complement the relevant prevention model (digitalization, program management, a “safe environment” system, etc.) merely consolidate the national prevention system that has already taken shape in a given national jurisdiction, placing far greater emphasis on regional prevention rather than on prevention at the national level [16; 219–225]. Thus, in this case, there can only be one consistent conclusion—Kazakhstan must develop its own national crime prevention model.

At a Meeting of the Extended Law Enforcement Panel on June 23, 2025, the President of the Republic of Kazakhstan Kassym-Jomart Kemelevich Tokayev pointed out the “need to establish the rule of law and order, prevent offenses, identify, prevent and eliminate the preconditions for the emergence of conditions for committing a crime, predict criminal threats and counter them. The Committee on Legal Statistics and Special Accounts should become a think tank engaged in the early detection and prevention of risks in the field of public safety, through the use of artificial intelligence and “big data”, which are stored in a supercomputer” [17]. Certainly, artificial intelligence and “big data” should become the object of close study and prompt implementation in the activities of all law enforcement agencies. The concept of using big data in preventive criminological activities is that the system integrates mathematical analysis, modeling of various situations and forecasting of behavioral reactions, covering both individual and territorial aspects of preventive activities [18; 40]. The essence of this approach lies in abandoning old methods of work and moving toward individual, targeted work with objects of potential interest. Moreover, in this case, the focus is much more on the deterrence of offenses and crimes, since this “mathematized” approach presupposes not so much the neutralization of the actual causes and conditions of crime, but rather is focused on increasing the element of efficiency in responding to certain processes, phenomena, and behavioral patterns of citizens, which ultimately presupposes a more situational, preemptive intervention by law enforcement agencies and society. Of course, both successful prevention and the successful deterrence of offenses require a national, methodologically sound and multifunctional system of interacting entities [19]. Based on the previously schematized foreign experience, it seems obvious that, in modern conditions, an appropriate prevention system cannot be developed in the context of law enforcement agencies’ isolation from civil society institutions.

One should agree with V. Ovchinskii that “the fourth technological revolution with the internet, unmanned aerial vehicles, drones, robotics, nanotechnology, and artificial intelligence—on the one hand, pro-

vides unprecedented opportunities to monitor people's actions and solve crimes to the state and law enforcement agencies, while, on the other hand, it arms potential and actual criminals" [20]. These are, in fact, the new criminal realities in the context of which each individual national jurisdiction will change and modernize its own crime prevention and deterrence systems. At the same time, Kazakhstan annually updates software used for preventive measures and for building an evidence base through data analytics. All of these programs to varying degrees make it possible to predict the emergence of all kinds of threats to public safety and analyze the connections between crimes to identify criminal profiles and prevent offenses [1]. However, reducing the assessment of certain failures solely to technical issues would be wrong. Indeed, in the area of prevention and deterrence of offences involving the use of information and communications technology, the factor of technical equipment plays a significant role; however, even here, the overall strategy of interaction between society and the state plays an essential function (particularly in the context of victimological cooperation).

In the formation of the system of offenses and (or) crimes deterrence a very significant factor will be the achievement of not discrete, but stable positive results. Any positive experience must be subjected to discussion, analysis and implementation of successful algorithms in subsequent crime deterrence actions of law enforcement agencies. Thus, the Financial Monitoring Agency under the coordination of the General Prosecutor's Office suppressed the activity of a criminal group engaged in the mass distribution of phishing SMS. It is noted that this is the first case of suppression of such a scheme on the territory of the CIS countries. The attackers used a special device—an SMS blaster, simulating the operation of mobile communication base stations. The equipment created a strong signal in a radius of 300 meters, forcing the phones of subscribers to automatically connect to a less secure network. "Such a device allowed breaking the protection of telecom operators and sending up to 100 thousand messages per hour. In order to expand coverage and conspiracy, the equipment was placed in transport and used in motion, mainly in places of mass accumulation of citizens—in markets and near shopping entertainment centers" [21]. Through the SMS blaster, fake messages from one of the banks with a proposal of exchange of bonuses instantly came to the phones of users. Transition by the link led to phishing sites where personal data were required: phone number, full name, bank card details, CVV code and SMS confirmation. This allowed the attackers to obtain access to the bank funds and confidential information of citizens [21]. Such successful practices must be regarded as a complement of the existing arsenal of means of crime deterrence and be subjected to organizational escalation both into the activity of other law enforcement structures of the Republic of Kazakhstan, and at the level of sharing experiences with other countries. This example is a vivid illustration of situational deterrence, which in the conditions of increased digitalization becomes increasingly important.

The increasing significance of the situational aspect of crime deterrence, supplemented by the formation of a balanced national model of offenses prevention, in modern conditions is actually the only criminologically justified and effective symbiosis which is capable of increasing the effectiveness of combating crime. S.Y. Lebedev notes that the reforming of criminal and criminal-procedural legislation is connected with the modernization of society and the entire life activity of human as a whole. The author notes that directly the tone to everything is set by the criminal world itself, which more quickly improves, especially in the field of cyberspace. A significant problem in this situation is the absence of any legal control from the side of the state aimed at the prevention of the development of crime in this sphere. Furthermore, such a passive attitude from the side of law enforcement agencies stimulates the criminal world to the creation of new and more innovative schemes of committing a crime [22; 223-224]. Along with this, based on analysis carried out previously, it logically follows that the system of crime prevention and deterrence is not fully dependent on the quality of normative structures. In this case, the role of law in regulating social relations is not diminished in any way, but it forms only a basis that must be complemented by an effective intellectual, research and fundamental-research component. The indication to that circumstance that there are practically no dissertation works [22; 223-224] about the issues of crime deterrence is absolutely fair also for Kazakhstan science, which in recent years goes along the path of discrete and conjunctural research.

Discussion

The issue investigated in this article is directly connected with the change of the methodology of the approach to the assessment of the activity of law enforcement agencies and the judicial system of the state. The evaluation of the punitive element of criminal punishment (or measure of administrative-legal impact) as a kind of panacea and the most effective tool of combating crime must remain in the past. Despite the inseparability of the system of crime prevention and deterrence from the mechanism of bringing to responsibility

and determination of the measure of punishment, the concentration of efforts must be aimed specifically at prevention and deterrence. At the same time, the fact of committing an offense or a crime cannot be regarded as an indicator of defectiveness of the system of deterrence or prevention of offenses, since the criminological situation can be reliably evaluated exclusively within medium-term and long-term time periods.

The transferring of the accent to the prevention and deterrence of offenses should be directly connected also with the formed “crisis of punishment”. In particular, Ya.I. Gilinskii writes: “Simultaneously with the entering of humanity into the world of postmodern, an understanding of the “crisis of punishment” is emerging. Punishment in general cannot achieve the goals declared by the criminal law (Art. 43 para. 2 of the CC RF). “Restoration of social justice”. What is “social justice”? From whose point of view? No one can be corrected by punishment. Neither a child, nor a convict. The entire history of humanity testifies to the weak general “preventive” role of punishment. And the growth of recidivism in Russia from 25 % to 52 % speaks of the complete ineffectiveness of special deterrence” [10; 113]. In its turn, T.K. Akimzhanov believes that the concept of execution of punishment must become flexible, effective, less costly and useful for society [23; 26]. As a rule, individuals with a history of criminal prosecution inevitably enter a high-risk zone for reoffending with the primary causes of this risk being social deprivation, unemployment, and a low level of education. All these factors must be included in the general system of crime prevention in its traditional understanding, that is, as an impact on the social causes of crime. These are exclusively long-term programs which have an indirect-criminological character. In particular, referring to well-known scientists, Ya.I. Gilinskii believes that society has split into those “included into active social, economic, political, cultural life, and—excluded from it” [10; 113]. Exactly the second ones constitute the main social base of crime, alcoholization, drug addiction, prostitution, suicide, there are the main criminogenic factors [10; 113]. In this case, as a socially significant hypothesis regarding the building of an effective system of crime prevention and deterrence can become a formulation of the question about the necessity of maximum and creative inclusion of members of society into the corresponding system along with law enforcement structures. An active subject, feeling the corresponding social inclusion, inevitably acquires a positive social impact, which may turn out to be a more effective anti-criminal factor than any strict measures of punishment.

R.T. Nurtaev notes that “formulation of the problem of increasing the efficiency of the combating crime is inextricably linked with the further development and improvement of the theory and legal practice of organization of optimal measures of impact on crime, in Kazakhstan the theory of efficiency of the combating crime is a low-developed problem” [24; 106]. It is obvious, that for the resolution of the situation is required the adoption of a substantial number of multifaceted measures, including also the increasing of transparency of statistical data about crime (as well as their further deeper differentiation), and the increasing of the significance of the regional factor, which in consideration of the large geographical extent of Kazakhstan cannot be ignored, and the study of positive foreign experience both in issues of crime deterrence (especially situational), and in the context of formation of the national model of prevention.

On the basis of the analysis of materials of criminal statistics, Kazakhstan scientists regularly draw attention to the insufficient efficiency of the criminal-law policy conducted in our country, the unfavorable criminogenic situation in the country, connecting this with the violation of the principle of inevitability of responsibility and punishment. The violation of this principle leads to the fact that the majority from the number of persons (9 out of 10) who committed criminal offenses and remain unpunished, continue their unlawful activity until they will not be brought to justice for the committing of another criminal offense and will not receive a deserved punishment. One of the causes of the violation of the principle of inevitability of responsibility is, in our opinion, the enthusiasm of individual scientists, as well as persons involved in the legislative process, with the principle of humanism. Some of them, concentrating exclusively on the humanization of criminal legislation, lose from sight that it is frequently realized to the detriment of other principles of criminal law—justice, inevitability of responsibility. And it is difficult to disagree with that, especially against the backdrop of resonant crimes committed with particular cruelty.

In particular, R.D. Sharapov, referring to criminologist scientists, writes that criminological and criminal-law research of recent years mostly testify to a noticeable deterioration of the criminal situation in the world [25; 126]. As the author points out, the changes of quantitative, and even more qualitative indicators of crime that occurred at the beginning of the new century quite naturally actualize the question about an adequate criminal-political, and, above all, criminal law countermeasures against criminal threats. The author states that this issue is becoming increasingly acute due to the reform of criminal legislation, which suffers from excesses in humanization and liberalism in the application of criminal liability measures, as well as a lack of a unified combating crime strategy [25; 270]. However, in this case, any hasty decisions should be

avoided, including a “rollback” from humanization, which over recent years has been deservedly considered as an achievement of Kazakhstan criminal policy. And in this case, we directly confront the problem of criminological justification and criminological support of the offense and (or) crimes prevention system. In this case, the following postulate is taken as a basis: if law enforcement agencies are practically the only real entity of prevention of offenses and (or) crimes, then the solution to prevention and deterrence tasks will be one-sided. And here, we should turn to foreign experience once again.

Foreign experience shows that in a number of states the prevention of crime has been formalized as a kind of independent direction of public policy, which is reflected in the establishment of specialized bodies, councils or centers, for which precisely crime prevention and deterrence is not an auxiliary police function, but the primary task. These entities analyze the criminogenic situation, develop practical recommendations, coordinate interagency interaction, spread preventive practices, finance projects and ensure the connection of the state with local communities. In particular, Sweden operates the Swedish National Council for Crime Prevention—Brå—a government agency under the Ministry of Justice that serves as a hub of criminological expertise for the criminal justice system. In particular, its mandate includes the development of knowledge in the sphere of criminal policy, as well as the promotion of measures on crime deterrence [26]. In Finland under the Ministry of Justice operates the National Council for Crime Prevention, directly identified as an expert and coordinating body in the field of crime deterrence, whose aim is to reduce the harm caused by crime and to enhance citizen safety, while its tasks include assessing criminal problems and preparing recommendations for crime reduction measures [27]. In turn, Denmark operates the Danish Crime Prevention Council, which accumulates and spreads knowledge about crime and its prevention, formulates recommendations about how to avoid a crime, acts as a kind of specialized platform of preventive policy [28]. In Canada the functions of prevention of offenses are concentrated in the National Crime Prevention Centre in the system of Public Safety Canada, furthermore, this center is responsible for the realization of national strategies of crime deterrence, ensures the efficiency of deterrence and reduction of crime in the country and supports preventive interventions aimed at risk factors before the committing of a crime [29].

In the context of the presented foreign experience is very appropriate a quote from the publication of G.R. Rustemova: “Criminological policy—a part of the state policy of the combating crime, which is aimed at a preventive impact on the personality of the criminal and the determinants of crime, creation and management of a system of effective measures of crime deterrence” [30; 43–45]. Given this statement directly follows the conclusion, which can be correlated with the key aspects of the conducted research: crime prevention and deterrence must be evaluated not as a side activity of entities performing law enforcement and other functions in the state and public system, but as an activity which must be implemented, in the first turn, by autonomous entities, which, taking into account the accumulation of comprehensive criminological information could provide a proactive impact on crime on a professional basis.

Conclusions

Thus, summing up the result to the main aspects of the study conducted in this article, several key conclusions can be formulated.

First, the prevention of offenses and (or) crimes and crime deterrence should be viewed as interconnected, but not fully coinciding directions of preemptive impact from the side of law enforcement agencies and other entities of preventive and deterrent activity. The conducted analysis visually demonstrated that both concepts are united by a common preventive direction, however perform different conceptual functions. Specifically, prevention is largely connected with a stable system, formed within the framework of national jurisdiction, of impact on the causes, conditions and social environment of offenses, whereas deterrence more often manifests as a more operational, situational and result-oriented prevention of particular criminal manifestations. Such an approach allows to avoid both their mechanical identification and artificial opposition.

Second, Kazakhstan needs its own model of prevention, and not a fragmentary borrowing of foreign practices. Foreign experience clearly testifies that effective preventive systems are formed not only due to legal norms or organizational decisions, but also with the participation of stable social bonds between the state, society and citizen. Therefore, individual elements of foreign models can be fragmentarily useful, but are not capable of replacing the national system, adapted to the features of social relations. Accordingly, for Kazakhstan it is fundamentally important to develop a model taking into account its own legal, social, territorial and cultural specificity.

Third, modern prevention cannot remain exclusively a function of law enforcement agencies. One of the key results of the research consists in that that preventive activity must go beyond the limits of depart-

mental logic of the police, prosecutor's office and other law enforcement structures. Foreign experience visually testify about the significance of special centers, councils and expert institutions dedicated to analyzing crime, developing recommendations, coordinating entities, as well as the disseminating successful practices.

Fourth, the efficiency of prevention must be evaluated not by single facts of crimes, but by stable medium- and long-term changes of the criminogenic situation. The mere fact of committing an offense and (or) crime does not always testify about the failure of the preventive system, since prevention by its nature is oriented at a long impact, linked with the reduction of criminogenic risks, involvement of citizens into the system of ensuring law and order, strengthening of legal culture, resocialization of persons from risk groups and the formation of a safe environment. Accordingly, its productiveness must be measured not by short-term indicators, but by the dynamics of crime, recidivism, public safety and trust between the population and state institutions.

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Б.К. Шнарбаев

Қылмысқа алдын алу әсері мәселесі: аксиологиялық және ұйымдастырушылық қайта қарау қажеттілігі

Мақала қазақстандық қоғамның қазіргі жұмыс істеу жағдайында қылмысқа профилактикалық әсерді бағалаудың түбегейлі жаңа тәсілдерін негіздеуге арналған. Сонымен қатар Қазақстан Республикасының қазіргі қылмыстық-құқықтық саясаты тұрғысынан «қылмыстың алдын алу», «қылмыстың алдын алу» және «қылмысты бақылау» ұғымдары арасындағы өзара байланыстың теориялық және қолданбалы мәселелері қарастырылды. Зерттеудің мақсаты — Қазақстан Республикасының қазіргі қылмыстық-құқықтық саясаты тұрғысынан құқық бұзушылықтардың және (немесе) қылмыстың алдын алуды теориялық және қолданбалы түрде түсіну. Зерттеудің әдіснамалық негізі диалектикалық, формальды-құқықтық, салыстырмалы-құқықтық, жүйелік-құрылымдық, логикалық-семантикалық әдістерден, сондай-ақ талдау, синтездеу, жалпылау және болжау әдістерінен тұрады. Қолданыстағы заңнама мен бағдарламалық құжаттарда көрсетілген терминология әрқашан біркелкі қолданылмайтыны дәлелденген, бұл профилактикалық қызметтің бірыңғай әдіснамалық негізін қалыптастыруды қиындатады. Құқық бұзушылықтардың алдын алу, мемлекет пен қоғамның әріптестік қатынастарын қалыптастыру арқылы қоғамдық қауіпсіздікті қамтамасыз ету мәселелерін тікелей реттейтін, сондай-ақ «заңдылық» және «құқық тәртібі» ұғымдарын жан-жақты түсінуге

негізделген түбегейлі жаңа құқықтық сананы қалыптастыруға бағытталған ұлттық заңнама актілеріне ерекше назар аударылады. Алдын алу саясатын криминологиялық қолдау, аналитикалық, болжамдық және зерттеу базасын әзірлеу, сондай-ақ құқық қорғау органдары мен азаматтық қоғам институттары арасындағы өзара іс-қимылды нығайту қажеттілігі атап өтілді. Автор жүйелі тәсілге, ведомствоаралық ынтымақтастыққа, ғылыми негізділікке және нәтижелерді ұзақ мерзімді бағалауға негізделген ұлттық қылмыстың алдын алу моделін әзірлеу Қазақстан үшін басымдық болады деген қорытындыға келді.

Кілт сөздер: құқық бұзушылықтардың алдын алу, қылмыстың алдын алу, қылмыстың алдын алудың моделі, шетелдік тәжірибе, қылмыстың алдын алу жүйесінің криминологиялық қамтамасыз етілуі.

Б.К. Шнарбаев

Проблема профилактического воздействия на преступность: необходимость аксиологической и организационной ревизии

Статья посвящена обоснованию принципиально новых подходов к оценке профилактического воздействия на преступность в современных условиях функционирования казахстанского общества. В статье рассматриваются теоретико-прикладные проблемы соотношения понятий «профилактика преступности», «предупреждение преступности» и «противодействие преступности» в контексте современной уголовно-правовой политики Республики Казахстан. Цель исследования заключается в теоретико-прикладном осмыслении профилактики правонарушений и (или) преступности в контексте современной уголовно-правовой политики Республики Казахстан. Методологическую основу исследования составили диалектический, формально-юридический, сравнительно-правовой, системно-структурный, логико-семантический методы, а также методы анализа, синтеза, обобщения и прогнозирования. Обосновывается, что действующее законодательство и программные документы используют указанную терминологию не всегда последовательно, что затрудняет формирование единой методологической основы превентивной деятельности. Особое внимание уделяется актам национального законодательства, непосредственно регулирующим вопросы профилактики правонарушений, обеспечения общественной безопасности посредством формирования партнерских отношений государства и общества, а также направленным на формирование качественно нового правосознания, основанного на абсолютном понимании смысла категорий «законность» и «правопорядок». Анализируется зарубежный опыт построения национальных систем профилактики преступности. Отдельно подчеркивается необходимость криминологического сопровождения профилактической политики, развития аналитической, прогностической и исследовательской базы, а также усиления взаимодействия правоохранительных органов с институтами гражданского общества. Автор приходит к выводу, что для Казахстана приоритетным направлением является формирование собственной национальной модели профилактики преступности, основанной на системности, межведомственном взаимодействии, научной обоснованности и долгосрочной оценке результатов.

Ключевые слова: профилактика правонарушений, предупреждение преступности, модель профилактики преступлений, зарубежный опыт, криминологическое сопровождение системы профилактики преступлений.

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